

**MULCAHY LLP**

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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 FOR  
PARTIAL SUMMARY JUDGMENT**

Date: November 21, 2016

Time: 10:00 a.m.

Courtroom: 8

Action Filed: September 17, 2015

Pretrial Conf.: November 14, 2016

Trial: January 31, 2017

I, Kevin A. Adams, declare as follows:

1. I am one of the attorneys of record for Plaintiffs and Counter-  
Defendants Bennion & Deville Fine Homes, Inc. ("B&D Fine Homes"), Bennion

1 & Deville Fine Homes SoCal, Inc. ("B&D SoCal") and Windermere Services  
2 Southern California, Inc. ("Services SoCal"), and Counter-Defendants Robert  
3 Bennion ("Bennion") and Joseph R. Deville ("Deville") (collectively, the "B&D  
4 Parties") in the above-named action. I am a member in good standing of the State  
5 Bar of California, and duly admitted to practice law before all of the courts of the  
6 State of California, including the United States District Court, Central District of  
7 California and the United States Court of Appeals for the Ninth Circuit.

8         2. I make this Declaration in support of Plaintiffs and Counter-  
9 Defendants Motion for Partial Summary Judgment of the First Amended  
10 Counterclaim ("FACC"), at Docket Entry ("D.E.") 16, filed by Windermere Real  
11 Estate Services Company ("WSC").

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

17  
18 **A. Depositions of WSC's Corporate Representatives**

19         4. On August 4, 2016, my secretary Barbara Calvert, at my direction and  
20 under my supervision, served WSC's counsel with an Amended Notice of  
21 Deposition of Defendant Windermere Real Estate Services Company pursuant to  
22 Federal Rules of Civil Procedure, Rule 30(b)(6) (the "Rule 30(b)(6) Notice"). I am  
23 the drafter of the Rule 30(b)(6) Notice. A true and accurate copy of the Rule  
24 30(b)(6) Notice is attached hereto as Exhibit A. A true and accurate copy of the  
25 Proof of Service for the Rule 30(b)(6) Notice reflecting service on WSC's counsel  
26 is attached hereto as Exhibit B.

27         5. The Rule 30(b)(6) Notice was also used, authenticated, and attached  
28 as exhibit 2 to the Depositions of WSC corporate representatives Paul Drayna (p.

1 19), Geoff Wood (pp. 18-19), Mark Oster (p. 18), among others. The relevant  
2 portions of the deposition transcripts for these witnesses are discussed and marked  
3 as exhibits below.

4 6. On August 19, 2016, Jeff Feasby, one of the attorneys for WSC, sent  
5 me an email identifying the names of the witnesses that WSC would be producing  
6 to testify as WSC's corporate representatives and in response to the categories  
7 identified in the Rule 30(b)(6) Notice. A true and accurate copy of the August 19,  
8 2016 email from Mr. Feasby is attached hereto as Exhibit C.

9 7. The August 19, 2016 email from Mr. Feasby was identified as exhibit  
10 3 and authenticated during the depositions of WSC corporate representatives Paul  
11 Drayna (p. 21), and Geoff Wood (pp. 19), among others.

12 8. During the weeks of August 22 and 29, 2016, I traveled to Seattle,  
13 Washington and deposed WSC's corporate representatives produced in response to  
14 the Rule 30(b)(6) Notice. This included the depositions of WSC's CEO (Geoff  
15 Wood), CFO (Mark Oster), and General Counsel (Paul Drayna). *See Ex. C*.

16 9. Attached as Exhibit D is a true and correct copy of relevant excerpts  
17 from the transcript of the deposition of Geoff Wood ("Wood Depo."), taken on  
18 August 25, 2016. As the attorney that deposed Mr. Wood, I have personal  
19 knowledge of the witness' testimony identified in the attached transcript. The 30-  
20 day deadline for Mr. Wood to make changes to his deposition testimony under  
21 Federal Rules of Civil Procedure, Rule 30(e)(1) has passed and no changes were  
22 made.  
23

24 10. Attached as Exhibit E is a true and correct copy of relevant excerpts  
25 from the transcript of the deposition of Paul Drayna ("Drayna Depo."), taken on  
26 August 22 and 23, 2016. As the attorney that deposed Mr. Drayna, I have personal  
27 knowledge of the witness' testimony identified in the attached transcript. The 30-  
28 day deadline for Mr. Drayna to make changes to his deposition testimony under

1 Federal Rules of Civil Procedure, Rule 30(e)(1) has passed and no changes were  
2 made.

3 11. Attached as Exhibit F is a true and correct copy of relevant excerpts  
4 from the transcript of the deposition of Mark Oster (“Oster Depo.”) taken on  
5 August 30, 2016, 2016. As the attorney that deposed Mr. Oster, I have personal  
6 knowledge of the witness’ testimony identified in the attached transcript. The 30-  
7 day deadline for Mr. Oster to make changes to his deposition testimony under  
8 Federal Rules of Civil Procedure, Rule 30(e)(1) has passed and no changes were  
9 made.

10 12. On August 25, 2016, and after I had completed the depositions of  
11 several of the corporate representatives identified by WSC, Mr. Feasby sent me a  
12 new designation of witnesses in response to my Rule 30(b)(6) Notice. A true and  
13 correct copy of the August 25, 2016 email is attached hereto as Exhibit G.

14 13. The August 25, 2016 email from Mr. Feasby was identified as exhibit  
15 127 and authenticated during the depositions of WSC corporate representatives  
16 Mark Oster (pp. 18-19), among others.

17 14. Category 46 of the Rule 30(b)(6) Notice required WSC to produce a  
18 corporate representative to testify concerning “[t]he damages [WSC] is claiming in  
19 this action.” *See* Ex. A, p. 6.

20 15. As reflected in Mr. Feasby’s emails from August 19<sup>th</sup> and 25<sup>th</sup>, WSC  
21 CEO (Geoff Wood), CFO (Mark Oster), and General Counsel (Paul Drayna) were  
22 each produced as corporate representatives to testify on behalf of WSC in response  
23 to Category 46. *See* Exs. C, G.

24 **B. WSC’s Expert Witness Disclosure**

25 16. On September 16, 2016, counsel for WSC served my office with  
26 WSC’s “Expert Witness Disclosure Pursuant to Federal Rule of Civil Procedure  
27 26” (“Expert Disclosure”). A true and accurate copy of WSC’s Expert Disclosure  
28



1 is attached hereto as Exhibit H.

2 17. As part of the Expert Disclosure, WSC designated Certified Public  
3 Accountant Neil Beaton as an expert witness in the case. *See* Ex. H, p. 1, ¶ 1.

4 18. Mr. Beaton's report is silent on any harm or damage to WSC in  
5 connection with WSC's first or second claimed breaches of the Area  
6 Representation Agreement. *See* Ex. H, exhibit 1. Instead, and consistent with the  
7 deposition testimony of Mr. Oster, Mr. Beaton summarized WSC's "economic  
8 damages" to be related solely to "unpaid franchise fees" in the amount of  
9 \$1,328,000. *See* Ex. H, exhibit 1, p. 5; Ex. F, pp. 113:10 to 114:4.

10 **C. WSC's Initial Disclosures**

11 19. On or around December 14, 2015, counsel for WSC served my office  
12 with WSC's Initial Disclosures pursuant to Federal Rules of Civil Procedure, Rule  
13 26(a)(1) (the "Initial Disclosures"). A true and accurate copy of WSC's Initial  
14 Disclosures are attached hereto as Exhibit I.

15 20. Page 5 of the Initial Disclosures identify WSC's claimed damages to  
16 be \$1,208,655.43. *See* Ex. I, p. 5. This figure is consistent with those franchise fee  
17 damages identified by Mr. Oster and Mr. Beaton. *See* Exs. F, H.

18 21. Review of WSC's Initial Disclosures shows that the document makes  
19 no reference to any damages in connection with WSC's claimed first and second  
20 breaches of the Area Representation Agreement.

21 **D. WSC's Written Discovery Responses**

22 22. I prepared the written discovery requests issued by the B&D Parties in  
23 this case. Several of the document production requests and interrogatories were  
24 specifically drafted to elicit information on the amount of damages WSC is seeking  
25 and the substantiation for those claimed damages.

26 23. For instance, on December 21, 2015, I sent Request for Production of  
27 Documents, set one, on behalf of B&D Fine Homes to WSC (the "Document  
28

1 Requests”). A true and accurate copy of the Request for Production of Documents  
2 is attached hereto as Exhibit J.

3 24. On or around January 20, 2016, WSC provided my office with written  
4 responses to the Document Requests. A true and accurate copy of WSC’s January  
5 20, 2016 written responses to the Document Requests are attached hereto as  
6 Exhibit K. I thoroughly reviewed WSC’s written responses and corresponding  
7 documents upon receipt.

8 25. I drafted Document Request Nos. 48 and 71 to obtain from WSC all  
9 materials relating to its damages and calculations for those damages. My review of  
10 WSC’s written responses and corresponding document production did not identify  
11 or support any damages in connection with WSC’s claims that Services SoCal  
12 failed (1) “to provide ‘prompt, courteous and efficient service’ to Windermere  
13 franchisees,” or (2) “to deal ‘fairly and honestly’ with members of the Windermere  
14 System,” as alleged in paragraph 130 of the FACC. *See* Ex. K.

15 I declare under penalty of perjury under the laws of the State of California  
16 and the laws of the United States of America that the foregoing is true and correct  
17 and that this Declaration was executed this 24th day of October, 2016 at Irvine,  
18 California.  
19

20  
21 /s/ Kevin A. Adams  
22 Kevin A. Adams  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**

1 **MULCAHY LLP**

2 James M. Mulcahy (SBN 213547)

3 *jmulcahy@mulcahyllp.com*

4 Kevin A. Adams (SBN 239171)

5 *kadams@mulcahyllp.com*

6 Four Park Plaza, Suite 1230

7 Irvine, California 92614

8 Telephone: (949) 252-9377

9 Facsimile: (949) 252-0090

10 *Attorneys for Plaintiffs and Counter-Defendants*

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

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

21 Plaintiffs,

22 v.

23 WINDERMERE REAL ESTATE  
24 SERVICES COMPANY, a  
25 Washington corporation; and DOES  
26 1-10.

27 Defendants.

28 **AND RELATED COUNTERCLAIMS**

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

) *Hon. Manual L. Real*

) **AMENDED NOTICE OF**  
) **DEPOSITION OF DEFENDANT**  
) **WINDERMERE REAL ESTATE**  
) **SERVICES COMPANY PURSUANT**  
) **TO FEDERAL RULES OF CIVIL**  
) **PROCEDURE, RULE 30(b)(6)**

) Date: August 25, 2016

) Time: 9:00 a.m. (PST)

) Place: Seattle Deposition Reporters  
) 600 University Street, Suite 320  
) Seattle, WA 98101-4196

**Exhibit No.**

2  
Drayna  
8-22-16

Cynthia A. Kennedy, CSR, RPR

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of  
3 Civil Procedure, the deposition of Defendant Windermere Real Estate Services Company  
4 ("Windermere") will be taken at Seattle Deposition Reporters 600 University Street,  
5 Suite 320, Seattle, WA 98101-4196. The deposition will commence at 9:00 a.m. (PST) on  
6 August 25, 2016, and will be conducted upon oral examination before a certified court  
7 reporter, who is a disinterested and unrelated officer authorized by law to administer  
8 oaths. The deposition will continue from day to day until completed.

9 PLEASE TAKE FURTHER NOTICE that pursuant to Rule 30 of the Federal  
10 Rules of Civil Procedure, the deposing party intends to cause the proceeding to be  
11 recorded stenographically and by videotape.

12 The deponent is not a natural person. The matters on which the deponent will be  
13 examined are as follows:

14 1. All efforts undertaken by Windermere to search for documents responsive to  
15 Plaintiff Bennion & Deville Fine Homes, Inc.'s ("B&D Fine Homes") First Set of  
16 Request for Production of Documents to Windermere.

17 2. All locations searched for documents and other materials (including  
18 electronically stored information) responsive to B&D Fine Homes' First Set of Request  
19 for Production of Documents to Windermere.

20 3. All efforts undertaken by Windermere to search for documents responsive to  
21 B&D Fine Homes' Second Set of Request for Production of Documents to Windermere.

22 4. All locations searched for documents and other materials (including  
23 electronically stored information) responsive to B&D Fine Homes' Second Set of  
24 Request for Production of Documents to Windermere.

25 5. Windermere's investigation for documents following the Court's issuance of  
26 the June 8, 2016 Order Granting in Part and Denying in Part Plaintiffs' Motion to Compel  
27 [Docket Entry No. 46].

28 6. Reasons, if any, for Windermere's inability to comply with B&D Fine

1 Homes' written discovery requests.

2 7. Reasons, if any, for Windermere's inability to comply with Plaintiff  
3 Windermere Services Southern California, Inc.'s ("Services SoCal") written discovery  
4 requests.

5 8. All systems, policies, and procedures utilized by Windermere in relation to  
6 the storing/keeping/holding/maintenance of its business, financial, corporate or any other  
7 records (collectively, "Records"), including, but not limited to: (a) how said Records are  
8 stored/kept/held/maintained on any computer or other electronic system; (b) how said  
9 Records are backed up; (c) how said Records are accessed and who has had or currently  
10 has access to said Records; (d) how said Records are secured; and (e) how said Records  
11 are destroyed, if at all.

12 9. The substance and content of all documents produced by Windermere in this  
13 case.

14 10. The substance and content of all pleadings filed and/or served by  
15 Windermere in this case.

16 11. The underlying basis for the claims alleged in the First Amended Counter-  
17 Claim ("FACC").

18 12. Windermere's business organization, officers, directors, shareholders,  
19 agents, employees, business activities, and methods of doing business from January 1,  
20 2012 to the present date.

21 13. All agreements, applications, loans, promissory notes, guaranties or other  
22 understandings that were signed, entered into, or otherwise executed or ratified between  
23 Windermere and B&D Fine Homes, Services SoCal, Bennion & Deville Fine Homes  
24 SoCal, Inc. ("B&D SoCal"), Robert Bennion ("Bennion"), and Robert Deville  
25 ("Deville") (collectively, the "B&D Parties").

26 14. The calculation of all amounts allegedly owing by any of the B&D Parties to  
27 Windermere under any agreements, applications, loans, promissory notes, or guaranties.

28 15. All income generated by Windermere through its Southern California

1 franchising operation since August 1, 2001.

2 16. The execution, obligations, rights, duties, and performance of the parties  
3 under the Windermere Real Estate License Agreement dated August 1, 2001, and all  
4 addenda thereto.

5 17. The execution, obligations, rights, duties, and performance of the parties  
6 under the Windermere Real Estate Services Company Area Representation Agreement  
7 for the State of California dated May 1, 2004, and all addenda thereto.

8 18. The execution, obligations, rights, duties, and performance of the parties  
9 under the Windermere Real Estate Franchise License Agreement, dated March 29, 2011,  
10 and all addenda thereto.

11 19. The execution, obligations, rights, duties, and performance of the parties  
12 under the Agreement Modifying Windermere Real Estate Franchise License Agreement  
13 dated December 18, 2012.

14 20. Alleged violations and contractual breaches by the B&D Parties of their  
15 agreements with Windermere.

16 21. Windermere Watch's anti-Windermere marketing campaign.

17 22. All efforts undertaken by Windermere to prevent or disrupt Windermere  
18 Watch's anti-Windermere marketing campaign.

19 23. Communications between the B&D Parties and representatives of  
20 Windermere regarding Windermere's efforts to combat Windermere Watch's anti-  
21 Windermere marketing campaign.

22 24. Communications between representatives of Windermere and  
23 representatives of Windermere Watch, including, but not limited to, Gary Krueger,  
24 regarding Windermere Watch's anti-Windermere marketing campaign.

25 25. Communications between representatives of Windermere and Windermere  
26 franchisees in California regarding Windermere Watch's anti-Windermere marketing  
27 campaign.

1           26. Use of the Windermere Watch anti-Windermere marketing campaign by  
2 competitors of Windermere in the real estate industry.

3           27. Windermere's efforts to take action (legal or otherwise) to prevent  
4 infringement of the Windermere trademark or the related unfair competition in the  
5 Southern California region as a result of the Windermere Watch websites.

6           28. Windermere's franchise registration and renewal efforts in California.

7           29. All of Windermere's emails, letters, filings, submissions, and other  
8 communications and interactions with representatives of the California Department of  
9 Business Oversight since January 1, 2012.

10          30. Disclosure of the Windermere franchise system to actual and prospective  
11 franchisees in California from January 1, 2012 to present.

12          31. The registration of Windermere's franchise disclosure document for the  
13 Southern California region.

14          32. The different contract terms offered by Windermere to its Northern  
15 California prospective franchisees from the terms offered to its Southern California  
16 prospective franchisees.

17          33. Any efforts undertaken by Windermere to acquire the B&D Parties'  
18 technology and related services.

19          34. All communications between Windermere and its Southern California  
20 Windermere franchisees from January 1, 2012 to present.

21          35. The performance of the B&D Parties while operating as franchisees and area  
22 representatives in the Windermere system.

23          36. The "Windermere System" provided by Windermere to franchisees in the  
24 Southern California region.

25          37. The contributions of the B&D Parties to the Windermere system.

26          38. The technology and related services offered by Windermere to franchisees in  
27 the Southern California region.  
28



1           39. Any alleged delay in payment of franchise fees and other fees by the B&D  
2 Parties.

3           40. The B&D Parties' use of the Windermere name and trademark following the  
4 termination and/or expiration of their franchise agreements.

5           41. Windermere's efforts to reacquire the Area Representative rights and duties  
6 for the Southern California region.

7           42. Windermere's termination of the Area Representative Agreement with  
8 Services SoCal.

9           43. Windermere's communications with the B&D Parties' sales agents and other  
10 employees from January 1, 2012 to present.

11           44. The support the B&D Parties provided to the Windermere franchisees in the  
12 Southern California region.

13           45. The loans by Windermere to the B&D Parties, and any subsequent  
14 repayment of those loans.

15           46. The damages Windermere is claiming in this action.

16           47. The fair market value of the Area Representative business at the time of  
17 termination.

18           48. The franchise and other fees allegedly received by Services SoCal and not  
19 remitted to Windermere as required under the Area Representation Agreement.

20           49. The franchise and other fees allegedly owed by the B&D Parties to  
21 Windermere.

22           50. Any reimbursement by Windermere to the B&D Parties for their  
23 expenditures on technology and SEO optimization to combat the anti-Windermere  
24 marketing efforts of Windermere Watch.

25           51. Agreements between Windermere and any Southern California franchisee  
26 concerning the payment of royalties and other fees to Windermere and/or the B&D  
27 Parties.  
28

1           52. All payments received by Windermere from any Southern California  
2 franchisee from January 1, 2012 to present.

3           53. The amount of attorneys' fees incurred by Windermere in connection with  
4 this action.

5           54. All contributions, directly or indirectly, to the Windermere Foundation by  
6 franchisees in the Southern California region, and the Windermere Foundations  
7 subsequent use or expenditure of those contributions.

8           55. Windermere's alleged investments into the Windermere technology system  
9 since February 1, 2012.

10          56. The alleged "suite of tools" available to Windermere agents through the  
11 Windermere technology system since January 1, 2012.

12          57. The B&D Parties' alleged attempts to recruit agents to leave Windermere to  
13 work for the B&D Parties.

14          58. The B&D Parties' alleged "open hostility" toward franchisees in the  
15 Southern California region.

16          59. Service SoCal's alleged "lack of support" for franchisees in the Southern  
17 California region.

18          60. The identification and calculation of all damages claimed by Windermere in  
19 this action; all facts, claims or defenses relating to said calculation; all Person with  
20 knowledge of said calculation; any actions undertaken in relation to said calculation; and  
21 all documents which discuss, relate or refer to said calculations.

22  
23  
24 Dated: August 4, 2016

**MULCAHY LLP**

25  
26 By: /s/ Kevin A. Adams

27 Kevin A. Adams

28 *Attorneys for Plaintiffs & Counter-  
Defendants*

## **EXHIBIT B**

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1 [ ] BY FEDERAL EXPRESS – I am readily familiar with the firm's practice of collection and  
2 processing correspondence for Federal Express. Under that practice it would be deposited  
3 with Federal Express on that same day in the ordinary course of business for overnight  
4 delivery with delivery costs thereon fully prepaid by sender, at Irvine, California.

5 [ ] BY MESSENGER SERVICE – I served the documents by placing them in an envelope or  
6 package addressed to the persons at the addresses listed herein and providing them to a  
7 professional messenger service for service. A declaration by the messenger service will be  
8 filed separately.

9 I declare under penalty of perjury under the laws of the State of California and the United  
10 States of America that the above is true and correct.

11 Executed on **August 4, 2016** at Irvine, California.

12 By: /s/ Barbara Calvert  
13 Barbara Calvert  
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PROOF OF SERVICE

# **EXHIBIT C**

Reply Reply All Forward

## Deposition Topics

Jeff Feasby [feasby@perezwilson.com]

To: Kevin Adams

Cc: Christopher Rowlett [rowlett@perezwilson.com]; vaughn@perezwilson.com

Friday, August 19, 2016 2:06 PM

Kevin -- As we discussed, set forth below are the witnesses designated by WSC in response to the Rule 30(b)(6) notice along with the topics on which they can testify. As you will see, we have not designated anyone to testify regarding category 40 because we have dismissed the trademark claims.

Best,

Jeff

- Paul Drayna – 1-5, 8-13, 16-23, 25-35, 39-43, 45, 46, 48, 50, 51, 60
- Mike Teather – 9-13, 16-25, 27, 33-35, 37, 39, 41-44, 47, 50, 51, 57-59
- Geoff Wood – 9-13, 16-27, 33-37, 39, 41-48, 50, 51, 55, 57-59
- Jill Wood – 9, 21, 33-37, 42, 44, 45, 47, 54, 58, 59
- OB Jacobi – 9, 21-23, 25, 27, 33-38, 42, 44, 47, 55, 56, 58, 59
- Mark Oster – 1-4, 8, 9, 11, 14-20, 33-36, 39, 42, 45-49, 52-55, 60
- Noelle Bortfeld – 9, 21, 22, 25, 34-37, 44, 59
- Mike Fanning – 37-38, 44, 56
- York Baur – 21-23, 25, 27, 36-38, 44, 55, 56
- Robert Sherrell – 1-8, 40

---

**Jeffrey A. Feasby** | Pérez & Wilson

Symphony Towers, 750 B Street, 33rd Floor, San Diego, CA 92101

direct dial: 619.741.0242 | facsimile: 619.460.0437[www.perezwilson.com](http://www.perezwilson.com)

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This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

**Exhibit No.**3Drayna8-22-16

Cynthia A. Kennedy, CSR, RPR

## **EXHIBIT D**



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 )  
SOUTHERN CALIFORNIA, INC., a )  
7 California corporation, )  
)  
8 Plaintiffs, )  
) No.  
9 vs. ) 5:15-cv-01921-R-KK  
)  
10 WINDERMERE REAL ESTATE SERVICES )  
COMPANY, a Washington )  
11 corporation; and DOES 1-10, )  
)  
12 Defendants, )  
)  
13 )  
AND RELATED COUNTERCLAIMS )  
14 )

15  
16 VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF:  
17 GEOFFREY P. WOOD  
18  
19

20 Seattle Deposition Reporters

21 600 University Street, Suite 320

22 Seattle, Washington

23  
24 DATE TAKEN: August 25, 2016  
25 REPORTED BY: CYNTHIA A. KENNEDY, RPR, CCR 3005

Page 1

1 was concerned that she had not been exposed to any of  
2 that. So I -- I think that she was unhappy with the  
3 services that she was getting.

4 We have Loscher, Browne, and Rodgers who  
5 went away. I think part of it was their relationship  
6 with Mr. Deville. Rodgers was a challenge, I know  
7 that, but that relationship was not a positive  
8 relationship.

9 Q. Now, isn't it true that Raye and Francine  
10 left the system after being upset they did not get the  
11 Brian Errington location?

12 A. I don't know.

13 Q. Did you discuss that with either Raye or  
14 Francine?

15 A. I did not.

16 Q. Now, Windermere has asserted various breach  
17 of contract claims against Mr. Bennion and Mr. Deville  
18 in their entities in this lawsuit.

19 Are you aware of that?

20 A. I am.

21 Q. And Windermere is seeking damages in  
22 connection with each of those claims.

23 Are you aware of that.

24 A. I am.

25 Q. And are you being presented to testify here

1 as to those damages --

2 A. No.

3 Q. -- that are being sought?

4 A. The amount?

5 Q. Correct.

6 A. No.

7 Q. Who from Windermere will?

8 A. Mark Oster.

9 Q. Thank you.

10 Mr. Oster is being presented by Windermere  
11 as the representative to testify as to the amount of  
12 damages that are being sought by Windermere in this  
13 case, correct?

14 A. That's correct.

15 Q. Are you aware of any efforts undertaken by  
16 Windermere to acquire Mr. Bennion and Mr. Deville's  
17 technology?

18 A. No.

19 Q. Do owners in Seattle ever complain about  
20 Ms. Wood's status as a services provider and as an  
21 owner at the same time?

22 A. No.

23 Q. You've never had an owner complain about the  
24 conflicting role of you or Ms. Wood being both  
25 services providers and owners?

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SIGNATURE

I declare under penalty of perjury under the laws of the State of Washington that I have read my within deposition, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the CHANGE SHEET flyleaf page hereof.

Signed in \_\_\_\_\_, Washington,  
on the \_\_\_\_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
GEOFFREY P. WOOD

TAKEN: August 25, 2016

# **EXHIBIT E**

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 of October 1st?

2 A. September 30th, October 1st, yes.

3 Q. And so whatever amount was left, based on  
4 this per diem extrapolation, that amount is being  
5 pursued as part of this litigation?

6 A. Correct.

7 Q. And do you know, as you sit here, what that  
8 amount is?

9 A. I -- I don't know the exactly. Mark Oster  
10 will have the exact number for you at his deposition.  
11 He was going to update that information or have an  
12 exact figure. I -- my recollection is that it is in  
13 the neighborhood of \$300,000, but that's a -- that's a  
14 very ballpark guess.

15 Q. Are there any other amounts that were  
16 forgiven as part of this modification agreement that  
17 Windermere is seeking to collect in this litigation?

18 A. No. That was -- it is the portion of that  
19 \$863,560 that was -- remained owing, as of September  
20 30th, 2015.

21 Q. Does Windermere contend that Mr. Bennion or  
22 Mr. Deville are personally liable for that figure?

23 A. The -- I believe that the -- I going to say  
24 I'll let document speak for itself. But, part of this  
25 agreement was a release of any personal guarantees of

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 )  
SOUTHERN CALIFORNIA, INC., a )  
7 California corporation, ) No.  
8 Plaintiffs, ) 5:15-cv-01921-R-KK  
9 vs. )  
10 WINDERMERE REAL ESTATE SERVICES )  
COMPANY, a Washington )  
11 corporation; and DOES 1-10, )  
12 Defendants, )  
AND RELATED COUNTERCLAIMS )  
13 )  
14 )

15  
16 VIDEOTAPED DEPOSITION EXAMINATION OF:

17 PAUL S. DRAYNA

18 VOLUME II

19 600 University Street, Suite 320

20 Seattle, Washington  
21  
22

23 DATE TAKEN: August 23, 2016

24 REPORTED BY: CYNTHIA A. KENNEDY, RPR, CCR 3005

25 PAGES 355 - 454

Page 355



1 served by Windermere in this case, correct?

2 A. Yes.

3 Q. And, to add onto that, the corporate  
4 representative to testify about the underlying basis  
5 for the claims alleged by Windermere in the First  
6 Amended Counterclaim, correct?

7 A. Yes.

8 Q. Now, the breach of contract claim, Count One  
9 in the counterclaim concerning the Coachella Valley  
10 Franchise Agreement, identifies a figure of  
11 \$629,968.64 plus interest that Windermere alleges is  
12 owing from Mr. Bennion and Mr. Deville.

13 Do you know how that figure was calculated?

14 A. That figure was calculated by our accounting  
15 department.

16 Q. And who is that?

17 A. Mark Oster is our chief financial officer.  
18 He has also been identified as a corporate  
19 representative. I believe he was also identified as a  
20 corporate representative to testify as to this issue  
21 specifically, the question of the amounts owing. And  
22 he has been asked to prepare an updated balance for  
23 his deposition this week. He will have that with him  
24 and be prepared to explain it and discuss it.

25 Q. Now, as part of the breach of contract claim

1 breach of the Area Representation Agreement,  
2 Windermere claims that Services breached the agreement  
3 by its continued knowing and intentional misuse of the  
4 Windermere name and trademarks following the  
5 expiration/termination of the Area Representation  
6 Agreement.

7 Are you aware of that?

8 A. Yes.

9 Q. How did Services breach that provision?

10 A. This would be the same issues that we just  
11 discussed with regard to the Coachella Valley entity.  
12 This is the continuing use, after September 30th, of  
13 domain names that contained the word "Windermere."

14 Q. How did Services use those domain names?

15 A. To some degree, it is unclear to us who was  
16 the registrant or who was using or who was controlling  
17 those domain names as of the date of termination.

18 Q. And are you aware that the Services entity  
19 was not the registrant of any of those domain names?

20 A. There's a question of who -- there's one  
21 question of who's the registrant, who has legal  
22 ownership of the domain name. There's also a question  
23 of who actually has control of the domain name and who  
24 is -- for instance, when a user types in  
25 WindermereSoCal.com and it redirects to a different

1 website, that happens because somebody did something.  
2 Somebody sat at a keyboard and programmed something to  
3 affect that redirect.

4 And we don't know, at this point, who did  
5 that or when.

6 Q. And you're aware that Bennion & Deville Fine  
7 Homes, Inc. is the owner of all those domain names  
8 that we had addressed earlier using the Windermere  
9 name?

10 A. Again, the -- I'm aware that they were the  
11 legal owner of the domain names. What we are unaware  
12 of is who, if it had been -- to the extent that it was  
13 an employee or representative of Windermere Services  
14 Southern California, Inc. who controlled those domain  
15 names or who programmed the redirects that we're  
16 talking about. That would form the basis of that  
17 potential claim against the Services company.

18 Q. What evidence does Windermere have to  
19 suggest that an employee of the Services entity was  
20 the person or persons responsible for continued use of  
21 the domain names?

22 A. As of today, I don't know that we have --  
23 that we have any evidence that discovery -- I think  
24 our investigation on that is continuing.

25 Q. Do you understand that the discovery cutoff

1 deadline in this case has passed, correct?

2 A. I --

3 MR. FEASBY: Objection.

4 THE WITNESS: No, I do not.

5 MR. FEASBY: Form.

6 THE WITNESS: I do not believe that's  
7 true.

8 BY MR. ADAMS:

9 Q. But as you sit here, you cannot identify any  
10 specific instances or evidence of a representative of  
11 Services using the Windermere domain names after  
12 September 30, 2015, correct?

13 A. We know what -- again, as I believe I  
14 already said, we know that somebody had to do  
15 something on or around September 30, 2015 that  
16 resulted in web traffic to WindermereSoCal.com being  
17 redirected somewhere else, and we don't know who did  
18 that.

19 Q. And you don't know who did it, so you just  
20 filed a claim for breach of contract against the  
21 Services entity?

22 A. That was not the sole basis for the breach  
23 of contract claim against the Services company.

24 Q. Is Windermere going to pursue that  
25 particular breach with respect to the domain name

1 against the Services entity?

2 A. To the extent that it is supported by the  
3 facts as they are discovered, yes.

4 Q. And what facts are those?

5 A. As --

6 MR. FEASBY: Objection. Asked and  
7 answered.

8 THE WITNESS: Yes, it was.

9 I already said, as of today, we don't  
10 know who did what or when.

11 BY MR. ADAMS:

12 Q. You realize trial is scheduled for just a  
13 little over a month and-a-half from now, correct?

14 A. Yes.

15 Q. And as you sit here, you don't have any  
16 facts that you can testify to concerning Services' use  
17 of the domain names after September 30, 2015?

18 A. I -- we've already talked about we have  
19 evidence of how the domain names were used. The  
20 question is, by whom or who was responsible for the  
21 nature of that use.

22 Q. And you're aware that -- of the registrant  
23 of those domain names?

24 A. Yes.

25 Q. And you're aware it's not the Services

1 entity?

2 A. Yes.

3 Q. Okay. There's also a claim in the  
4 counterclaim alleged by Windermere against  
5 Mr. Bennion, Mr. Deville, and their entity, Bennion &  
6 Deville Fine Homes SoCal for breach of contract.

7 Are you aware of that?

8 A. Yes.

9 Q. And that contract concerns the Southern  
10 California Franchise Agreement, correct?

11 A. The San Diego Franchise Agreement.

12 Q. And the -- and that there's an amount  
13 identified in connection with that breach that I  
14 assume Mr. Oster will also be able to testify to?

15 A. Correct.

16 Q. And that there's also a claim in connection  
17 with that breach for this same continued use of the  
18 domain names?

19 A. Yes.

20 Q. What evidence do you have to suggest that  
21 Mr. Bennion, Mr. Deville, or the entity Bennion &  
22 Deville Fine Homes SoCal continued to use the  
23 Windermere domain names after September 30th of 2015?

24 A. Again, I think there was some uncertainty of  
25 who did what and who worked for which entity. And I

1 understand that that was -- that there was some  
2 discussion of that in the prior week of depositions of  
3 individuals from your clients, that perhaps provided  
4 some clarification of who worked where and when and in  
5 what capacity. And that may shed some light. I have  
6 not seen those deposition transcripts.

7 But to the extent that -- again, to the  
8 extent that any employee of Bennion & Deville Fine  
9 Homes SoCal, Inc. was responsible for programming the  
10 redirect of WindermereSoCal.com or any of the other  
11 domain names to a non-Windermere website on or after  
12 September 30, 2015, then we believe there is a -- that  
13 would be a basis for this claim.

14 Q. And you believe that Mr. Bennion, as an  
15 individual, was the registrant of any of those  
16 domains?

17 A. Mr. Bennion and Mr. Deville both personally  
18 guaranteed the full performance of that license  
19 agreement and, therefore, are personally liable for  
20 any breach thereof.

21 Q. And what damages were incurred by Windermere  
22 in connection with that alleged breach?

23 A. Again, as we discussed, the damages  
24 primarily consist of attorney's fees that we were  
25 required to expend in our efforts to secure the

SIGNATURE

I declare under penalty of perjury under the laws of the State of Washington that I have read my within deposition, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the CHANGE SHEET flyleaf page hereof.

Signed in \_\_\_\_\_, Washington,  
on the \_\_\_\_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
PAUL S. DRAYNA

TAKEN: August 22, 2016



## **EXHIBIT F**

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

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AND RELATED COUNTERCLAIMS                )

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Videotaped Deposition of MARK OSTER,  
taken at 600 University Street, Suite 320,  
Seattle, Washington, commencing at 8:58 A.M.  
Tuesday, August 30, 2016, before CYNTHIA A.  
KENNEDY, RPR, CCR 3005.

JOB No. 2372236A  
PAGES 1 - 137

1 period of time, but it's based on a time frame of when  
2 the interest is -- can start to be paid based on lack  
3 of collection.

4 Q. And it would not have been accruing prior to  
5 August 25th of 2014, correct?

6 A. That's correct.

7 Q. And if we go again to the last page of the  
8 document, I see that the interest calculation  
9 continues through 9/21/2014.

10 Have you stopped calculating interest in  
11 connection with these amounts?

12 A. No.

13 Q. And for purposes of this litigation, does  
14 this document Exhibit 139, reflect all of the amounts  
15 owed by Windermere Real Estate -- strike that.

16 Does it reflect all of the amounts owed by  
17 the Coachella Valley franchisee from July 1st, 2014,  
18 through present?

19 MR. FEASBY: Objection. Form.

20 THE WITNESS: Please restate the  
21 question.

22 BY MR. ADAMS:

23 Q. Sure. You have been identified as a  
24 corporate representative to testify as to the damages  
25 sustained by Windermere franchisor as asserted in the

1 counterclaim.

2 Do you understand that?

3 A. I do.

4 Q. And I'm interested in knowing from you, as  
5 the corporate representative designated in that  
6 capacity, to know what the damages are that are being  
7 claimed by Windermere franchisor against the Coachella  
8 Valley entity.

9 Do you understand that?

10 A. I do.

11 Q. Okay. What interest is Windermere  
12 franchisor seeking in this litigation from the  
13 Coachella Valley entity?

14 A. As of --

15 MR. FEASBY: I'm sorry. Objection.  
16 Form.

17 THE WITNESS: The time frame we're  
18 talking about through August 22nd, 2016, as stated  
19 here \$81,718.40.

20 BY MR. ADAMS:

21 Q. And that would be the same for any of these  
22 fees that are identified in this chart, they're all  
23 through August 22nd, 2016?

24 A. That's correct.

25 Q. Okay. And so it is your testimony that this

1 Mr. Deville or their entities failed to comply with  
2 their contracts in any other way?

3 A. As stated before, I believe they were also  
4 responsible for collecting.

5 Q. And outside of that, is there anything else  
6 that you believe they failed to perform under the  
7 contracts?

8 A. Those are the two areas that I can speak to  
9 based on my responsibilities within the company.

10 Q. Okay. Category number 46, something we've  
11 already talked about at least at some level, and that  
12 concerns the damages Windermere is claiming in this  
13 action.

14 Do you understand that you testified --  
15 strike that.

16 You understand that you were identified as a  
17 corporate representative to testify as to this  
18 category, correct?

19 A. That is correct.

20 Q. What are the damages that Windermere is  
21 claiming in this action?

22 A. The damages are the amounts due that we've  
23 already talked about in approximation of \$1.3 million  
24 in the schedule previously provided.

25 Q. And outside of that schedule and potential

1 interest that might flow from that August 23rd date  
2 until the time of payment, are there any other damages  
3 that Windermere is claiming in this action?

4 A. Not that I'm aware of.

5 Q. Okay. Category 47 is the fair market value  
6 of the area representative business at the time of  
7 termination.

8 Do you see that?

9 A. I do see that.

10 Q. And you understand that you were designated  
11 as a corporate representative to talk about that --

12 A. I do.

13 Q. -- topic?

14 What was the value of the area  
15 representative business at the time of termination?

16 A. In my estimate, the value was zero at the  
17 time of termination.

18 Q. Why is that?

19 A. Because the entity had a history of lack of  
20 profitability and lack of cash flows from operations.

21 Q. And did you perform a calculation to achieve  
22 that zero figure?

23 A. I did not perform a calculation. I relied  
24 upon the audited financial statements, which were  
25 provided to us.

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SIGNATURE

I declare under penalty of perjury under the laws of the State of Washington that I have read my within deposition, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the CHANGE SHEET flyleaf page hereof.

Signed in \_\_\_\_\_, Washington,  
on the \_\_\_\_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
MARK OSTER

TAKEN: August 30, 2016

# **EXHIBIT G**



Reply Reply All Forward

## RE: Deposition Topics

Jeff Feasby [feasby@perezwilson.com]

To: Kevin Adams

Thursday, August 25, 2016 11:45 PM

Kevin – We are de-designating Ms. Bortfeld as to topics 21, 34, 35, 37, and 44, Mr. Fanning as to topic 37, Mr. Baur as to topics 21 and 44, Mr. Oster as to topics 34, 36, and 42, and Mr. Sherrell as to topic 5. Accordingly, the remaining topics for those witnesses are as follows:

- Noelle Bortfeld – 9, 22, 25, 36, 59
- Mike Fanning – 38, 44, 56
- York Baur – 22-23, 25, 27, 36-38, 55, 56
- Mark Oster – 1-4, 8, 9, 11, 14-20, 33, 35, 39, 45-49, 52-55, 60
- Robert Sherrell – 1-4, 6-8, 40

**From:** Jeff Feasby [mailto:feasby@perezwilson.com]

**Sent:** Friday, August 19, 2016 2:07 PM

**To:** kadams@mulcahyllp.com

**Cc:** Christopher Rowlett; vaughn@perezwilson.com

**Subject:** Deposition Topics

Kevin – As we discussed, set forth below are the witnesses designated by WSC in response to the Rule 30(b)(6) notice along with the topics on which they can testify. As you will see, we have not designated anyone to testify regarding category 40 because we have dismissed the trademark claims.

Best,

Jeff

- Paul Drayna – 1-5, 8-13, 16-23, 25-35, 39-43, 45, 46, 48, 50, 51, 60
- Mike Teather – 9-13, 16-25, 27, 33-35, 37, 39, 41-44, 47, 50, 51, 57-59
- Geoff Wood – 9-13, 16-27, 33-37, 39, 41-48, 50, 51, 55, 57-59
- Jill Wood – 9, 21, 33-37, 42, 44, 45, 47, 54, 58, 59
- OB Jacobi – 9, 21-23, 25, 27, 33-38, 42, 44, 47, 55, 56, 58, 59
- Mark Oster – 1-4, 8, 9, 11, 14-20, 33-36, 39, 42, 45-49, 52-55, 60
- Noelle Bortfeld – 9, 21, 22, 25, 34-37, 44, 59
- Mike Fanning – 37-38, 44, 56
- York Baur – 21-23, 25, 27, 36-38, 44, 55, 56
- Robert Sherrell – 1-8, 40

Jeffrey A. Feasby | Pérez & Wilson

Symphony Towers, 750 B Street, 33rd Floor, San Diego, CA 92101

direct dial: 619.741.0242 | facsimile: 619.460.0437

[www.perezwilson.com](http://www.perezwilson.com)

**Exhibit No.**

127

Baur

8 26-16

Cynthia A. Kennedy, CSR, RPR

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

# **EXHIBIT H**

1 John D. Vaughn, State Bar No. 171801  
Jeffrey A. Feasby, State Bar No. 208759  
2 PEREZ WILSON VAUGHN & FEASBY  
750 B Street, Suite 3300  
3 San Diego, California 92101  
Telephone: 619-702-8044  
4 Facsimile: 619-460-0437  
E-Mail: vaughn@perezwilson.com  
5

6 Jeffrey L. Fillerup, State Bar No. 120543  
Dentons US LLP  
7 One Market Plaza Spear Tower  
24th Floor  
8 San Francisco, California 94105  
Telephone: 415.356.4625  
9 Facsimile: 619.267.4198  
E-Mail: jeff.fillerup@dentons.com  
10

11 Attorneys for Defendant and Counterclaimant  
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 SOCIAL, 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 AND RELATED COUNTERCLAIMS  
27  
28

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

Hon. Manuel L. Real

**WINDERMERE REAL ESTATE  
SERVICES COMPANY'S EXPERT  
WITNESS DISCLOSURE  
PURSUANT TO FEDERAL RULE  
OF CIVIL PROCEDURE 26**

Courtroom 8

Trial Date: October 18, 2016

Complaint Filed: September 17, 2015

1 Pursuant to Federal Rule of Civil Procedure 26(a) and the agreement of the  
2 parties, defendant and counterclaimant Windermere Real Estate Services Company  
3 (“WSC”) hereby provides the following Expert Witness Disclosures:

4 1. WSC has retained Neil J. Beaton, CPA/ABV/CFF, CFA, ASA, and his  
5 company Alvarez & Marsal Valuation Services, LLC, as persons who may be used  
6 at trial to present evidence under Federal Rules of Evidence 702, 703, or 705. A  
7 written report and supporting materials prepared by Mr. Beaton and Alvarez &  
8 Marsal Valuation Services, LLC, pursuant to Federal Rule of Civil Procedure Rule  
9 26(a)(2)(B), is attached hereto as Exhibit 1 and incorporated by this reference.

10 2. WSC has retained David E. Holmes, Esq., and his company Franchise  
11 Expert Witness Services, as persons who may be used at trial to present evidence  
12 under Federal Rules of Evidence 702, 703, or 705. A written report and supporting  
13 materials prepared by Mr. Holmes and Franchise Expert Witness Services, pursuant  
14 to Federal Rule of Civil Procedure Rule 26(a)(2)(B), is attached hereto as Exhibit 2  
15 and incorporated by this reference

16 3. WSC also reserves the right to utilize the testimony of any expert  
17 retained by plaintiffs and counter-defendants in this matter.

18 4. WSC expressly reserves the right to identify other experts as a  
19 supplement to these disclosures if discovery continues and/or as additional  
20 individuals, documents, or information are identified or obtained which are likely to  
21 lead to, possess, or contain discoverable information, or as parties identify other  
22 experts. WSC further reserves the right to identify any rebuttal experts and/or  
23 reports as it deems necessary based upon the expert disclosure of plaintiffs and  
24 counter-defendants in this matter.

25 5. These disclosures are based upon information and facts no available  
26 from WSC’s understating of the issues, contentions, and arguments WSC intends to  
27 assert at the time of trial in this matter. These disclosures are without prejudice to  
28 experts, facts, issues, and contentions subsequently learned or discovered.

6. WSC shall supplement these disclosures when and as required under the Federal Rules of Civil Procedure or any other applicable rules.

DATED: September 16, 2016 PEREZ WILSON VAUGHN & FEASBY

By: /s/ Jeffrey A. Feasby

John D. Vaughn

Jeffrey A. Feasby

Attorneys for

Windermere Real Estate Services Company

# EXHIBIT 1

**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.**

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

---

**Case No: 5:15-cv-01921-R-KK**

**Report of  
Neil J. Beaton, CPA/ABV/CFF, CFA, ASA  
September 16, 2016**

**ALVAREZ & MARSAL VALUATION SERVICES, LLC  
1201 Third Avenue, Suite 800  
Seattle, WA 98101**

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Signatures .....	15

### **Attachments:**

Exhibit 1 – Curriculum Vitae – Neil J. Beaton  
Exhibit 2 – Testimony List – Neil J. Beaton  
Exhibit 3 – Presentations and Publications – Neil J. Beaton  
Exhibit 4 – Documents Reviewed and/or Considered  
Schedule 1 – WSSC - Comparison of Original and Recast Income  
Schedule 2 – Summary of Franchise, Technology, and Other Fees  
Schedule 3 – Bennion & Deville Discretionary Expenses  
Schedule 4 – Damages Analysis Summary



## QUALIFICATIONS

1. I, Neil J. Beaton, am a Managing Director at Alvarez & Marsal Valuation Services, LLC (“A&M”). I specialize in business valuations, mergers and acquisition support, litigation consulting, and economic analysis. Prior to joining A&M, I was the Global Lead of Complex Valuation at Grant Thornton LLP, and before joining Grant Thornton LLP, I was a shareholder in a boutique business valuation and economic consulting firm headquartered in Seattle, WA. Additionally, I was previously employed by the Dun & Bradstreet Corporation, an international financial services conglomerate with interests in credit reporting, securities analysis and financial management.
2. I am a Certified Public Accountant and have achieved the designations of Accredited in Business Valuation (“ABV”) and Certified in Financial Forensics (“CFF”), sponsored by the American Institute of Certified Public Accountants (“AICPA”). I am also a Chartered Financial Analyst (“CFA”) under the auspices of the CFA Institute (“CFAI”) and an Accredited Senior Appraiser (“ASA”) under the auspices of the American Society of Appraisers. I am a member of the AICPA, the Washington Society of CPAs, and the CFAI. I am a past president and trustee of the Seattle Society of Financial Analysts, a former Co-Chair of the AICPA’s Valuation of Private Equity Securities Task Force, a former member of the AICPA’s ABV Exam Committee, a former member of the AICPA’s Mergers & Acquisitions Disputes Task Force, and a former chair of the AICPA’s FAS 141/142 Task Force. I am a member of the *Business Valuation Update* Editorial Advisory Board, on the Panel of Experts for the publication, *Financial Valuation and Litigation Expert*, and on the Editorial Board of the National Association of Certified Valuation Analysts, *Value Examiner*. I am a past member of the Financial Accounting Standards Board’s (“FASB”) Valuation Resource Group and the AICPA’s National Accreditation Committee for Business Valuation. A Curriculum

Vitae is attached as Exhibit 1, along with a testimony list covering the last four years as Exhibit 2, and a list of my presentations and publications in the last 10 years as Exhibit 3.

### **ASSIGNMENT**

3. At the request of counsel to Windermere Real Estate Services Company (“WSC” or the “Company”), we have formed a preliminary opinion of the economic damages that may have been incurred by WSC as a result of alleged violations of various partnership agreements between WSC and Bennion & Deville Fine Homes, Inc. (“B&D Fine Homes”), Bennion & Deville Fine Homes SoCal, Inc. (“B&D SoCal”), and Windermere Services Southern California, Inc. (“WSSC”), collectively referred to as the “Bennion & Deville Entities”. WSC alleges that it has incurred a variety of economic damages resulting from alleged acts of Robert Bennion and Joseph Deville (“Bennion & Deville”) to reduce and/or eliminate the amounts owed to WSC based on the agreements between the parties dating back to August of 2001.
4. I have also been asked to assess whether WSSC collected the proper amount of fees from B&D Fine Homes and B&D SoCal as set forth in the Area Representation Agreement between WSSC and WSC and to assess possible inaccuracies in the financial statements prepared on behalf of the Bennion & Deville Entities based on their inconsistent preparation.
5. Finally, I have been asked to analyze the financial statements and other documents provided to me to determine whether WSSC possessed the characteristics of an operating company or if it operated more like a vehicle for Bennion & Deville to extract personal financial benefit to the detriment of WSC.

### **MATERIALS REVIEWED**

6. When used hereinafter, “we” and/or “our” means me and/or persons working under my supervision and control. For this assignment, we reviewed and/or considered various documents provided to us, as listed on Exhibit 4. I reserve the right to update my opinions should additional relevant documents or information be provided.

### **SUMMARY OF OPINIONS**

7. Based on the information provided as of the date of this report, I have estimated WSC’s economic damages related to unpaid franchise fees at \$1,328,000.
8. It is my opinion that WSSC did not make its best efforts to collect fees from B&D Fine Homes and B&D SoCal as required under the Area Representation Agreement.
9. It is my opinion that the various financial statements provided for the Bennion & Deville Entities are inconsistent, which suggests they are inaccurate and may have been prepared for special needs and purposes.
10. It is my opinion that Bennion & Deville used WSSC as a vehicle through which Bennion & Deville extracted funds for their personal benefit rather than paying the fees owed to WSC.
11. Since we recently have been provided with the restated financial statements for WSSC, it is my understanding that additional discovery and deposition testimony is likely to occur. I may supplement this report with additional opinions or observations should it become necessary to do so.

## **WORK PERFORMED AND BASIS FOR OPINIONS**

### **Background**<sup>1</sup>

12. Windermere Real Estate Services Company, founded over 40 years ago in the Seattle area, is the franchisor of the Windermere System of franchisees that provide real estate brokerage services to customers. The Company began with a single office and eight real estate agents, but has grown to over 300 offices and over 7,000 real estate agents throughout the Western United States.
13. WSC and Bennion & Deville began a series of partnerships and business relationships starting in August of 2001. Robert Bennion and Joseph Deville, who had been real estate agents in Seattle with Windermere prior to opening their California offices, saw an opportunity to expand Windermere's real estate brokerage business into California. On August 1, 2001, WSC and B&D Fine Homes, Inc. entered into a Windermere real estate license agreement for Coachella Valley in California (the "Coachella Agreement"). This agreement allowed Bennion & Deville to open new franchise locations in southern California, something that had not previously been done with the Windermere trademark. According to the Coachella Agreement, B&D Fine Homes, Inc. was required to pay the following fees:
  - a. An initial fee of \$15,000;
  - b. Monthly license fees of either five percent (5%) of gross commission revenue or \$200 per sales agent;
  - c. Monthly combined technology and administrative fee of \$35 per sales agent; and
  - d. A late fee of ten percent (10%) the delinquent amount, plus compounding interest of 10 percent.
14. Three years later, in 2004, Bennion & Deville entered into another agreement to become area representatives for the southern California region (the "Area Representation Agreement"),

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<sup>1</sup> Portions of the background information were obtained from the Plaintiff's First Amended Complaint, dated September 17, 2015, as well as the First Amended Counterclaim, dated October 14, 2015.

effectively creating the entity Windermere Services Southern California, Inc. This agreement conferred upon Bennion & Deville the role and responsibility of providing support and auxiliary services to incoming and existing Windermere franchises in southern California, as well as the non-exclusive right to offer Windermere real estate licenses to real estate brokerages in their target area. Bennion & Deville also had the responsibility to collect franchise and technology fees from licensees in their area of responsibility. A list of specific duties is outlined in the Area Representation Agreement.<sup>2</sup>

15. Based on the documents reviewed, WSC began to forgive B&D Fine Home's franchise fees, decrease or freeze their technology fees, and/or defer other fees related to the franchise relationship in or around 2007. As example, on August 10, 2007, WSC waived all franchise fees owed by B&D Fine Homes for 2006, which fees at the time amounted to approximately \$501,000, due to financial difficulties experienced by B&D Fine Homes.<sup>3</sup>
16. WSC was approached by B&D Fine Homes again in August 2007, asking for additional financial assistance due to their continuing financial difficulty. WSC obliged, and on August 30, 2007, WSC agreed to defer all of B&D Fine Homes' franchise fees for 2007 for a period of time, with final payment guaranteed by May 2013.<sup>4</sup>
17. Despite WSC's agreement to forgive and defer franchise fees, B&D Fine Homes continued to struggle financially. Bennion & Deville again approached WSC seeking financial assistance, stating that they were on the brink of losing B&D Fine Homes.<sup>5</sup> On January 13, 2009, WSC, through a related entity, provided a \$500,000 loan to Bennion & Deville.<sup>6</sup> The loan was to be paid in full by March 1, 2014, but the two sides later agreed to extend that date an additional

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<sup>2</sup> Exhibit\_36\_JosephRDeville.

<sup>3</sup> Exhibit\_22\_JosephRDeville.

<sup>4</sup> Exhibit\_24\_JosephRDeville.

<sup>5</sup> First Amended Counterclaim, dated October 14, 2015, including Exhibit I.

<sup>6</sup> Exhibit\_39\_JosephRDeville.

three years as an accommodation at the request of Bennion & Deville. Based on the documents reviewed, the loan balance is currently outstanding.

18. Two years after the first loan was provided to Bennion & Deville by WSC, Bennion & Deville approached WSC seeking additional financial assistance, this time with the intent of obtaining start-up capital in order to open new Windermere franchises in the San Diego area. WSC, through a related entity, agreed to loan Bennion & Deville another \$500,000 on February 16, 2011, with the principal of the loan to be paid in full by March 1, 2016.<sup>7</sup> The full loan balance was taken through multiple installments.
19. Bennion & Deville expanded their real estate brokerage business into the San Diego area in the spring of 2011. On March 29, 2011, WSC and Bennion & Deville entered into another Windermere real estate license agreement (the “SoCal Agreement”), effectively creating another Bennion & Deville entity known as Bennion & Deville Fine Homes SoCal, Inc.<sup>8</sup> Similar to the Coachella Agreement, the SoCal Agreement required franchisees to pay a monthly license fee as well as a monthly technology fee. However, unlike the Coachella Agreement, the SoCal Agreement did not require an initial franchise fee. Initially, the SoCal Agreement provided for the opening of four franchised locations in the San Diego area.
20. Only two months after signing the SoCal Agreement, Bennion & Deville again approached WSC for financial assistance, still under the guise of compensating for start-up costs related to the SoCal Agreement franchisees. Once again, WSC, through a related entity, obliged and provided Bennion & Deville with an additional \$250,000 loan on June 6, 2011<sup>9</sup>, with the balance to be repaid in full on May 1, 2014. Between 2008 and 2011, WSC made multiple loans to Bennion & Deville and their related entities totaling over \$1.25 million to assist Bennion & Deville and their business operations in southern California.

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<sup>7</sup> Exhibit\_43\_JosephRDeville.

<sup>8</sup> Exhibit\_37\_JosephRDeville.

<sup>9</sup> First Amended Counterclaim, dated October 14, 2015, Exhibit K.

21. Even in light of all of the financial support supplied by WSC, in 2012, Bennion & Deville complained about various problems that they alleged were negatively impacting their franchises. Bennion & Deville referenced an anti-marketing campaign known as “Windermere Watch”; they claimed that the campaign was affecting sales and the reputation of their brokerages across the southern California region, and that WSC was not doing enough to combat this problem. Bennion & Deville threatened to leave the Windermere system all together, and negotiations ensued. Eventually, the two sides came to terms by agreeing to modify the original franchise agreements (the “Modification Agreement”) on December 18, 2012.<sup>10</sup> The Modification Agreement contained several provisions, including an agreement by WSC to address the Windermere Watch issue. Of the several provisions contained in the Modification Agreement, many were established to relieve Bennion & Deville of various obligations or provide relief from future obligations, including the following:

- a. WSC agreed to waive a total of \$1,151,000, which comprised \$399,960 in a promissory note, \$191,025 in technology and franchise fees for B&D SoCal, and \$560,075 in technology and franchise fees for B&D Fine Homes;
- b. WSC agreed to give discounts to B&D Fine Homes and B&D SoCal franchisees for licensing fees, retroactive to April of 2012;
- c. WSC agreed to cap technology fees for B&D Fine Homes and B&D SoCal franchisees for the following five years; and
- d. WSC agreed to release Bennion & Deville from all personal liability in regard to the specific forgiven fees. However, there was no release of fees or their personal guarantee for any accrued fees on or after April 1, 2012.

22. As part of the Modification Agreement, Bennion & Deville agreed to:

- a. Remain in the Windermere system for the following five years;

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<sup>10</sup> Exhibit \_51\_ Joseph R Deville, Vol , II.

- b. To pay WSC a pro rata portion of waived fees if Bennion & Deville left Windermere within the following five years; and
  - c. To pay WSC \$181,000 of past due fees by December 31, 2012.
- 23. While the foregoing provisions in the Modification Agreement were meant to relieve Bennion and Deville from past obligations, it was not intended to relieve them of their duties under the Area Representation Agreement or other specified obligations.<sup>11</sup>
- 24. Beginning in January 2014, Bennion & Deville continued to voice discontent regarding the financial concessions made by WSC, stating that the anti-marketing campaign “Windermere Watch” was still putting a damper on their business. Bennion & Deville claimed to have spent \$85,000 on search engine optimization costs to combat “Windermere Watch”, which were ultimately reimbursed through the write off of fees by WSC.
- 25. Finally in early 2015, WSC and Bennion & Deville terminated their respective agreements, with the termination effective September 30, 2015.
- 26. WSC is claiming it has incurred economic damages as a result of B&D Fine Homes and B&D SoCal’s failure to pay contractually obligated fees as well as WSSC’s failure to engage in reasonable good faith efforts to collect those fees<sup>12</sup>:
  - a. Coachella Agreement: WSC is claiming damages of \$586,550, plus interest of \$81,700 and late fees of \$58,700 through September 2015.
  - b. Modification Agreement: WSC is claiming damages of \$386,000.
  - c. SoCal Agreement: WSC is claiming damages of \$180,900, plus interest of \$24,800 and \$18,100 in late fees through September 2015.

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<sup>11</sup> “While the Modification Agreement references both the Coachella Valley Franchise Agreement and the SoCal Franchise Agreement and states that it is intended to modify both agreements, the Modification Agreement did not modify the Area Representation Agreement, nor did it modify or in any way affect the various loans and notes entered into by WSC and Bennion and Deville during and throughout their business relationship.” First Amended Counterclaim, dated October 14, 2015, pg. 16.

<sup>12</sup> We also understand that WSC will be seeking attorney’s fees as part of the provisions in the Agreements.



- d. Other: Damages relating to failure to surrender domain names and applicable agreements.

**Alvarez & Marsal's Damages Analysis**

27. We were asked to evaluate the damages that may have been incurred by WSC as a result of Bennion & Deville's violation of various agreements between WSC and Bennion & Deville Fine Homes Inc., Bennion & Deville Fine Homes SoCal, Inc., and Windermere Services Southern California, Inc. For the purpose of this analysis, we are assessing the economic damages incurred by WSC assuming: 1) B&D Fine Homes and B&D SoCal's breaches of the Coachella Agreement and the SoCal Agreement by failure to pay fees; 2) WSSC's breach of the Area Representation Agreement by failure to engage in reasonable efforts to collect fees; and 3) B&D Fine Homes and B&D SoCal's breaches of the Modification Agreement by failing to remain as franchisees.
28. According to the Area Representation Agreement between WSC and WSSC, dated May 1, 2004, it was WSSC's 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."<sup>13</sup> We have been provided with various financial documents that indicate inconsistent accounting that ultimately resulted in insufficient payments to WSC from the Bennion and Deville Entities based on the agreements in place at the time the payments were due.
29. We have been provided with audited financial statements for WSSC for the years ended December 31, 2011 through 2013, which also included historical profit and loss information for the years 2009 and 2010, and balance sheet detail as of December 31, 2010.<sup>14</sup> We have also been provided with compiled financial statements for B&D Fine Homes for the years 2012 through 2014. We have also been provided with the compiled financial statements for

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<sup>13</sup> Deposition of Joseph R. Deville, dated July 28, 2016, Exhibit 36.

<sup>14</sup> Deposition of Joseph R. Deville, dated July 27, 2016. Exhibit 59-61.

B&D SoCal for the 2012 and internally prepared financial statements for 2013 and 2014.

30. According to the American Institute of Certified Public Accountants (“AICPA”), financial statements for a company are prepared to a level of assurance based on the evidence obtained and analytical procedures performed by the entity’s Certified Public Accountant (“CPA”). No assurance is required for the preparation of compiled financial statements. The CPA simply states that the financial statements appear to be free from obvious material misstatements. Reviewed financial statements require the CPA to perform analytical procedures, inquiries, and other procedures necessary to obtain “limited assurance” on the accuracy of the financial statements. A review engagement includes a formal report that includes a conclusion as to whether any material changes need to be made to the financial statements. A review is substantially narrower in scope than an audit. An audit is the highest level of assurance services that a CPA performs. For an audit, the CPA performs procedures necessary to obtain “reasonable assurance” that the financial statements are free from material misstatements. As mentioned previously, we have received compiled and audited financial statements for the Bennion & Deville Entities in this case, as well as internally prepared financial documents. In addition, we recently received “recast” financial statements for the years 2011 through 2013 for WSSC.
31. As shown on Schedule 1, according to the audited financial statements, WSSC had negative net income of \$335,450 in 2011, negative \$165,423 in 2012, and negative \$1,049,395 in 2013. It should be noted that the original audited financial statements for 2011 indicated net income of \$41,815<sup>15</sup>, which is a difference of \$377,265. However, based on recast financial information provided to us, the recast income was negative \$20,450 in 2011, positive \$224,577 in 2012, and positive \$292,372 in 2013. These recast financial statements appear to have incorporated franchise fees that were not included for the purpose of determining the

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<sup>15</sup> WSC1707

contractual payments due to WSC, but appear to be included now for an alternative purpose as part of this litigation.

32. As shown on Schedule 1, the recast income statements indicate a total change in stated revenue of \$1,095,000 from 2011 through 2013. WSSC's unaccounted revenue, which was due to failing to report franchise fee revenues from southern California Windermere franchises, altered the assessment of WSSC's financial stability during that period of time. Excluding the franchise fee revenue on WSSC's financial statements created an onerous financial picture that may have formed the basis for Bennion & Deville making continuous requests of WSC to reduce or eliminate amounts owed by Bennion & Deville's Entities to WSC.
33. In addition to the understated revenue, there is an overstated expense of \$967,000 that was included in the 2013 audited financial statements that was excluded from the recast financial statements.
34. In total, the recast financial statements that were provided during this litigation show an increase in operating income of over \$2.0 million for the years 2011 through 2013 compared to the audited financial statements that were created in the ordinary course of business.
35. As shown on Schedule 2, the franchise fees per the compiled financial statements for B&D Fine Homes and B&D SoCal were different in all years than the franchise fee revenue indicated on WSSC's audited financial statements. In addition, internal monthly calculations related to license fees due from B&D Fine Homes and B&D SoCal provide yet another indication of the inconsistency in license fees due over each year reviewed. The inconsistency in these financial documents indicates an overall inaccuracy in the underlying financial information and perhaps preparation of various financial documents for special purposes.
36. As stated previously, WSC waived franchise fees owed, provided personal loans, and renegotiated terms of loans and future fees for Bennion & Deville's Entities in multiple

instances between 2006 and 2015. Although Bennion & Deville insisted that B&D Fine Homes and B&D SoCal were struggling financially, and therefore requested various reductions, waivers, delays, and forgiveness of franchise fees in addition to requesting multiple personal loans from WSC, Bennion & Deville Entities were paying millions of dollars of personal, non-business expenditures.

37. As shown on Schedule 3, during 2012 (the same year in which WSC waived over \$1.15 million in franchise and technology fees), Bennion & Deville paid themselves total wages of \$371,000 in addition to discretionary expenses in the amount of \$173,000. Among the discretionary expense was \$28,000 for an auto lease on a Land Rover as well as a \$47,000 lease on a motor home.
38. These personal expenditures continued during 2013 and 2014. As shown on Schedule 3, in 2014 (the same year in which B&D Fine Homes and B&D SoCal decided to stop paying franchise fees to WSC), Bennion & Deville paid themselves \$695,000 in wages and charged \$397,000 worth of discretionary expense to the Bennion & Deville Entities' income statements. The discretionary expenses in 2014 include a \$123,000 lease for a motor home, a \$46,000 auto lease for a Bentley, a \$29,000 lease for a private airplane, and a \$96,000 charge for a condo. Such expenditures do not support the contention that WSSC was struggling financially. As shown on Schedule 3, from 2012 to through 2014, Bennion & Deville paid themselves wages and used B&D Fine Homes and B&D SoCal revenue for personal expenses in the amount of \$2,610,000.
39. In my opinion, Bennion & Deville failed to create a viable real estate services company because they failed to collect the appropriate amount of franchise and other fees from the underlying real estate entities. Furthermore, the discretionary expenses noted in the preceding paragraphs siphoned off a significant amount of funding that could have been used to build a viable real estate services company.

40. Based on our analysis of the financial information provided, it is my opinion that Bennion & Deville either provided false financial information to its auditors for the inclusion in their audited financial statements or the recast financial statements are not an accurate picture of WSSC's financial condition. In addition, Bennion & Deville took excess compensation and discretionary expenses during years when they requested that WSC forgive franchise fees and make loans and failed to pay franchise and other fees owed to WSC.


### **CONCLUSIONS**

41. Based on the information provided as of the date of this report, we have estimated WSC's economic damages related to unpaid franchise fees at \$1,328,000, as shown on Schedule 4.
42. Since discovery is ongoing in this case, I may supplement this report with additional opinions or observations should it become necessary to do so.

### **FEES**

43. Alvarez & Marsal Valuation Services, LLC ("A&M Valuation") is compensated for my time on this matter at a rate of \$500 per hour. In addition to my time, I directed other A&M Valuation professionals who performed supporting work and analyses in connection with my preparation of this report at hourly rates ranging from \$175 to \$450.
44. I completed this report on September 16, 2016.

### **SIGNATURE**



Neil J. Beaton, CPA/ABV/CFF, CFA, ASA  
Managing Director

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**CURRICULUM VITAE**

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**NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA**

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**PROFESSIONAL EMPHASIS**

Managing Director at Alvarez & Marsal Valuation Services, LLC, specializing in the valuation of businesses, business interests and intangible assets for purposes of financial reporting, incentive stock options, litigation support (marriage dissolutions, lost profits claims), mergers and acquisitions, buy-sell agreements, and estate planning and taxation. Also performs economic analysis for personal injury claims and wrongful death actions.

**PROFESSIONAL QUALIFICATIONS AND ASSOCIATIONS**

Certified Public Accountant (CPA): Washington, 1990

American Institute of CPAs and Washington Society of CPAs

Former Co-Chair of the AICPA Valuation of Private Equity Securities Task Force

Former Member of the AICPA ABV Exam Committee

Former Committee Member of AICPA Business Valuation Subcommittee

Former Chair of the AICPA FAS 141/142 Task Force

Former Member of the AICPA National Accreditation Commission for Business Valuation

Former Member of the AICPA Merger & Acquisition Disputes Task Force

Accredited in Business Valuation (ABV)

Certified in Financial Forensics (CFF)

Chartered Financial Analyst (CFA), 1992

Past President and Trustee of Seattle Society of Financial Analysts

Member of the CFA Institute

Accredited Senior Appraiser (ASA), 1994

American Society of Appraisers

Member of the *Business Valuation Update* Editorial Advisory Board

Panel of Experts, *Financial Valuation and Litigation Expert*

Editorial Board of the National Association of Certified Valuation Analysts, *Value Examiner*

Former Member of the FASB Valuation Resource Group

**EDUCATION**

Master of Business Administration, Finance, National University, 1983

Bachelor of Arts Degree, Economics, Stanford University, 1980

Numerous continuing education classes in the areas of accounting, taxation and business valuation

**PROFESSIONAL EXPERIENCE**

Alvarez & Marsal Valuation Services, LLC (2012–Present)

Grant Thornton LLP (2003–2012)

Brueggeman and Johnson, P.C. and predecessor entity (1989–2002)

Dun & Bradstreet Corporation. National Business Analyst (1981–1989) — Responsible for analyzing large, publicly traded corporations and assisting in large-scale credit decisions. Specialized in banking, insurance and financial services industries.

## TESTIMONY SUMMARY – LAST 4 YEARS

NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA

**DEPOSITION TESTIMONY**

Date	Case Name	Type of Business	Jurisdiction
1/12	Pisheyar v. Snyder and Hannah	Auto Dealerships	King County Superior Court
1/12	City and County of San Francisco v. Cobra Solutions, Inc.	IT Consulting Services	Superior Court of California
2/12	Frost v. Fireman's Fund Insurance Co.	Stock Options	King County Superior Court
2/12	Dawson, et al. v. Robinson Helicopter Company	Korean Wholesale Lumber Company	King County Superior Court
2/12	REM Market and Martin Properties v. Argonaut Great Central Insurance	Retail Grocery Stores	Chelan County Superior Court
4/12	Wright v. Wright	Neurosurgery Practice	King County Superior Court
5/12	Welch, et al. v. Pettersson, et al.	Auto Dealership	King County Superior Court
5/12	Fouts v. State Farm Insurance	Health Care	U.S. District Court, Western District of WA
5/12	Dawes v. Certainteed Corporation, et al.	Pipe Supply	Pierce County Superior Court
5/12	Marketquest Group, Inc. v. BIC Corporation, et al.	Manufacturer of Promotional Products	U.S. District Court, Southern District of California
7/12	Massey v. Harvard Drug Group, et al.	College Education	King County Superior Court
7/12	Estate of Vanna Francis v. Clallam County, et al.	College Education	U.S. District Court, Western District of WA
8/12	Univar, Inc. et al. v. Xenon Arc, et al.	Chemical Distributor	U.S. District Court, Western District of WA
8/12	Kellogg Capital Markets LLC and Eric Rosenfeld v. Troy Group, Inc., et al.	Printer and Toner Manufacturer	Court of Chancery, Delaware
8/12	Estate of Charles Cravens v. Kadlec Medical Center, et al.	Software Design	Benton County Superior Court
9/12	Johnston v. Samaniego, et al.	Neurologist	Kitsap County Superior Court
10/12	The Bristol at Southport, LLC v. Starline Windows, Inc.	Manufacturer of Windows	King County Superior Court
11/12	Waltrip v. City of Kent	Firefighter	King County Superior Court
11/12	Barrett v. Bill the Butcher, Inc., et al.	Retail Meat Sales	King County Superior Court
12/12	Wendell Brown v. Viant Capital, LLC, et al.	Renewable Energy	Superior Court of California
4/13	Taylor v. Intuitive Surgical, Inc.	Robotic Surgery Equipment	Kitsap County Superior Court
4/13	Noble v. Noble	Real Estate Management	King County Superior Court
5/13	Willard v. City of Everett	Auto Body Mechanic	U.S. District Court, Western District of WA
5/13	Noble v. Noble	Real Estate Management	King County Superior Court
5/13	Arthur "Bill" Barnum, et al. v. State of Washington, et al.	High School Education	Pierce County Superior Court
7/13	EagleView Technologies, Inc. v. Xactware Solutions, Inc.	Custom Computer Software	U.S. District Court Western District of Washington

TESTIMONY SUMMARY – LAST 4 YEARS		NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA	
7/13	Hollywood Media Corp., et al. v. AMC Entertainment Inc.	Internet Movie Ticketing	Circuit Court, 15 <sup>th</sup> Judicial District, Palm Beach, FL
7/13	Casino Marketing Alliance, LLC v. Pinnacle Entertainment	Software Analytics	American Arbitration Association, Commercial
8/13	Syrdal, Daniel v. Chalmers	Attorney	King County Superior Court
8/13	Trianon, LLC v. Carpenters Tower, et al.	Office Building	King County Superior Court
8/13	Mod Pizza v. Pieology/Chang	Restaurant Operations	U.S. District Court Western District of Washington
8/13	Bonanza Fuel v. Delta Western	Wholesale Oil Distribution	U.S. District Court for the District of Alaska
8/13	Noble v. Tallman Building, LLC	Property Management	King County Superior Court
9/13	KDC Foods, Inc., v. Gray, Plant, Mooty, et al.	Food Preparation	U.S. District Court Western District of Wisconsin
10/13	Strong v. Rudin, et al.	Engineer	King County Superior Court
11/13	Mitchell, et al. v. Price, et al.	Real Estate Investment Fund	Pierce County Superior Court
11/13	REC Solar Grade Silicon v. Grant County, WA	Polysilicon Manufacturing	Washington State Board of Tax Appeals
12/13	Intelio Technologies, Inc., v. Ryko Solutions, Inc.	Car Wash Equipment Manufacturing	American Arbitration Association, Chicago, IL
1/14	In re: Plant Insulation Company – Bayside Insulation & Construction, Inc.	Insulation Contractor	U.S. Bankruptcy Court, Northern District of California
1/14	Rachel Rozman Cooley v. State of Washington, et al.	High School Education	Pierce County Superior Court
1/14	Pikover v. EagleView Technologies, Inc.	Aerial Measurement Services	Snohomish County Superior Court
3/14	Howard Oppenheimer, et al. v. Carl Bianco, et al.	Real Estate Investment	King County Superior Court
4/14	Baylor Medical Center at Frisco v. Bledsoe and Willis	Health Care System	U.S. District Court, Eastern District of Texas
4/14	Maytown Sand and Gravel, LLC v. Thurston County, et al.	Gravel Mine	Lewis County Superior Court
5/14	Global Enterprises, LLC v. Montgomery Purdue Blankinship & Austin PLLC	Boat Charter	U.S. District Court Western District of Washington
6/14	The Shaw Group, Inc., et al. v. Zurich American Insurance Company, et al.	Pipe Fabricator	U.S. District Court Middle District of Louisiana
7/14	Wilson v. Wilson	Professional Athlete	King County Superior Court
7/14	Dennis Moran, et al. v. Monitor Liability Managers, LLC, et al.	Attorney	King County Superior Court
8/14	Sheard and Martin v. Robert Polakoff	Pharmacologist	King County Superior Court
9/14	Farmers Insurance Company of Washington, et al. v. Damian J. Greene Insurance Agency, Inc.	Insurance Brokerage	King County Superior Court
9/14	Anderson News, LLC, et al. v. American Media, Inc., et al.	Wholesale Magazine Distribution	U.S. District Court Southern District of New York
10/14	Sinner, et al. v. Conner, et al.	Winery Real Estate	Snohomish County Superior Court



TESTIMONY SUMMARY – LAST 4 YEARS		NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA	
10/14	CampusPoint Corporation v. Granlund	Staffing Company	King County Superior Court
10/14	Milette v. Magnetic & Penetrant Services Co., Inc.	Metal Coating & Finishing	Arbitration – Seattle, WA
11/14	Kawasaki Heavy Industries, Ltd. v. Bombardier Recreational Products, Inc., et al.	Personal Watercraft Manufacturing	Private Arbitration – Chicago, IL
11/14	AccessData Group, LLC v. Thompson, et al.	Cyber Security Software	Arbitration – Salt Lake City, UT
11/14	Chong Sun Kyong v. Sung Ho Kim	Financial Executive	King County Superior Court
12/14	Western Mortgage v. Key Bank	Financial Instruments	U.S. District Court - Idaho
1/15	Brian Wurts v. City of Lakewood, et al.	Police Officer	U.S. District Court Western District of Washington
1/15	Hansen v. Hansen	Bail Bond Agency	King County Superior Court
1/15	Hoffman v. Integrale Investments, LLC, Keith Knutsson, and PCGL, LLC	Real Estate Development	Circuit Court, 13 <sup>th</sup> Judicial District, Tampa, FL
2/15	Vasudeva Mahavisno v. Compendia Biosciences, Inc. and Life Technologies Corporation	Drug Discovery Software	U.S. District Court, Eastern District of Michigan, Southern Division
3/15	Susan Camicia v. City of Mercer Island, et al.	Legal Secretary	King County Superior Court
5/15	DeRosa v. Aggressive Transport, Ltd.	College Education	Pierce County Superior Court
5/15	Philippe Charriol International Limited v. A’Lor International Limited	Jewelry Manufacturing	U.S. District Court, Southern District of California
7/15	The Patriot Group, LLC v. Hilco Enterprise Valuation Services, LLC	Valuation Services	Cook County Circuit Court, Illinois County Department
9/15	Alpha Pro Tech, Inc. v. VWR International LLC	Clean Room Apparel Manufacturer	U. S. District Court, Eastern District of Pennsylvania
10/15	Thomson v. HMC Group and Torrance Memorial Medical Center, et al.	Hospital Design/Billing	U.S. District Court, Central District of California
10/15	Moe, et al. v. Radiant Global Logistics, Inc.	Transportation Logistics	King County Superior Court
11/15	CH2O, Inc. v. Meras Engineering, Inc.	Specialty Chemical Manufacturing	Thurston County Superior Court
12/15	Nautilus, Inc. v. Gary D. Piaget d/b/a Piaget Associates	Exercise Equipment	Arbitration – Vancouver, WA
12/15	Spokane Rock I, LLC, v. Doty, Beardsley, Rosengren & Co., P.S.	Property Development/Management	Pierce County Superior Court
1/16	Sandra S. Noreen v. Michael W. Bugni, et al.	Book Royalties	King County Superior Court
1/16	Marx v. Shelby	Wholesale Gourmet Foods	King County Superior Court
2/16	McLean, et al. v. Coleman-Davies Pearson, P.C.	Freight Trucking	King County Superior Court
2/16	Wood v. Wood	Start-up Companies	Jefferson County Circuit Court, Kentucky
3/16	Lysa Catlin v. RPM Mortgage, Inc.	Mortgage Broker	Arbitration – Bellevue, WA
3/16	In re: Capitol Lakes, Inc.	Retirement Community	U.S. Bankruptcy Court, W. D. of Wisconsin
5/16	Larry Richards v. Thermal Hydra Plastics, LLC, d/b/a Clearwater Spas, et al.	Spa Manufacturer	King County Superior Court
5/16	DeWitt v. DeWitt	HVAC Control Systems	Benton County Superior Court

**TESTIMONY SUMMARY – LAST 4 YEARS****NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA**

5/16	SmartMed, Inc. v. FirstChoice Medical Group, Inc.	Healthcare Consulting	Judicial Arbitration and Mediation Services
5/16	Education Logistics, Inc., et al. v. Datsopoulos, MacDonald & Lind, PLLP, et al.	Transportation Logistics Software	4 <sup>th</sup> Judicial Court of Montana, Missoula County
6/16	In re: Aeropostale, Inc.	Specialty Clothing Retailer	U.S. Bankruptcy Court, S. D. of New York
6/16	Telecom Transport Management, Inc. v. AT&T Corp.	Telecommunications Services	Judicial Arbitration and Mediation Services
6/16	Ryan M. Pszonka, et al. v. Snohomish County, et al.	Natural Disaster/Oso Landslide	King County Superior Court
7/16	BP West Coast Products LLC v. Keith Willnauer, Whatcom County Assessor	Oil & Gas Refinery	Washington State Board of Tax Appeals
7/16	Kevin Wilson v. Eurofins Environment Testing US Holdings, Inc., et al.	Testing Laboratories	King County Superior Court
7/16	Estate of Jacob A. Steinle v. Munchbar, et al.	Search Engine Optimization	King County Superior Court
8/16	Monster Energy Company v. Olympic Eagle Distributing	Beverage Distributor	Judicial Arbitration and Mediation Services
9/16	Ronald Fitz Reed LLC v. Alan S. Wischnesky LLC	Network Hardware and Equipment Retailer	King County Superior Court

**ARBITRATION/MEDIATION TESTIMONY**

Date	Case Name	Type of Business	Jurisdiction
4/12	Wright v. Wright	Neurosurgery Practice	King County Superior Court
5/12	Welch, et al. v. Pettersson, et al.	Auto Dealership	King County Superior Court
6/12	Moore v. Safeco	Online Marketing	King County Superior Court
12/12	Estate of Vanna Francis v. Clallam County	College Education	King County Superior Court
1/13	Hazemann v. Hazemann	Trial Consulting Services	King County Superior Court
1/13	Armintrout v. Armintrout	Tracing; Spec Homes	King County Superior Court
4/13	Hill v. Nickerson	Economic Consulting	King County Superior Court
6/13	Harris v. State Farm Insurance	Bio-Feedback Consulting	King County Superior Court
7/13	Edmonds Hardware, LLC v. Grace Architects PLLC	Retail Ace Hardware Store	King County Superior Court
9/13	Casino Marketing Alliance v. Pinnacle Entertainment, Inc.	Software Analytics	American Arbitration Association – San Francisco
11/13	REC Solar Grade Silicon v. Grant County, WA	Polysilicon Manufacturing	Washington State Board of Tax Appeals
12/13	Chapman v. Chapman	Real Estate Advisory	King County Superior Court
12/13	Wilcox v. Wilcox	Attorney	King County Superior Court
1/14	EnerSys Delaware Inc. v. Allergy Systems	Fuel Cell Manufacturing	American Arbitration Association – San Francisco
2/14	Intelio Technologies, Inc., v. Ryko Solutions, Inc.	Car Wash Equipment Manufacturing	American Arbitration Association – Chicago, IL
7/14	Wilson v. Wilson	Professional Athlete	King County Superior Court
8/14	Brandt, et al. v. Brandt	Integrated Fruit Farms	Alternative Dispute Resolution

TESTIMONY SUMMARY – LAST 4 YEARS		NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA	
8/14	Murray v. Murray	Building Material Manufacturing	King County Superior Court
9/14	Wong v. Skoczowski	Mobile Software Solutions	Toronto, Ontario, Canada
9/14	Dye v. Dye	Wine Distribution	Arbitration – Oakland, CA
10/14	Sinner, et al. v. Conner, et al.	Winery Real Estate	Arbitration – Seattle, WA
10/14	Miles Resources, LLC, v. Summerwood Park Holdings, LLC	Real Estate Development	Arbitration – Seattle, WA
10/14	Milette v. Magnetic & Penetrant Services Co., Inc.	Metal Coating & Finishing	Arbitration – Seattle, WA
11/14	Strawn v. Strawn	Scanning and Imaging	King County Superior Court
11/14	Software Forensics, Inc. v. Eric Thompson, et al.	eDiscovery, Security Software	Arbitration – Salt Lake City, UT
12/14	Hansen v. Hansen	Bail Bond Agency	Judicial Dispute Resolution
2/15	Kawasaki Heavy Industries, Ltd. v. Bombardier Recreational Products, Inc., et al.	Personal Watercraft Manufacturing	Private Arbitration – Chicago, IL
5/15	Leslie v. Leslie	CPA Firm	King County Superior Court
9/15	van Loben Sels v. van Loben Sels	Tax Consulting Firm	Superior Court of California, San Mateo County
1/16	Nielsen v. Nielsen	General Contractor	King County Superior Court
4/16	Doyle v. Doyle	Weight Loss Clinics	King County Superior Court
4/16	McCleskey v. McCleskey	Commercial and Institutional Construction	King County Superior Court
8/16	SmartMed, Inc. v. FirstChoice Medical Group, Inc.	Healthcare Consulting	Judicial Arbitration and Mediation Services
9/16	Monster Energy Company v. Olympic Eagle Distributing	Beverage Distributor	Judicial Arbitration and Mediation Services

**COURT TESTIMONY**

Date	Case Name	Type of Business	Jurisdiction
1/12	Horne v. World Publications, et al.	Internet Boat Sales	6 <sup>th</sup> Judicial Circuit Court, Pinellas County, FL
2/12	City and County of San Francisco v. Cobra Solutions, Inc.	IT Consulting Services	Superior Court of California
2/12	Easly v. Fresco Shipping SA	Tug Boat Operator	U.S. District Court, Western District of WA
2/12	Westgate Communications v. Chelan County	Telephone Communications	U.S. District Court, Eastern District of WA
3/12	Sound Infiniti v. Pisheyar	Infiniti Dealership	King County Superior Court
6/12	Wright v. Wright	Neurosurgery Practice	King County Superior Court
10/12	Hanna v. Davison	Pharmaceutical Sales	King County Superior Court
11/12	Education Logistics v. Laidlaw	Bus Routing Software	U.S. District Court of Montana, Missoula Division
11/12	Barrett v. Bill the Butcher, Inc., et al.	Retail Meat Sales	King County Superior Court

## TESTIMONY SUMMARY – LAST 4 YEARS

## NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA

11/12	Renee Rose de Levi v. Republic of Peru	Banking	International Center for Settlement of Investment Disputes
11/12	JR Marketing, et al. v. Hartford Casualty Insurance Company, Inc.	Computer Lock Sales	Superior Court of the State of California
12/12	Petra Franklin v. David Lahaie	Industrial Recycling	King County Superior Court
1/13	James v. James	Wholesale Software	King County Superior Court
1/13	Armintrout v. Armintrout	Tracing; Spec Homes	King County Superior Court
4/13	Wadhwa v. Wadhwa	Solar Power Plant	Superior Court of California, Contra Costa County
6/13	Milling v. Hummel	Wholesale Biologic Supplies	13 <sup>th</sup> Judicial Circuit Court, Hillsborough County, FL
10/13	Noble v. Noble	Real Estate Management	King County Superior Court
10/13	Arthur “Bill” Barnum, et al. v. State of Washington, et al.	High School Education	Pierce County Superior Court
12/13	Dean Wilcox v. Bartlett Services, Inc., et al.	Millwright	Benton County District Court
1/14	In re: Plant Insulation Company – Bayside Insulation & Construction, Inc.	Insulation Contractor	U.S. Bankruptcy Court, N. D. of California
2/14	Robert R. Mitchell, et al. v. Michael A. Price	Mortgage Originator	Pierce County Superior Court
3/14	Malcolm v. Malcolm	Consumer Electronics Manufacturer	Pitkin County District Court of Colorado
4/14	REC Solar Grade Silicon v. Grant County, WA	Polysilicon Manufacturing	Washington State Board of Tax Appeals
6/14	Pikover v. EagleView Technologies, Inc.	Aerial Measurement Services	Snohomish County Superior Court
7/14	Maytown Sand and Gravel, LLC v. Thurston County, et al.	Gravel Mine	Lewis County Superior Court
9/14	Recreational Data Services, LLC v. Trimble Navigation Limited, et al.	Software Development Services	Superior Court of AK, 3 <sup>rd</sup> District at Anchorage
10/14	Estate of Sheard v. Robert Polakoff	Pharmacologist	King County Superior Court
11/14	Virshbo v. Virshbo	Intelligent Transportation Systems	Multnomah County Circuit Court, Oregon
12/14	Wong v. Skoczkowski	Mobile Software Solutions	Toronto, Ontario, Canada
2/15	Hoffman v. Integrale Investments, LLC, Keith Knutsson, and PCGL, LLC	Real Estate Development	Circuit Court, 13 <sup>th</sup> Judicial District, Tampa, FL
3/15	Hansen v. Hansen	Bail Bond Agency	King County Superior Court
3/15	Hobbs v. Hobbs	Authentication Software	King County Superior Court
4/15	Moran v. Moran	Restaurant Franchise	Boulder County District Court
8/15	Donatelli v. D.R. Strong Consulting Engineers	Real Estate Development	King County Superior Court
12/15	vonAllmen v. vonAllmen	Stock Options	King County Superior Court
1/16	Moe, et al. v. Radiant Global Logistics, Inc.	Transportation Logistics	King County Superior Court
3/16	John J. Mutchler v. State of Washington, Department of Labor & Industries	State Employee	Thurston County District Court

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**TESTIMONY SUMMARY – LAST 4 YEARS****NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA**

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4/16	In re: Capitol Lakes, Inc.	Retirement Community	U.S. Bankruptcy Court, W. D. of Wisconsin
6/16	Marx v. Shelby	Wholesale Gourmet Foods	King County Superior Court
6/16	Farmers Insurance Company of Washington, et al. v. Damian J. Greene Insurance Agency, Inc.	Insurance Brokerage	King County Superior Court
7/16	Marx v. Shelby	Wholesale Gourmet Foods	King County Superior Court

## PRESENTATIONS AND PUBLICATIONS

NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA

<i>VENUE</i>	<i>SPONSOR</i>	<i>DATE</i>	<i>SUBJECT</i>
2016 Advanced Business Valuation Conference - Boca Raton, FL	ASA	Sep 2016	Valuing Foreign Acquisitions
2016 Forensic Accounting and Business Valuation Conference - Louisville, KY	KyCPA	Aug 2016	Economic Damages for Start-Up and Emerging Businesses; Valuing Emerging Businesses
2016 NAAATS Conference	AICPA	Jul 2016	Fair Value Issues: New Developments
BVR Web Seminar	BVR	Jun 2016	Current Trends in 409A Valuations
AICPA/AAML National Conference on Divorce - New Orleans	AICPA	May 2016	Valuation of Stock Options, Appreciation Rights and Other Equity Compensation
2016 New York International Family Law Symposium	IAFL New York Chapter	Apr 2016	Discovery of International Financial Documentation
2016 Complex Family Law: As Experts See It	AAML Washington State Chapter	Mar 2016	How Attorneys Can Work With a Financial Expert
2015 AICPA Forensic & Valuation Services Conference	AICPA	Nov 2015	Reconciliation and Asset Approach; Report Writing
ABA Section of Family Law - 2015 Fall CLE Conference - Portland, OR	American Bar Association	Oct 2015	Valuation Essentials
AICPA Expert Witness Skills Workshop - Chicago, IL	AICPA	Oct 2015	Expert Witness Training
Complex and High Asset Divorce: A Focus on the Money	The Seminar Group	Sep 2015	Interpreting Tax Returns & International Valuation Issues
AICPA Expert Witness Workshop - Webcast	AICPA	Sep 2015	Business Valuations in Litigation: The Basics
AICPA Forensic & Valuation Services Webcast	AICPA	Jul 2015	Navigating Mergers & Acquisitions: Understanding Mergers & Acquisitions Disputes
Colorado CLE	Colorado Bar Association	Jun 2015	Lost Profits and Economic Damages: A Case Study Approach
BVR Web Seminar	BVR	May 2015	Divorce & IP: Are Patent Rights, Copyrights, Trademarks Still Tied Up After the Knot Gets Untied?
2015 AICPA/AAML Family Law Conference - Las Vegas	AICPA	May 2015	Family Law Overview and Overcoming the Catch 22; Bolstering your Testimony through Demonstratives in the Courtroom
YPO-WPO - Webinar	Deal Global Business Network	Apr 2015	The Ever Changing Value of Valuation
NYS CLE Board - New York Chapter Meeting	AAML New York Chapter	Mar 2015	Secondary Stock Markets are the New Primary Issue
2014 AICPA Forensic & Valuation Services Conference	AICPA	Nov 2014	Growing Your Practice & Balancing it All; Reconciliation and Asset Approach Discussion; Complex Capital Valuations
2014 ASA/CICBV Joint Business Valuation Conference - Toronto, ON	ASA/CICBV	Oct 2014	Secondary Transactions Considerations and Implications
6th Annual Wechsler Family Law Symposium	AAML Washington State Chapter	Oct 2014	Analyzing Tax Returns to Determine Income and Identify Assets
The Value Examiner	NACVA	Sep 2014	Are You Ready for Some Football? Insights into NFL Team Valuations
AICPA Expert Witness Skills Webcast	AICPA	Jul 2014	Business Valuation in Litigation - Useful Tips

## PRESENTATIONS AND PUBLICATIONS

NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA

<i>VENUE</i>	<i>SPONSOR</i>	<i>DATE</i>	<i>SUBJECT</i>
International Academy of Matrimonial Lawyers, US Chapter - New York	IAML US Chapter	May 2014	International Business Valuation: Everything You Always Wanted To Know But Were Afraid To Ask
AICPA/AAML National Conference on Divorce - Las Vegas	AICPA	Apr 2014	Intellectual Property: Identification, Classification/Characterization, Valuation and Distribution
Wealth Blog	Wealthfront, Inc.	Apr 2014	The Reason Offer Letters Don't Include a Strike Price
AICPA Forensic & Valuation Services Conference - Las Vegas	AICPA	Nov 2013	Top Commercial Litigation Engagements; Valuation of Privately-Held Company Equity Securities
2013 Business Valuation and Services Conference - Houston	Texas Society of CPAs	Oct 2013	Overview of the AICPA's M&A Disputes Practice Aid
WSBA CLE - Seattle	AAML Washington State Chapter	Oct 2013	Strategies for Valuing Businesses or Assets that have Limited Cash Flow
BVR Web Seminar	BVR	Oct 2013	Calculating Lost Profits for Early Stage Companies
Egyptian Private Equity Association - Cairo	Financial Services Volunteer Corps	Jun 2013	Egyptian Equity Valuation and Modeling
NACVA National Consultants' Conference	NACVA	Jun 2013	Top Five Commercial Litigation Assignments You're Missing Out On
AICPA Web Seminar	AICPA	May 2013	Overview of the Newly-Released AICPA Cheap Stock Practice Aid
2nd Annual Million Dollar Divorce	The Seminar Group	Apr 2013	Overview of Business Valuation
BVR Web Seminar	BVR	Apr 2013	Lost Profits v. Lost Business Value
<i>Standards of Value</i>	John Wiley & Sons, Inc.	Mar 2013	<i>Chapter 6: Fair Value in Financial Reporting: What Is It?</i>
19th Annual Family Law Conference	AAML Washington State Chapter	Mar 2013	Top Tips Related to Income Adjustments and Property Splits
<i>Forensic &amp; Valuation Services Practice Aid</i>	AICPA	2013	<i>Mergers and Acquisitions Dispute</i> , co-author
AICPA National BV Conference	AICPA	Nov 2012	Fair Value Issues; Valuation of Business with International Operations
Advanced Business Valuation Conference	American Society of Appraisers	Oct 2012	Valuation Using Advanced Option-based Methods
13 <sup>th</sup> Annual VSCPA BV, Fraud & Lit Conference	Virginia Society of CPAs	Sep 2012	Valuing Early Stage Companies in General and in Litigation
Annual New Jersey State NACVA Conference	New Jersey State NACVA	Sep 2012	Lost Profits v. Lost Business Value
AICPA Web Seminar	AICPA/AAML	Jun 2012	Tips, Tricks, Traps and Emerging Issues for the Expert Witness
BVR Web Seminar	BVR	May 2012	Divorce and IP: Are Patent Rights, Copyrights, Trademarks Still Tied Up After the Knot Gets Untied?
National Conference on Divorce	AICPA/AAML	May 2012	Divorce and IP: Are Patent Rights, Copyrights, Trademarks Still Tied Up After the Knot Gets Untied?; Valuing Assets Outside the U.S.: Why Doesn't Everyone Play by Our Rules?
2011 Fair Value Congress	NACVA	Feb 2012	AICPA Cheap Stock Practice Aid Update

## PRESENTATIONS AND PUBLICATIONS

NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA

<i>VENUE</i>	<i>SPONSOR</i>	<i>DATE</i>	<i>SUBJECT</i>
FVS Web Seminar	AICPA	Jan 2012	Valuations for Dissenting Stockholder & Minority Oppression Actions
<i>AICPA Accounting and Valuation Guide</i>	AICPA	2012	<i>Valuation of Privately-Held-Company Equity Securities Issued as Compensation</i> , co-author
BVR Web Seminar	BVR	Dec 2011	Delaware Chancery Roundtable: Views from the Bench, Counsel & Witness Stand
AICPA National BV Conference	AICPA	Nov 2011	Betting on the Future: The Outlook for the Business Valuation Profession; Cost of Capital: Practical Solutions in an Impractical World; Caught in the Crossfire: The Expert Witness for Valuation; Update of Final Comments on Cheap Stock Practice Aid; Marketing & Management of a Valuation Practice
AICPA National Forensic Conf.	AICPA	Sep 2011	Damages for Newly Formed Entities
Business Valuation & Family Law Sections Joint Meeting	California Society of CPAs, Family Law Litigation Section	May 2011	Challenges of Valuing Early Stage Companies in General and for Litigation
FEI Portland	Financial Executives International	May 2011	The Front Lines of Business Valuation
<i>Financial Valuation Application and Models, Third Edition</i>	John Wiley & Sons, Inc.	2011	<i>Chapter 24: Other Valuation Services Areas</i> , co-author
<i>The Comprehensive Guide to Lost Profits Damages for Experts and Attorneys, 2011 Edition</i>	Business Valuation Resources	2011	<i>Chapter 11: Calculating Damages for Early-Stage Companies</i> , co-author
BVR Web Seminar	BVR	Dec 2010	409A Valuation Issues
AICPA National BV Conference	AICPA	Nov 2010	Review of the Updated AICPA Cheap Stock Practice Aid
The Knowledge Congress Live Webcast Series	The Knowledge Group, LLC	Oct 2010	Commercial Damages: Overview and Cross Examination - Bullet Proof or Bullet Holes
BVR Web Seminar	BVR	Oct 2010	Reasonable Certainty and Lost Profits in Early Stage Cos.
World Financial Symposium	Davis Wright Tremaine	Oct 2010	Factors that Increase Private Company Valuations
AICPA National Forensic Conference	AICPA	Oct 2010	Shareholder Oppression and Dissenter Suits; Lost Profits v. Valuation in Litigation
Forensic & Valuation Services Web Seminar	AICPA	Sep 2010	Practical Implementation Issues Regarding FV Issues in Business Combinations
The Value Examiner	NACVA	Jun 2010	Discounts for Early-Stage Companies
ACG InterGrowth 2010 Conference	Assn. for Corporate Growth	May 2010	Do Financial Sellers Get a Better Deal?
<i>Valuing Early Stage and Venture-Backed Companies</i>	John Wiley & Sons, Inc.	Apr 2010	Advanced Valuation Techniques for Early Stage Companies
3rd Annual Summit on Fair Value for Financial Reporting	Business Valuation Resources	Feb 2010	Advanced Workshop on Financial Reporting for Stock Options Under 409A/123R



## PRESENTATIONS AND PUBLICATIONS

NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA

<i>VENUE</i>	<i>SPONSOR</i>	<i>DATE</i>	<i>SUBJECT</i>
Minnesota Business Valuation Conference	American Society of Appraisers - Minneapolis	Jan 2010	Valuation of Intellectual Property
TMA Meeting Series	Turnaround Management Association	Jan 2010	Business Value in Uncertain Markets
BVR Practice Guide Series	Business Valuation Resources	Jan 2010	Valuations for IRC 409A Compliance
<i>Valuation Strategies Magazine</i>	Thomson Reuters	Nov 2009	Volatility in the Option Pricing Model
Business Valuation Committee	ASA	Nov 2009	Update on Practice Aid: Valuation of Early Stage Companies
2009 Fair Value Summit	AICPA	Jun 2009	Private Equity Issues under FAS 157
Fair Value Measurement Conference	NACVA and the IBA	May 2009	IFRS v. U.S. GAAP: What You Need to Know
2009 Annual Consultants' Conference			
2009 Business Valuation Conference	Illinois CPA Society	May 2009	Uses and Abuses of Management Projections
Valcon 09: Risks, Restructurings, Real Estate and Retail	American Bankruptcy Institute	Feb 2009	The Impact of Globalization on Valuation of Distressed Debt and Businesses
2009 ACG West Coast Mergers & Acquisitions Conference	ACG of San Francisco	Feb 2009	Price v. Value: Bridging the Gap in a Down Economy
2nd Annual Summit on Fair Value for Financial Reporting	Business Valuation Resources	Feb 2009	Current Issues in 123R/409A and Mock Audit Review for FAS 141 and 142
Annual Private Equity COOs and CFOs Forum	Private Equity International	Jan 2009	Panel: International Accounting and Valuation Standards – Convergence or Divergence?
Accountants' Handbook - Eleventh Edition 2009 Supplement	John Wiley & Sons, Inc.	Jan 2009	Valuation of Assets, Liabilities, and Non Public Companies (revised)
Knowledge of Business Valuation - LIVE Webinar	Business Valuation Resources	Dec 2008	The Uses and Abuses of Management Projections
2008 AICPA/ASA Joint Business Valuation Conference	AICPA/ASA	Nov 2008	"Sticky Wickets" Related to 409A Valuations; Discount Techniques for Early Stage Companies
Business Valuation Basics	WSCP/AICPA	Nov 2008	Business Valuation: A Real Life Case Study
ABV Examination Review	AICPA	Oct 2008	The Body of Business Valuation Knowledge
IRC Section 409A: Deadline Looming - Are You Prepared? LIVE Webinar	The Knowledge Congress	Oct 2008	409A Stock Option Valuations: Does Current Valuation Practice Match the Regulations
BVR Thought Leadership Series	Business Valuation Resources	Aug 2008	The Uses & Abuses of Management Projections - Creating a Solid Framework for Financial Performance Analysis
2008 PNW Growth Financing Conf.	Association for Corporate Growth	Aug 2008	Price versus Value: Bridging the Gap
VPS FCG Webinar Series	Financial Consulting Group	May 2008	DLOM: Quantitative vs. Qualitative Models
Business Valuation Standards across the Association Landscape	Strafford Publications	May 2008	Business Valuation: Mastering Changes in Key Standards
The Birth, Life, and Death of Law Practices	Washington State Bar Association	Mar 2008	The Valuation of Law Practices

## PRESENTATIONS AND PUBLICATIONS

NEIL J. BEATON, CPA/ABV/CFF, CFA, ASA

<i>VENUE</i>	<i>SPONSOR</i>	<i>DATE</i>	<i>SUBJECT</i>
Monthly Litigation Department Meeting	Latham & Watkins, LLP	Mar 2008	Valuation of Intellectual Property in Litigation and the Financial Reporting Environment
ACG Capital Connection Conference	ACG of Utah	Feb 2008	Lessons Learned From My Worst Deal
Fair Value Summit - New York	BVR and ASA	Feb 2008	Overview of IRC 409A and SFAS 123R
King County Bar Association Continuing Legal Education	Washington State Bar Association	Dec 2007	Expert Witness and Forensic Accounting Issues in Probate Litigation
AICPA National Business Valuation Conference	AICPA	Dec 2007	IRC 409A and SFAS 123R Valuations; Risks Along the Technology Life Cycle
Seattle Chapter of the Appraisal Institute Fall Conference	Appraisal Institute	Nov 2007	Practical Applications of Fair Value In a Business Combination
ASA Advanced BV Conference	ASA	Oct 2007	Current and Perplexing Issues in Implementing 409A and 123R
Teleconference on Understanding the AICPA's SSVS 1	Strafford Publications	Sep 2007	Understanding SSVS1 and Related Implementation Tips
Section 409A Teleconference	The Knowledge Congress	Sep 2007	Equity-Based Compensation Arrangements and Valuation Issues
2007 Intellectual Property Institute	WSCPA	Jul 2007	Valuing Intellectual Property
Intangible Valuation Seminar	Gerson Lehrman Group	Jun 2007	Valuing Intellectual Property for Merger & Acquisition Purposes
Global Business Symposium	Asinta	May 2007	IFRS/US GAAP Comparison
ACG Capital Connection Conference	ACG of Utah	May 2007	Train Wreck: Lessons Learned From My Worst Deal
Business & Intellectual Property Valuations, Economic Damage and Expert Witness Skills Program	Law Education Institute	Jan 2007	Intellectual Property Valuation and Damages Methodologies
National Business Valuation Conference	AICPA	Dec 2006	Fair Value Valuations under Delaware Law; High Technology Company Valuation Seminar
Valuation Roundtable of San Francisco	ASA	Jun 2006	Valuing Complex Equity Instruments
National Webcast for BVR Subscribers	BV Resources	May 2006	Early Stage Company Valuations
ACG Utah 2006 Capital Connection	ACG of Utah	Apr 2006	Valuations in Mergers & Acquisitions

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**Documents Reviewed and/or Considered**


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Description

- First Amended Complaint and Exhibits A through V, dated September 17, 2015
- First Amended Counterclaim with Exhibits A through R, dated October 14, 2015
- Robert Bennion Deposition Vol I with Exhibit 64, dated July 27, 2016
- Robert Bennion Deposition Vol II with Exhibits 65 through 74, dated July 28, 2016
- Joseph Deville Deposition Vol I with Exhibits 1 through 46, dated July 26, 2016
- Joseph Deville Deposition Vol II with Exhibits 47 through 63, dated July 27, 2016
- Eric Forsberg Deposition with Exhibit 78, dated July 29, 2016
- Kirk Gregor Deposition with Exhibits 75 through 77, dated July 28, 2016
- Patrick Robinson Deposition with Exhibits 79 through 80, dated July 29, 2016
- Mark Oster Deposition with Exhibits 2, 4, 5, 25, 127, and 137 through 143, dated August 30, 2016
- Bennion & Deville Fine Homes, Inc.'s Responses To Windermere Real Estate Services Company's Interrogatories, Set One
- Counterdefendant Bennion And Deville Fine Homes, Inc.'s Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Requests For Admission, Set One
- Plaintiff Bennion & Deville Fine Homes, Inc.'s Responses To Defendant Windermere Real Estate Services Company's Request For Production [Set Two]
- Counterdefendant Bennion And Deville Fine Homes Socal, Inc.'s Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Requests For Admission, Set One
- Plaintiff Bennion & Deville Fine Homes Socal, Inc.'s Responses To Defendant Windermere Real Estate Services Company's Request For Production [Set Two]
- Counterdefendant Bennion & Deville Fine Homes Socal, Inc.'s Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Interrogatories, Set One
- Plaintiff Windermere Services Southern California, Inc.'s Responses To Defendant Windermere Real Estate Services Company's Request For Production [Set Two]
- Plaintiffs' Bennion & Deville Fine Homes, Inc.'s Responses To Defendant Windermere Real Estate Services Company's Request For Production Of Documents
- Plaintiffs' Bennion & Deville Fine Homes, Inc.'s Responses To Defendant Windermere Real Estate Services Company's Request For Production Of Documents
- Counter-Defendant Robert L. Bennion's Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Interrogatories, Set One
- Counterdefendant Robert L. Bennion's Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Requests For Admission, Set One
- Counter-Defendant Joseph R. Deville's Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Interrogatories, Set One
- Counterdefendant Joseph R. Deville's Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Requests For Admission, Set One
- Defendant Windermere Real Estate Services Company, Inc.'s First Supplemental Responses To Plaintiff Bennion & Deville Fine Homes Inc.'s First Set Of Interrogatories
- Defendant Windermere Real Estate Services Company, Inc.'s First Supplemental Responses To Plaintiff Bennion & Deville Fine Homes Inc.'s First Set Of Requests For Admission
- Defendant Windermere Real Estate Services Company, Inc.'s First Supplemental Responses To Plaintiff Bennion & Deville Fine Homes First Set Of Requests For Production
- Defendant Windermere Real Estate Services Company, Inc.'s First Supplemental Responses To Plaintiff Windermere Services Southern California, Inc.'s First Set Of Interrogatories
- Defendant Windermere Real Estate Services Company, Inc.'s Responses To Plaintiff Bennion & Deville Fine Homes, Inc.'s First Set Of Interrogatories
- Defendant Windermere Real Estate Services Company, Inc.'s Responses To Plaintiff Bennion & Deville Fine Homes, Inc.'s First Set Of Requests For Admission
- Defendant Windermere Real Estate Services Company, Inc.'s Responses To Plaintiff Bennion & Deville Fine Homes First Set Of Requests For Production

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**Documents Reviewed and/or Considered**


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<u>Description</u>	
- Defendant Windermere Real Estate Services Company, Inc.'s Responses To Plaintiff Windermere Services Southern California, Inc.'s First Set Of Interrogatories	
- Defendant Windermere Real Estate Services Company, Inc.'s Second Supplemental Responses To Plaintiff Bennion & Deville Fine Homes First Set Of Requests For Production	
- Counterdefendant Windermere Services Southern California, Inc.'s Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Interrogatories, Set One	
- Counterdefendant Windermere Services Southern California, Inc.'s Responses To Defendant And Counterclaimant Windermere Real Estate Services Company's Requests For Admission, Set One	
- Plaintiffs' Windermere Services Southern California, Inc.'s Responses To Defendant Windermere Real Estate Services Company's Request For Production Of Documents	
- Defendant Windermere Real Estate Services Company, Inc.'s Responses To Plaintiff Bennion & Deville Fine Homes Second Set Of Requests For Production	
- Defendant Windermere Real Estate Services Company, Inc.'s Responses To Plaintiff Windermere Services Southern California, Inc.'s Second Set Of Interrogatories	
- Bennion & Deville Fine Homes, Inc. and Fine Homes SoCal Profit & Loss Forecast 2015	WSC055178-055188
- Bennion & Deville Fine Homes, Inc. Compiled Financial Statements (2012-2014)	WSC055189-055437
- Bennion & Deville Fine Homes, Inc. RFP Responses	WSC055460-055440
- Bennion & Deville Fine Homes SoCal Compiled Financial Statements (2012-2014)	WSC055463-055562
- Bennion & Deville Fine Homes SoCal RFP Responses	WSC055563-055581
- Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, and Windermere Services Southern California, Inc. Miscellaneous Financial Documents	WSC0055582-058545
- Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, and Windermere Services Southern California, Inc. MSR Reports	WSC0055582-0056458
- Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, and Windermere Services Southern California, Inc. Statements of Fees	WSC0056459-0057261
- Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Windermere Services Southern California, Inc., and Windermere Services Company Miscellaneous Emails and Communications	WSC0057262-0057357
- Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Windermere Services Southern California, Inc., Miscellaneous Financial Documents	WSC0057358-057469
- Bennion & Deville Fine Homes, Inc., Bennion & Deville Fine Homes SoCal, Windermere Services Southern California, Inc., Lease Agreements and Records of Operating Expenses	WSC0057470-058545
- B&D0069200-0069205	
- B&D0069206-0069220	
- B&D0069221-0069284	
- B&D0069285-0069367	
- B&D0069368-0069381	
- B&D0069382-0069393	
- B&D0069394-0069403	
- B&D0069404-0069413	
- B&D0069414-0069529	
- B&D0069530-0069537	
- B&D0069538-0069545	
- B&D0069546-0069648	

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**Documents Reviewed and/or Considered**

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**Description**

- B&D0069649-0069706
- B&D0069707-0069710
- B&D0069711-0069718
- B&D0069719-0069726
- B&D0069727-0069798

## Schedule 1

**Windermere Services Southern California Inc. - Comparison of Original and Recast Income**

US\$

	Dec 31, '11				Dec 31, '12				Dec 31, '13			
	Recast Profit & Loss	Original Profit & Loss	Change		Recast Profit & Loss	Original Profit & Loss	Change		Recast Profit & Loss	Original Profit & Loss	Change	
Net Revenue	\$ 421,594	\$ 106,594	\$ 315,000	\$ 489,377	\$ 99,377	\$ 390,000	\$ 495,260	\$ 105,260	\$ 390,000	\$ 1,095,000		
Total Operating Expenses	<u>403,027</u>	<u>403,027</u>	<u>-</u>	<u>196,009</u>	<u>196,009</u>	<u>-</u>	<u>103,803</u>	<u>88,850</u>	<u>14,953</u>			
Operating Income (Loss)	18,567	(296,433)	315,000	293,368	(96,632)	390,000	391,457	16,410	375,047	\$ 1,080,047		
Total Other Income (Expense)	<u>(39,017)</u>	<u>(39,017)</u>	<u>-</u>	<u>(68,791)</u>	<u>(68,791)</u>	<u>-</u>	<u>(99,085)</u>	<u>(1,065,805)</u>	<u>966,720</u>			
Net Income (Loss)	\$ (20,450)	\$ (335,450)	\$ 315,000	\$ 224,577	\$ (165,423)	\$ 390,000	\$ 292,372	\$ (1,049,395)	\$ 1,341,767	\$ 2,046,767		
										Total Change		

Note:

\* Restated profit and loss data obtained from document B&D0069838



**Bennion & Deville, et al. v. Windermere, et al.**

**Schedule 2**

**Summary of Franchise, Technology, and Other Fees**

**US\$**

	2012	2013	2014

**Summary of Franchise Fees, Technology Fees, and Other Fees**

**B&D Fine Homes, Inc. (Coachella Valley)**

Compiled Financial Statements <sup>(1)</sup>

WSE Office Report <sup>(2)</sup>

\$	520,525	\$	485,800	\$	417,000
\$	540,000	\$	540,000	\$	540,000

**B&D Fine Homes SoCal, Inc. (SoCal)**

Compiled and Internal Financial Statements <sup>(3)</sup>

WSE Office Report <sup>(2)</sup>

\$	33,875	\$	194,175	\$	120,625
\$	240,000	\$	240,000	\$	190,000

*Total Compiled Franchise Fees (Coachella Valley & SoCal)*

\$	554,400	\$	679,975	\$	537,625
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**Windermere Services Southern California (WSSC)**

Audited Financial Statements - Total Revenue <sup>(4)</sup>

\$	99,377	\$	105,260		NA
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Recast Financial Statements: Revenue from Franchise Fees <sup>(5)</sup>

Recast Financial Statements: Total Revenue <sup>(5)</sup>

\$	390,000	\$	390,000	\$	365,000
\$	489,377	\$	495,260	\$	478,213

Total Cash Receipts <sup>(6)</sup>

\$	580,378	\$	1,090,081	\$	699,376
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**Footnotes:**

<sup>(1)</sup> CONFIDENTIAL WSC055363, CONFIDENTIAL WSC055283, CONFIDENTIAL WSC055189

<sup>(2)</sup> WSC0055606-56458

<sup>(3)</sup> Compiled financial statements for 2012 and internal financial statements for 2013 and 2014. CONFIDENTIAL WSC055531, CONFIDENTIAL WSC055503, CONFIDENTIAL WSC055463

<sup>(4)</sup> Exhibit\_59\_Joseph R Deville, Vol , II, Exhibit\_60\_Joseph R Deville, Vol , II, Exhibit\_61\_Joseph R Deville, Vol , II.

<sup>(5)</sup> B&D0069838

<sup>(6)</sup> B&D0069727



**Bennion & Deville, et al. v. Windermere, et al.** **Schedule 3**  
**Bennion & Deville Discretionary Expenses**  
**US\$**

	2012		2013		2014	
	Total		Total		Total	

**Owner Wages (1)**

Deville	\$	251,809	\$	344,141	\$	347,467
Bennion	\$	248,281	\$	328,552	\$	347,467
<b>Total Wages</b>		<b>500,090</b>		<b>672,693</b>		<b>694,934</b>

**From Income Statement (1)**

Auto Lease - Land Rover	\$	28,296	\$	2,233	\$	-
Desert Rental (Motor Home)	\$	46,797	\$	39,262	\$	123,064
Auto Lease - Bentley	\$	-	\$	15,235	\$	46,869
Auto Lease - Cadillac	\$	-	\$	12,752	\$	13,911
Arena2Mare (Airplane)	\$	-	\$	-	\$	29,276
50% Auto and Maintenance	\$	64,464	\$	67,009	\$	46,240 (2)
Landscaping Maintenance	\$	-	\$	-	\$	2,300 (2)
Laguna Condo	\$	-	\$	-	\$	96,000 (2)
50% Meals and Entertainment	\$	34,186	\$	35,638	\$	35,810 (2)
Cell Phone	\$	-	\$	-	\$	3,360 (2)
<b>Total Expenses</b>		<b>173,742</b>		<b>172,129</b>		<b>396,830</b>

**Total Wages and Expenses**

<b>Total Wages and Expenses</b>	\$	<b>673,832</b>	\$	<b>844,822</b>	\$	<b>1,091,764</b>
<b>2012-2014 Total</b>	\$		\$		\$	<b>2,610,418</b>

**Footnotes:**

- (1) CONFIDENTIAL WSC055570, CONFIDENTIAL WSC055438, B&D0069838  
(2) CONFIDENTIAL WSC057456





**Bennion & Deville, et al. v. Windermere, et al.**

**Damages Analysis Summary**

**US\$**

**Schedule 4**

<b>WSSC, Inc. Breach of Modification Agreement</b>	
Total WSC Share Forgiven	\$ 863,560
Per Diem	471
Days Elapsed (12/21/2012 - 9/30/2015)	1,013
Total Forgiven	477,503
<b>Subtotal:</b>	<b>386,057 (1)</b>
 <b>B&amp;D Fine Homes, Inc. (Coachella Valley) Outstanding Fees</b>	
License Fees	\$ 330,000
Technology Fees	256,550
Late Fees	58,655
Accrued Interest	81,718
<b>Subtotal:</b>	<b>726,923</b>
 <b>B&amp;D Fine Homes SoCal, Inc. (SoCal) Outstanding Fees</b>	
License Fees	\$ 112,500
Technology Fees	68,425
Late Fees	18,093
Accrued Interest	24,845
<b>Subtotal:</b>	<b>223,862</b>
<b>Total Franchise and Other Fees Due</b>	<b>\$ 1,336,842</b>
<b>Less: Kirksey &amp; King Payments</b>	<b>(8,501)</b>
<b>Net Franchise and Other Fees Due</b>	<b>\$ 1,328,341</b>

**Footnotes:**

(1) Damage calculation based on breach of contract for Modification Agreement, source document Exhibit\_51\_Joseph R Deville, Vol , II



# EXHIBIT 2

David E. Holmes, Esq.  
Franchise Expert Witness Services  
2225 Exposition Drive, Unit 21  
San Luis Obispo, California 93405

davidholmes@macservices.net

805-550-9323

September 16, 2016

John D. Vaughn, Esq.

Jeffrey A. Feasby, Esq.

Perez Wilson Vaughn & Feasby

Sent by Email: [vaughn@perezwilson.com](mailto:vaughn@perezwilson.com)

Re: Report – *Bennion & Deville Fine Homes, Inc. et al. v. Windermere Real Estate Services Company* – United States District Court, Central District of California – Case No. 5:15-CV-01921 R (KKx)

Dear Messrs. Vaughn and Feasby:

This letter is in response to your request for a report relative to the above-referenced case.

I was asked to provide my opinion(s) with respect to various franchising-related matters as they may have arisen in this matter.

Specifically, I've been asked to provide my opinions with respect to the:

(a) business and strategic rationales, and related standards and practices, supporting a franchisor's decision to utilize an area representative model for territorial expansion, including the appropriateness of a decision to appoint an area representative in the business situation presented and whether, in that business situation, other franchisors might have followed the same strategy.

(b) respective roles, and industry standards and practices, for area representatives and franchisors, possibly including (but not limited to) those related to real estate-related franchises; and

(c) standards of care and practices regarding an area representative with respect to the sale of franchises and support of local franchisees, including considerations where an area representative is itself a franchisee of the franchisor.

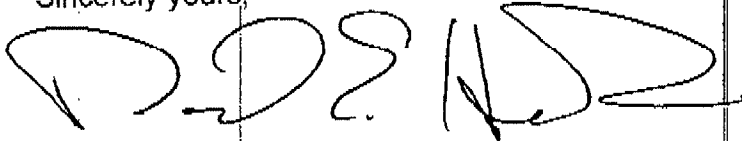
My opinions relating thereto are set forth in the attached Report.

In forming my opinions I have reviewed the documents set forth in the attached List of Materials Received and/or Reviewed, as forwarded to me by your firm or otherwise, as well as having drawn on my general experience in the domestic and international franchising field since 1975.

My biography, setting forth my qualifications, is attached. My compensation for expert witness services in this matter is at a rate of \$500 per hour and is not dependent on the outcome of this or any other legal action or otherwise, on the amount or terms of any judgment or settlement of any underlying legal action, nor on any contractual or other arrangements between your firm and any other person or party, including your clients.

I respectfully reserve the right to revise, supplement and/or amend the attached Report, including my conclusions and opinions, as additional documentation, deposition transcripts, opinions by other experts or otherwise become available.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'D. E. Holmes', with a stylized, cursive script.

David E. Holmes

## Report

### **1. Business and strategic rationales, and related standards and practices, supporting a franchisor's decision to utilize an area representative model for territorial expansion.**

- a. Before discussing the business and strategic rationales supporting a decision to use the area representative model for territorial expansion, it's helpful to understand the structure of the area representative model in franchising and how it differs from other franchise business models. Note that the core business elements of the area representative model will generally remain constant irrespective of the specific business model for unit (or retail) level franchised businesses.
- b. The classic franchise business model, and the simplest in structure, involves a franchisor and one or more franchisees, each of whom will be operating retail or other businesses under the franchisor's brand.

In this classic (and often typical) model, the franchisor and the franchisee have a direct contractual and business relationship, generally not involving third parties, and usually embodied in a franchise agreement (and possibly other agreements, such as leases of real estate or equipment), with the franchisor licensing the franchisee to use the franchisor's brand, trademarks and system(s) of operation, marketing, administration, etc. and with the franchisee paying an initial franchise fee to the franchisor for such rights and, usually, a periodic royalty, generally based on sales by the franchisee to its customers. Often, the franchisor will also provide after-sales service and support directly to the franchisee.

- c. In the area representation model, a third party is introduced into the relationship between the franchisor and the franchisee and that third party is typically referred to as the "area representative" or, sometimes, the "region."
- d. In the area representation model, the operating franchisee still has a direct contractual arrangement with the franchisor, signing the franchise agreement directly with the franchisor. However, in this model, the franchisor will have also entered into an agreement (typically called an area representation – or area representative – agreement) with the area representative.

- e. Under the area representation agreement, the area representative will assume the obligation to perform various obligations or functions normally performed by the franchisor and typically limited to unit franchisees within a specified geographic area. Those obligations can include (among others) the marketing of franchises to prospective franchisees, the delivery to prospective franchisees of a Franchise Disclosure Document and other pre-sale/sale documents, initial and/or ongoing training of new franchisees, assistance (under some business models) to the new franchisee in finding a location, lease negotiations, pre-opening and opening assistance, assistance in the selection and training of the franchisee's employees, assistance in build-out of the franchisee's premises, ongoing inspection and audit of the franchisee's franchised business, ensuring compliance with the franchisor's standards including (among other things) operations and other manuals, answering inquiries and addressing complaints/concerns of franchisees, operational, marketing and other ongoing support of the franchisee and the franchised business, and other functions otherwise normally performed by the franchisor. The area representative can also serve as a conduit for communication (in both directions) between the franchisor and the franchisee, as well as serving a "business coaching" function with respect to franchisees.
- f. The area representative may also work with the franchisor and the franchisee in situations where the franchisee may be in default of its financial or other obligations.
- g. In some cases, the area representative will have an obligation to assist in soliciting the sale (and possibly assuring the opening) of a specified number of franchises in the territory over a defined period of time, such an obligation often being called a development schedule.
- h. In some cases, the area representative will also be allowed to own and operate one or more retail-level franchised businesses under the franchisor's brand. Such unit(s) may be used for training of new franchisees and their employees and/or for development and testing of new retail products and services.

- i. In many cases, the franchisor will provide services to the area representative related to its functions. These can include training the area representative's trainers and other personnel with respect to franchising principles and practices and (sometimes) with respect to the operation of the franchised businesses, providing and updating manuals, providing and placing retail advertising and marketing materials / programs, providing and placing advertising and marketing materials related to the offer and sale of franchises, development of new items for sale by franchisees to their customers, updating of retail-level facility standards, guidelines re location selection and build-out, and certain types of administrative support.
- j. The area representative may pay the franchisor an initial fee for its rights under the area representation agreement and will generally receive a portion of the royalty (and perhaps other) fees paid by the franchisee, in compensation for area representative's services. Those fees paid by the retail-level franchisee may be either paid directly to the franchisor, with some portion then remitted by the franchisor to the area representative, or may be paid by the franchisee to the area representative, which retains a portion of those amounts and remits the balance to the franchisor.
- k. Given the basic structure of the franchisor - area representative - franchisee relationship, the business and strategic rationales for a franchisor to enter into a franchisor - area representative relationship can include the following, noting that not all of these elements will necessarily be present in every franchisor - area representative relationship:
  - i. Reduced operating costs at the franchisor level: Since the area representative provides local support and services to the franchisees in its territory, which might otherwise be provided by the franchisor, the franchisor generally does not need to maintain such personnel and facilities at the local level, thereby possibly lowering operating costs and increasing its profitability.
  - ii. Where the area representative pays the franchisor an initial franchise fee for his rights, or is perceived to bring other significant sources of value to the relationship (such as franchise- or industry-specific skills and/or relationships,

including local knowledge and contacts), the franchisor may benefit accordingly.

- iii. More rapid system growth: If nation-wide (or even international) expansion is contemplated, multiple area representatives throughout the country can potentially result in faster sales of franchises than would be the case where the franchisor was only able to support marketing efforts in a few areas at a time, due to financial, human resources or other limitations. This can not only generate more income for the franchisor more quickly than with other models, but can have related benefits, including greater visibility and top-of-mind consumer awareness in the relevant markets, access to favorable sites for the franchised business, more beneficial relationships with vendors and expanded funds available for national and regional advertising.
- iv. In addition, the use of area representatives who are already (hopefully successfully) operating a franchised outlet in the general market area of potential franchisees can be a more effective franchise marketing strategy as opposed to use of franchise brokers (who have never operated such a unit themselves) or attempts by the franchisor to sell franchises where there are no currently operating stores in the market to validate the concept. A prospective franchisee, who may ask what a distant franchisor really knows about local market conditions and practices or even the potential for a new business model in the relevant industry, may feel more secure where a respected local individual or firm will be the area representative and where a franchised outlet is seen to be already successfully operating.
- v. Adjustments to local markets, business practices and regulations: To the extent that markets differ, or business practices vary by area, adaptation and adjustment of the business model may be more effective where a local area representative is aware of the need for such variations, whether as related to real-estate matters, cultural issues, customer preferences, retail or other marketing matters, competitive challenges, suppliers of goods or services, local regulations or otherwise.
- vi. Development and implementation of best practices via a bottom-up model: Where the area representative facilitates positive interchanges and communications among franchisees and with the franchisor, innovations and



responses to developments, opportunities or challenges in the relevant market(s) can be implemented more quickly and effectively, possibly even leading to development of superior best practices throughout the national franchise system, both as to operational matters and marketing tactics and strategy. Where the franchisees have developed a relationship with the area representative characterized by mutual respect and trust, operational, marketing and other suggestions and/or directives from the franchisor, when transmitted and supported by the area representative, may be more readily accepted by the local franchisees.

- vii. Incentivization: One of the benefits of a franchised business model can be that the franchisee, as the owner on his or her business, is highly incentivized to have it succeed, perhaps even more so than an employee with no ownership interest. That same dynamic can apply to the area representative in the operation of his or her area representation business (as compared to an individual who is either a broker or an employee of the franchisor), possibly increasing the chances of its success and the resulting success of the unit-level franchisees. This can be particularly true where the area representative (generally unlike a broker or franchise marketing or service employee of the franchisor) can participate in a royalty stream from the unit franchisees.
- viii. Similarly, use of a broker to market franchises may entail the disadvantage that the broker will be (generally) marketing a wide range of franchised opportunities, perhaps even competing ones, and will not be concentrated on marketing only one particular franchisor's franchises. Those issues are normally not present where an area representative is used.
- ix. Franchisor / Area Representative / Franchisee dynamics: Where the area representative is perceived by the unit-level franchisees as a positive source of support and assistance (both in the daily operation of their businesses and in terms of long-term strategic planning and results), and with the success of the unit-level franchisees being a paramount concern of the area representative, and where the area representative acts as an advocate to the franchisor on behalf of the unit-level franchisees in his or her territory, communications and accommodation between those franchisees and a geographically distant franchisor may be more effective. As a practical matter, suggestions by an

area representative with multiple unit-level franchisees in his or her territory may be more readily accepted by the franchisor than if those same suggestions had come from a single franchisee with only one or two operating units.

- I. Aside from the generally positive elements discussed above, area representative franchising can also present potential negatives, at least as viewed by a franchisor considering use of the area representative model for expansion.
  - i. If initial franchise fee, royalty and other payments flow from the unit level franchisee to the area representative (rather than directly from the unit level franchisee to the franchisor) and the area representative fails to promptly and fully remit those amounts to the franchisor, or fails to make appropriate efforts to collect and remit such fees, the franchisor may experience significant negative cash flow and profitability effects.
  - ii. Where the area representative receives or retains a portion of the initial franchise fee, royalty or other payments by unit-level franchisees, the franchisor's revenues may be reduced accordingly.
  - iii. If the area representative fails to collect and remit portions of initial franchise fees, royalties or other payments by unit-level franchisees, which portions are due the franchisor, the franchisor's revenues may be reduced accordingly.
  - iv. Similarly, if an area representative or group of area representatives in effect controls a substantial proportion of the franchisor's cash flow, their power within the franchise system can expand relative to the power and control of the franchisor.
  - v. If the area representative fails to provide proper support to unit level franchisees, or fails to enforce important system standards, the franchisor may face complaints from franchisees and/or retail level customers and possible loss of market share and/or diminishment of the value of its brand.
  - vi. When franchise marketing or support services are provided by someone other than the franchisor, the possibility exists that they will not be as well presented or performed as if they

had been the sole responsibility of the franchisor and its in-house staff. Inevitably, some area representatives will perform these functions less well than others, so the sometimes difficult issue of how to address any such shortcomings will necessarily arise. The possibility of such issues arising may be increased where the area representative has little or no prior experience performing franchisor-type functions or understanding the need for different management techniques than those often used in non-franchising business models. Substantive knowledge of the details of the underlying business model being franchised may not, by itself, be adequate where the area representative lacks an understanding of franchising principles and requirements.

- vii. If the area representative owns and operates more than one unit level franchised business (it's not unusual for an area representative to maintain a single unit level franchised business for franchise marketing, training and product/service development purposes), the area representative's human and financial resources may become more focused on the operation and success of its own operating units, with attention and human and other resources being directed away from the area representative's core mission: The support and success of all the franchisees in the territory.
- viii. Similarly, if the area representative owns and operates more than one unit level franchised business, those area representative-owned business may be perceived by potential or existing franchisees as having secured access to favorable locations/markets (thereby possibly precluding the opening of other franchisees' units in those potentially prime markets or areas), receiving special treatment and/or benefits or even being in actual or potential competition with the other franchisees. Note that, in such a case, perceptions may be critical to the relationship.
- m. In this case, if the franchisor had determined that the potential advantages of appointing an area representative (improved servicing of local franchisees, knowledge of the relevant market, a more effective franchise sales strategy, etc.) outweighed the

potential disadvantages of appointing an area representative (diversion of one-half of the revenue stream from local franchisees to the area representative, risks of failure by the area representative to properly service and support local franchisees, any failure to give best efforts to collection and remission of fees, any failure to direct appropriate levels of resources to the long-term success of local franchisees, etc.), then the decision to appoint an area representative would have been appropriate and would not be inconsistent with franchise industry standards as applied to forming area representative relationships. Also germane to any such decision might have been various considerations specifically related to the underlying franchised business model and the industry involved, as well as the stage of development of franchising as a distribution model in that industry. In my experience with Century 21, similar (although not identical) relationships seemed to have been generally successful. I would not be surprised if other franchisors in the same industry made a decision, after balancing positive and negative considerations, to appoint one or more area representatives.

**2. Respective roles, and industry standards and practices, for area representatives and franchisors, possibly including (but not limited to) those related to real estate-related franchises.**

- a. In the classical direct franchising model (franchisor – franchisee, with no area representative or similar entity involved), the franchisor will generally provide ongoing service and support to the unit-level (retail) franchisee. This ongoing service and support function will often be expected by the franchisee and can be vital to the success of both the franchisor and the franchisee.

Financially and operationally successful franchisees are more likely to be: able to pay royalties, advertising contributions and other amounts; potential purchasers and operators of additional franchised units; and positively inclined to validate the franchise system in response to inquiries from potential new franchisees considering the purchase of a franchise, than where franchisees do not experience such success. Therefore, the operational and financial success of the unit-level franchisees is a prime concern and focus of good franchisors (and area representatives) and is consistent with franchise industry standards and practices.

That financial and operational success can be enhanced by ongoing advice and assistance from the franchisor or area representative, including (among many other things) correction of operational and marketing issues at the franchisee level, sharing of best practices developed and/or used by the franchisor and other successful franchisees in the system, ongoing training (including on new products or services to be offered to the public), proactive responses to changing market conditions and competitive or other challenges, assuring consistency and appropriate levels of quality in dealing with customers, services and products delivered, and protection of the brand. All of these may involve ongoing training and support on a regular, and sometimes frequent, basis. In some franchise systems, this is referred to as “field support” and may be provided by persons called, among other things, “field service representatives.”

For most franchised business models, both franchisees and franchisors consider such support to be a vital ingredient in the possible success of both the franchisor and its franchisees.

As noted in Franchising for Dummies (written primarily for prospective franchisees), 2<sup>nd</sup> Edition; Seid and Thomas, © 2005, page 144:

*“Operating a franchise in today’s economic climate means staying on your toes all the time. You can’t do that by yourself. As a franchisee you should expect the franchisor to provide you with more than initial training. After your franchise is open, expect the franchisor’s field staff to show up armed with operational, marketing, and organizational support. You should also expect the company’s help with the rollout of innovations, such as the preparation of new products or the operation of new equipment. The hallmarks of great franchisors are offering new products, updating research, implementing new-product development, installing state-of-the-art technology, introducing better methods of customer service, and repositioning franchises in the market. These services keep a company more than one step ahead of the competition . . .” [Emphasis added.]*

In the franchisor – area representative – unit franchisee model, the area representative assumes primary responsibility for much of the role of the franchisor in providing ongoing, day-to-day support and assistance to the unit franchisee, as described above, and the factors discussed above generally apply to the area representative in performing his or her functions.

From a strategic and structural standpoint, that function of providing ongoing direct support to local franchisees from a locally-based area representative is precisely why the franchisor has appointed the area representative rather than simply hiring a franchise broker: to do more than merely solicit the purchase of a franchise by prospective franchisees (which a broker, or in-house sales staff, may be able to do very well and at lower cost to the franchisor) but also to take the burden from the franchisor of providing needed support services on a local level. In the absence of the area representative competently performing those functions, it's doubtful that an area representative model would have been used or that ongoing compensation to the area representative (and a resulting reduced share of royalties going to the franchisor) would have been core elements in the franchisor / area representative business arrangement.

- b. I note that Section 2 of the Windermere Real Estate Services Company Area Representation Agreement for the State of California (the "Area Representation Agreement") provides, in part, that "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 . . . "
- c. I note from Section 3 of the Area Representation Agreement that such agreement provides for the area representative to perform a number of such functions, including: "responsibility for the administration and supervision of the use and display of the Trademark . . . the provision of support and auxiliary services to Windermere licensees in the Region . . . marketing Windermere licenses in the Region . . . establishing and operating a training, educational and professional development program for licensees . . . implementing the intra-system referral program . . . offering Windermere marketing programs . . . making available samples of Windermere forms and listing and marketing materials . . . administering, collecting and remitting contributions to the Windermere Foundation . . . coordination of advertising and public relations . . . 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 . . . 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 . . . and the nature, type and quality of the services offered by licensees.”

Section 3 of the Area Representation Agreement goes on to provide that:

“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 good will built by WSC and the value of the trademark . . . 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.”

Section 12 of the Area Representation Agreement goes on to provide that:

“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.”

Allowing for elements specific to the business model being franchised and the related industry, as well as elements related to the specific circumstances of the parties to the Area Representation Agreement, such provisions are consistent with standards and practices in area representative franchising. (Note that an arrangement whereby fees are paid by Franchisees to the Area Representative, rather than to the Franchisor directly, may not be typical in area representative franchising.) A failure to comply or perform the Area Representative’s obligations undertaken under such provisions (including but not limited to those involving collection and remission of fees) would not be consistent with standards and practices in area representative franchising.

- d. Both in the case of the classical direct franchising model (franchisor – franchisee, with no area representative involved) and the

franchisor – area representative – unit franchisee model, a paramount concern is the success of unit level franchisees, for the reasons described above. A franchise system where franchisees feel that their short- and long-term financial and other interests are subordinated to the financial success of the franchisor or the area representative can face significant negative internal stress, potentially damaging the brand and having a negative effect on future franchise sales, among other things.

If franchisees perceive the franchisor or the area representative as not being committed to the success of the franchisees or, worse, being in active and damaging competition with the franchisees, those negative effects will be increased, franchisees may even decide to leave the system and will almost surely fail to provide positive validation when contacted by prospective franchisees inquiring about how existing franchisees are treated.

- e. There is, in the area representative/franchisee relationship, a need for a high level of concern for, and commitment to, the success of unit level franchisees. This commitment, and its implementation, are related to the development of franchising-specific management skillsets by the area representative, which may significantly differ from management methodologies used in non-franchising business models, even in the same industry. By definition, franchising involves the franchisee financing, owning and operating his or her own individual unit, in which franchisees generally take great pride. Franchisees cannot be ordered about like employees and almost always cannot be “fired” without cause, so other management tools must be used. Therefore, many of the management skills needed at the franchisor level should also be present at the area representative level.

So, the area representative must develop, if he or she does not already have them, the skills necessary to convince franchisees not only of the area representative’s sincere interest in the unit franchisee’s success, and the area representative placing that interest in a paramount position above any competitive or other scenarios between the area representative and the franchisee, but also to convince the franchisee to take operational, marketing or other steps in that franchisee’s long-term best interest even though there may be short-term costs, inertia or other challenges for the franchisee.

In this sense the area representative is fundamentally a business “coach,” skilled in both the details of the franchised business model



and the distinct elements of a franchise relationship, firmly committed to the franchisee's business success, and neither a "boss" nor a largely disinterested, uninvolved and generally absent observer, and not a competitor or someone operating to exclude franchisees from prime locations or markets.

- f. Certain elements present in the real estate profession can raise issues of possible competition between an area representative operating its own office(s) and the offices of the franchisees to be supported by the area representative. Where the area representative's brokerage office(s) is/are in the same general market area serviced by one or more of the offices of the franchisees, there is at least the potential for competition between such offices, whether for listings, representation of potential buyers and/or the services of particularly productive agents. Therefore, the area representative would, under applicable industry standards and when possible, take appropriate steps to minimize such competition and, if he or she fails to do so, it may negatively impact the relationship between the area representative and those franchisees, making it more difficult for the area representative to effectively support those same franchisees. Similar to situations where a franchisor is operating a number of company-owned units in markets where franchisees also have units, serious consideration would normally be given by the area representative as to any potential negative impact of intra-brand competition from the area representative and its effect on existing and future franchisees.
- g. Where a franchisor is seeking to enter a new market, or a market where it has relatively little existing presence or brand recognition, a core objective for the franchisor and its franchisees will normally be to build the value of the brand in the eyes of potential franchisees, existing franchisees and customers. This is sometimes referred to by business people as "brand equity." Actions by the area representative that might diminish brand equity, whether by failure to appropriately support existing franchisees or by engaging in competition with them, could diminish brand equity and, among other things, damage new sales of franchises and the profitability of existing franchisees, all of which would be inconsistent with franchise industry standards.

**3. Standards of care and practices regarding an area representative with respect to the sale of franchises and support of local franchisees, including considerations where an area representative is itself a franchisee of the franchisor.**

- a. In general, see the information presented above, many elements of which it would be redundant to repeat here and which reflect franchise industry standards. The principles laid out above will, in most instances, inform and support the standards of care and daily business practices of an area representative.
- b. An effective and ethical area representative will realize that, with time, the total investment in their franchised businesses by franchisees may exceed the investment by the area representative in its business, simply because there may be more unit franchisees. A failure to adequately support, or (worse) to negatively impact, unit-level franchisees would be considered unacceptable in successful franchise systems and inconsistent with industry standards. Such actions or omissions by an area representative, if they took place, could potentially damage the value of the franchised brand, restrict future growth of the franchised system through sales of franchises or existing franchisees opening additional units, harm the profitability of franchised units, and result in increased discord and loss of trust, with franchisees leaving the system and even possible litigation.
- c. Similarly, such actions or omissions by an area representative, if they took place, could potentially negatively impact franchise sales (thereby potentially reducing short-term revenue in the form of initial franchise fees and long-term revenue in the form of royalties or otherwise), whether within the area representative's region and/or elsewhere in the system, since prospective franchisees may contact existing franchisees prior to making their purchase decision, could receive negative validation regarding the possible purchase (due to perceived or actual issues regarding the area representative) and then decide to purchase a competing franchise offering or not to purchase any franchise at all. The risk of the later outcome is greater where, as is generally true in real estate franchising, the prospective franchisee is already licensed to and is doing business in the industry and the local market, a franchising model known as "conversion franchising."
- d. Given those possible negative effects, responsible area representatives devote maximum efforts to fully supporting franchised units, proactively reaching out to unit franchises, both on an individual and group basis, and seeing how the area representative can assist the franchisees. As noted above, the area representative's proper role is that of an active "coach," never undermining franchisees' opportunities for success. Simply waiting

for franchisees to call for help, or only inspecting units for possible violations of system standards, does not meet the industry standard for proper performance of an area representative's functions. On the other hand, pro-active support of unit-level franchisees would be consistent with industry standards and can increase the franchisees' opportunities for success and support of the brand, and to minimize potential discord, franchisees leaving the system or not validating it to potential purchasers, and even possible litigation.

- e. In sum, for the ethical and effective area representative following franchise industry standards, the success of the franchisees he or she is responsible for supporting is the over-riding objective of that area representative and would be an even higher priority than the success of any units owned and operated by the area representative or its affiliates.

### **Findings**

In my review of various materials in this matter (see the attached List of Materials Received and/or Reviewed), I made the following observations and/or findings:

1. Section 3 of the Windermere Real Estate Services Company Area Representation Agreement for the State of California (the "Area Representation Agreement" or "Area Representative Agreement") provides, in Section 3, for various duties and obligations of the Area Representative, including those with respect to the "licensees" (franchisees) in the "Region."
2. Those duties and obligations of the area representative with respect to franchisees are, in broad measure, substantially similar to such duties and obligations of area representatives in franchising generally, putting to one side duties and obligations particular to the real estate industry and its related business models.
3. A substantial failure by an area representative to properly perform such duties and obligations would not be consistent with standard practices in franchising, as applied to area representatives.

4. Such a failure by an area representative could: operate to damage the relationships between the franchisor and its franchisees; affect the ability of the franchisor to award future franchises (or additional franchises to existing franchisees); result in existing franchisees leaving the franchised system; and/or possibly negatively impact the value of the franchised brand, to the potential detriment of both the franchisor and its franchisees.
5. The First Amended Counterclaim by Defendant and Counterclaimant Windermere Real Estate Services Company for Damages and Injunctive Relief (the "Counterclaim") alleges [references are to page and line numbers of the Counterclaim] that the area representative: a) "did not provide prompt, courteous and efficient service to franchisees" (page 11; line 7); b) "did not deal fairly and honestly" with franchisees (page 11; line 8); c) did not offer the same support to other franchisees as they provided to offices owned by the area representative or an affiliated company (page 11; lines 9-10); competed against other franchisees (page 11; line 16); attempted to solicit agents who worked for other franchises to leave their current employment and work for the area representative of an affiliated company (page 11; lines 18 – 22); and failed to collect and remit various fees from franchisees to the franchisor (page 11; lines 25-27).
6. If proven, such acts or omissions by an area representative would not be consistent with standard practices in franchising, as applied to area representatives.
7. In the deposition of Mr. Deville (Vol. I; page 31; line 12), after being asked what he considered to be the obligations of the area representative in providing services to franchisees in Southern California, and responding that they were to "grow the region and to act as a conduit between the owners and Seattle, collect fees," and then being asked if he could think of anything else, he responded "No."
8. As detailed above, standard franchising practices for area representatives include more than simply marketing franchises, acting as a "conduit" between the franchisor and the unit franchisees and collecting fees. Those practices include, among other things discussed in more detail above, assuring general system compliance by franchisees (not only trademark compliance), establishing and operating a training, education and professional development program for franchisees and

their employees, and a proactive “coaching” model to assist franchisees in becoming financially and operationally successful.

9. In the deposition of Mr. Deville (Vol. II; page 414; lines 1 - 15), Mr. Deville states that certain franchise owners were “disgruntled” as a result of the area representative (or an affiliate) opening an office in Encinitas.
10. The type of reaction by franchisees discussed by Mr. Deville would not be unusual, nor unanticipated, in franchising where the franchisees affected believed that the location or market was a favorable one and that they could successfully operate a franchised unit at that location or in that market.
11. In the deposition of Mr. Gregor (page 85; line 20), Mr. Gregor states, after being asked “And if there was an issue in your mind about whether or not these owners could pay the fees they were required to pay under the Franchise Agreement, would you speak up and make that known to Mr. Deville?”, Mr. Gregor responded “That was beyond my grade at that time.”
12. Standard franchising practices for area representatives would not include franchise sales staff who might have issues with respect to a prospective franchisee’s possible inability to pay required fees failing to alert the area representative’s management to such concerns. On the contrary, the payment of required fees is a prime concern for all responsible franchisors or area representatives.
13. In the deposition of Mr. Robinson, at a number of points the deponent addresses questions relating to the area representative’s (or its affiliate’s) alleged failure to pay (or being delinquent in paying) franchise fees. [See page 33; lines 20 – 24; page 35; lines 6 – 9; page 40; lines 4 – 9.]
14. A franchisor would reasonably expect that an area representative would not show favoritism regarding payment of fees by offices owned and operated by it or an affiliated company, as compared to offices owned and operated by other franchisees. Standard franchise industry

practice is for area representatives to pay fees on units owned and operated by them according to their legal obligations.

15. In the deposition of Mr. Gooding, he expresses concern or dissatisfaction with respect to what he perceived as (among other things): the area representative not collaborating with him with respect to closure of a Windermere office and possible opportunities to retain agents from that office within the Windermere system (page 132, line 12 - page 136, line 13); a lack of willingness on the part of the area representative to collaborate on "double truck" or similar joint advertising (page 153, line 9 - page 154, line 15); a lack of "collaboration" and "help" from the area representative (page 157, lines 1 - 3; page 158, lines 14 - 17); a lack of support or collaboration re various training or other functions (page 162, line 16 through page 163, line 19; page 164, line 19 through page 166, line 25; page 206, lines 15 - 22; page 207, lines 8 - 13); the relationship with the area representative having become a competitive one rather than collaborative (page 185, line 19 - 22; page 187, line 17 through page 190, line 19; page 192, lines 2 - 12; page 247, lines 3 - 7).
16. In general, conduct by an area representative as testified to by Mr. Gooding, if such testimony accurately reflects the facts, would not be consistent with applicable standards in area representative franchising.
17. In the deposition of Mr. Johnson, he expresses concern or dissatisfaction with respect to what he perceived as (among other things): feeling that his franchise was "instead of having a mutually beneficial relationship, that we were, in fact, competing against SoCal, and that was causing some challenges between our relationship" and apparently relating that perception to issues regarding "advertising and the competition about recruiting agents" (page 175, line 9 - Page 176 3; page 176, line 6 - page 4; page 192, lines 15 - 21; page 233, lines 4 - 13); possibly disparaging comments by the area representative re the franchisee (page 178, lines 2 - 19; page 180, lines 4 - 18; page 186, lines 5 - 7); issues regarding communication and/or collaboration (page 191, line 22, page 192, lines 9 - 12; page 193, lines 9 - 16; page 230, lines 1 - 6).
18. In general, conduct by an area representative as testified to by Mr. Johnson, if such testimony accurately reflects the facts, would not be consistent with applicable standards in area representative franchising.

19. In the deposition of Mr. Fanning, he testified that: the area representative told him what he could and could not speak to franchisees about (page 30, line 22 through page 31, line 25.)
20. Such a limitation or direction by an area representative would not, in general, be typical in franchising or consistent with standard franchise industry standards and practices.
21. In the deposition of Mr. Fanning, he testified that: he did not have an opportunity to teach agents in the region because he was asked to stop coming.
22. Such a limitation or direction by an area representative would not, in general, be typical in franchising or consistent with standard franchise industry standards and practices.
23. In the deposition of Mr. Fanning, he testified that: at least one franchisee in the region was not aware that various software tools were available to them, nor did they have ample training on how to use them.
24. Such a situation would not be typical in franchising or consistent with standard franchise industry standards and practices.
25. In the deposition of Mr. Fanning, he testified that: other regions were "more than happy to have us come into their region and help [educate those agents.]"
26. The approach of such other regions is typical in franchising, would normally be expected and is consistent with standard franchise industry standards and practices.

27. In the deposition of Ms. Bortfeld, she testified that: she had concerns regarding use, by agents working for Bennion and Deville, of the Windermere logo, business cards (including use of a non-approved vendor) (page 21, line 1 through Page 29, line 9.)
28. Inappropriate use of a logo, or of non-approved suppliers, would not be consistent with franchise industry standards.
29. In the deposition of Ms. Bortfeld, she testified that: Messrs. Gooding and Johnson "were unaware of a lot of the marketing materials that are branded for us . . . They were just completely unaware of who we were - - the programs that we have . . . They just - - they were clearly clueless about the services that my department provides. . . . they were just so shocked at what they found on the worksite. They said we had no idea all this stuff was available. . . . It was almost like bringing on a new franchise, bringing through an orientation. And they're, like, This is great, wish we knew about this." (Page 82, line 22 through Page 83, line 8; Page 86, line 11 through line 17.)
30. Franchisees being unaware of the materials or services available from a franchisor is not consistent with franchise industry standards.
31. In the deposition of Ms. Bortfeld, she testified that: "We weren't allowed to talk to anybody in Southern California. I wasn't allowed to talk to any be (*sic*) in Southern California . . . Mr. Deville requested that we do not discuss - - we do not have conversations with his owners. . . . I respected his wishes. " (Page 86, line 23 through Page 87, line 6)
32. A franchisor being asked to not communicate with its franchisees is not typical in franchising or consistent with franchise industry standards.
33. In the deposition of Ms. Bortfeld, she testified that: There were instances of Mr. Deville involving "unpleasant encounters" and which resulted in employees coming into "my office in tears or visibly shaken after an interaction" and an employee telling her that Mr. Deville "was yelling at me, and I felt attacked" . . . "every interaction I've ever had has been extremely unpleasant. So you just don't go to the hornet's



nest too often." (Page 90, lines 5 – 10; lines 20-21; Page 95, lines 5 – 7.)

34. Such encounters as those described are not consistent with franchise industry standards.
35. In the deposition of Ms. Bortfeld with respect to the topic of the region possibly failing to support franchisees in Southern California, she testified with respect to: non-disbursal of leads supplied by the franchisor, (Page 107, line 21 through Page 127, line 4); matters relating to customization of marketing materials and franchisee's lack of knowledge re materials (Page 116, line 16 through Page 118, Line 5); franchisee's lack of "access to radio spots, print ad templates, TV spots, billboard, any of the advertising . . ." (Page 118, line 11 through Page 120, line 14.)
36. Not providing unit franchisees with materials and resources generally available from the franchisor is not consistent with standard franchise industry practice.

David E. Holmes



Date: September 16, 2016



**List of Materials Received and/or Reviewed**

1. Windermere Real Estate Services Company Area Representation Agreement for the State of California (with exhibits)
2. First Amended Counterclaim by Defendant and Counterclaimant – Bennion & Deville Fine Homes, Inc., et al. v. Windermere Real Estate Services Company, et al.; USDCt Central District of California Case. No. 5:15-CV-01921 R (KKx) [hereinafter referred to as the “Bennion case.”]
3. First Amended Complaint - Bennion case. (with exhibits)
4. August 13, 2016, Cover Letter from Atty. Feasby re transmission of depositions and discovery documents.
5. Defendant (WRESC) Responses to Plaintiff's (Bennion) First Set of Requests for Production - Bennion case.
6. Defendant's (WRESC) Responses to Plaintiff's (Bennion) First Set of Interrogatories - Bennion case.
7. Defendant's (WRESC) Responses to Plaintiff's (WSSC) First Set of Interrogatories - Bennion case.
8. Defendant's (WRESC) Responses to Plaintiff's (Bennion) First Set of Requests for Admission - Bennion case.
9. Defendant's (WRESC) First Supplemental Responses to Plaintiff's (Bennion) First Set of Requests for Production - Bennion case.
10. Defendant's (WRESC) First Supplemental Responses to Plaintiff's (Bennion) First Set of Interrogatories - Bennion case.
11. Defendant's (WRESC) First Supplemental Responses to Plaintiff's (Bennion) First Set of Requests for Admission - Bennion case.
12. Defendant's (WRESC) Second Supplemental Responses to Plaintiff's (Bennion) First Set of Requests for Production - Bennion case.
13. Defendant (WRESC) Responses to Plaintiff's (Bennion) Second Set of Requests for Production – Bennion Case.
14. Defendant's (WRESC) Responses to Plaintiff's (WSSC) Second Set of Interrogatories – Bennion Case.
15. Counterdefendant Robert L. Bennion's Responses to WRESC's Request for Admission, Set One - Bennion case.
16. Counterdefendant Robert L. Bennion's Responses to WRESC's Interrogatories, Set One - Bennion case.
17. Counterdefendant Joseph R. Deville's Responses to WRESC's Request for Admission, Set One - Bennion case.
18. Counterdefendant Joseph R. Deville's Responses to WRESC's Interrogatories, Set One - Bennion case.
19. Plaintiffs' (Bennion) Responses to Defendant's Request for Production of Documents - Bennion case.
20. Bennion & Deville Fine Homes Responses to WRESC Interrogatories, Set One- Bennion case.
21. Counterdefendant Bennion & Deville Fine Homes Responses to WRESC Requests for Admission, Set One- Bennion case.

22. Plaintiffs' (Bennion) Responses to WRESC Request for Production [Set Two] - Bennion case.
23. Plaintiffs' (Bennion) Responses to WRESC Request for Production of Documents - Bennion case.
24. Counterdefendant Bennion & Deville Fine Homes Responses to WRESC Interrogatories, Set One - Bennion case.
25. Counterdefendant Bennion & Deville Fine Homes Responses to WRESC Requests for Admission, Set One - Bennion case.
26. Plaintiffs' (Bennion) Responses to WRESC Request for Production, Set Two - Bennion case.
27. Plaintiff's (WSSC) Responses to Defendant's (WRESC) Request for Production of Documents - Bennion case.
28. Counterdefendant's (WSSC) Responses to WRESC's Interrogatories, Set One - Bennion case.
29. Counterdefendant's (WSSC) Responses to WRESC's Requests for Admission, Set One - Bennion case.
30. Plaintiff's (WSSC) Responses to WRESC's Requests for Admission, Set Two - Bennion case.
31. Deposition of Robert L. Bennion; July 27, 2016 – Volume I
32. Deposition of Robert L. Bennion; July 28, 2016 – Volume II
33. Deposition of Joseph R. Deville; July 26, 2016 – Volume I
34. Deposition of Joseph R. Deville; July 27, 2016 – Volume II
35. Deposition of Eric Forsberg; July 29, 2016
36. Deposition of Kirk Gregor; July 28, 2016
37. WESC's First Amended Notice Deposition of Joseph R. Deville with Exhibits.
38. Franchising for Dummies; 2<sup>nd</sup> Edition; Seid and Thomas, © 2005
39. Deposition of Paul Drayna; Volumes I and II – Bennion Case.
40. Deposition of Brian Gooding; September 6, 2016. [Confidential portions omitted.]
41. Deposition of Richard Johnson; September 9, 2016.
42. Deposition of Michael Fanning; August 31, 2016.
43. Deposition of Noele Bortfeld; August 31, 2016 w/ separate emailed sheet listing various pages and line numbers.

## **David E. Holmes Curriculum Vitae**

### **Executive Summary**

- Practiced domestic and international franchise law from 1975 until his retirement in 2008.
- Associate General Counsel - International House of Pancakes.
- Vice President and Counsel - Century 21 Real Estate Corporation.
- Partner - Holmes Lofstrom, LLP, specializing exclusively in domestic and international franchise law. (Retired - 2008)
- Three Times Co-Chair, State Bar Franchise Law Committee - current Co-Chair of that committee.
- Past Member and Secretary, State Bar Business Law Section Executive Committee.
- Past Chair, State Bar Franchise and Distribution Law Advisory Commission.
- Past Chair, State Bar Board of Legal Specialization
- Certified Specialist Franchise and Distribution Law - The State Bar of California Board of Legal Specialization. (2009 - 2014)
- Executive Editor (all editions), CEB practice book: California Franchise Law and Practice.

### **Detailed CV**

David E. Holmes practiced law in the domestic and international franchising area beginning in 1975, having graduated from the University of Southern California in 1966 and its Law School in 1969.

From 1969 to 1975, he was in-house counsel at Southern California Edison and Cordura Corporation, both in Los Angeles. His responsibilities in the legal departments of those companies involved public securities offerings and general business law matters.

From 1975 to 1980 David was Associate General Counsel for International House of Pancakes, where his responsibilities included legal aspects of multi-

brand franchise operations (including franchise matters), related training of marketing and operations personnel, real estate matters, and acquisitions/dispositions of various units.

From 1980 through 1983 David was Vice President and Counsel for Century 21 Real Estate Corporation, where his duties covered franchise and other legal compliance matters and related training, governmental relations, litigation supervision, acquisitions, and system-wide legal training programs.

David and a partner owned and operated a subfranchise company in Southern California, Fantastic Sam's, from approximately 1983 to 1984, and he was in private practice as a solo attorney from 1985 to 2001, specializing in franchise law.

From 2002 to 2008, David was a Partner with Holmes Lofstrom, LLP, which represented businesses in a wide range of industries and professions and with a concentration in franchising. During David's tenure, the firm's clients were located throughout North America and abroad and included mature franchise systems, as well as new and beginning franchise companies.

From 1985 to 2008, David was in private practice, specializing exclusively in franchising, including structuring and development of new and established franchise systems, system design, drafting of documents for registration and legal compliance, management of litigation, franchise system negotiations and legal aspects of system compliance, along with related training.

He has been involved in the structuring and negotiation of international expansion activities for American franchisors in a number of foreign markets, as well as entry by foreign-based franchise systems into North America.

David has actively contributed to the International Franchise Association (the "IFA", the primary trade group representing franchising in the United States) by serving on its Legal/Legislative and Franchise Relations committees, including as a senior liaison, has spoken and presented papers at IFA Annual Conventions, Legal Symposia and other events, has been a member of the IFA Legal Symposium Task Force (which determines the content and speakers for each year's Legal Symposium), and has authored various IFA publications (or portions of such publications), including being a co-author of the A Dispute Resolution Handbook for Franchisees and Franchisors. David moderated a panel discussion at the 2005 IFA Legal Symposium on Franchise Disclosure and was a member of the IFA Supplier Forum Advisory Board and in 2007 assisted the IFA's Franchise Relations Committee and its Best Practices Product Review Task Force in updating their materials.

Shortly after adoption of the revised FTC Franchise Rule, he presented, as part of an IFA panel, an educational program on the (then) most recent

revisions to the Federal Trade Commission Franchise Rule and its disclosure requirements. He has led various roundtables at IFA events, including at IFA Conventions and Legal Symposia. He was also a chapter Editor for an American Bar Association monograph on Earnings Claims and, at the request of the IFA, prepared revisions to the IFA's Handbooks on Best Practices in Transfers and Succession Planning.

David has presented papers and seminars at various IFA and other meetings and seminars, in the United States and abroad, as well as conducting franchise law training sessions for domestic and foreign franchise systems.

He has appeared at meetings with, and hearings before, legislative and administrative bodies in connection with franchising matters and has testified on the business and legal aspects of franchising and the possible effects of proposed legislation and regulations.

David has been a guest speaker on various shows relating to franchising, conducted numerous training sessions for franchisor personnel and franchisees, and has been a regular speaker at educational seminars for franchisors and franchise attorneys. In addition, David has often spoken on franchising and related matters at IFA quarterly regional meetings.

He has been designated, and testified, as an expert witness on franchising and franchise-related matters in both federal and state courts.

During 2003-2004, David served his second term as Co-Chair of the California State Bar Franchise Law Committee (the "FLC"), where he helped to draft (and oversaw the drafting of) the most extensive changes to the California Franchise Investment Law since its original enactment. During that time, David was the primary liaison between the Franchise Law Committee and senior staff of the Department of Corporations, including working with the Department on new legislation and revisions to the Department's policies and procedures with respect to franchise registration, disclosure, and enforcement matters, as well as negotiating the final form of the bill with state legislative staff.

In the Summer of 2010, David was invited to serve on the State Bar Franchise Law Committee once again. In that capacity, he primarily focused on regulatory and statutory matters.

For the 2013-2014 State Bar year, David was again appointed as Co-Chair of the State Bar Franchise Law Committee matters and, after completion of his term as Co-Chair, continues to sit on various subcommittees of the FLC in an advisory (non-voting) capacity.

David has been involved in other projects for the FLC, including the formulation of new legislation, the drafting of affirmative legislative and regulatory

proposals and related discussions with regulatory officials, including those involving the regulation of franchise area developers. He served on a subcommittee of the Franchise Law Committee in a proposed general re-writing and modernization of substantial portions of the California Franchise Investment Law, as well as possible revisions to the California Franchise Relations Act and the California Seller Assisted Marketing Plan law.

In October of 2004, David was selected to serve on the Executive Committee of the Business Law Section of the State Bar and served, among other duties, as the primary liaison between the Franchise Law Committee and the Executive Committee, and as Secretary of the Executive Committee.

In October of 2006, David was appointed to the newly formed State Bar Franchise and Distribution Law Advisory Commission as its Vice-Chair. That Commission was charged with developing and administering standards and procedures for certifying California lawyers as franchise and distribution law specialists, the first bar association in the country to do so. In 2007 he became that Commission's Chair and had overall responsibility for the accomplishment of its objectives, and into September of 2009 served that Commission as its former Chair. In those capacities, he participated in the preparation, grading and/or evaluation of examination questions for the franchise and distribution law specialty and has served as a pre-tester and evaluator of proposed exam questions in that area. He was also a member of the State Bar's Board of Legal Specialization, to which the Commission reports, and served on the New Specialties Subcommittee of the Board of Legal Specialization.

Effective in September of 2009, David was appointed to the State Bar's Board of Legal Specialization, which administers all certified legal specialties in California, including franchise and distribution law, and also served as Chair of its Examination Committee. He was the Chair of the Board of Legal Specialization for the 2012-2013 State Bar year, having previously been its Vice Chair, and in 2013-2014 served as Immediate Past Chair and Advisor to that body.

David was certified as a Franchise and Distribution Law Specialist by the State Bar of California's Board of Legal Specialization; since he is retired, his certification ended on December 31, 2014.

He is also the Executive Editor of the California Continuing Education of the Bar (CEB) publication: California Franchise Law and Practice, published in 2009, 2011, and 2013. CEB is a joint University of California - State Bar program, founded in 1947.

In addition, David has been a member of the State Bar-CEB Business & Intellectual Property Law Advisory Committee, which advised CEB with respect to publications, continuing legal education programs and other matters.

David was a member for many years of the American Bar Association's Franchising Forum, served on the American Association of Franchisees and



Dealers' (AAFD) Fair Franchising Standards Committee and assisted that committee in the drafting of portions of their Fair Franchising Standards.

He has also been a member of the American Arbitration Association's (AAA) Franchise Advisory Panel, which advised the AAA regarding arbitration policies and personnel and has taught upper division and graduate level classes on business law at The California State University, Long Beach.

David has been selected by his peers as a "legal eagle" in the franchising community, as part of Franchise Times' Annual Legal Eagle recognition program, and has also been listed in The International Who's Who of Franchise Lawyers.

David is a widower, has two adult sons, and resides in San Luis Obispo, California. He also serves as a volunteer at French Hospital Medical Center in San Luis Obispo, where he has been a team captain, and is a volunteer photographer for the Cal Poly San Luis Obispo women's basketball teams.

David E. Holmes

List of Publications (August 11, 2016)

1. California Franchise Law and Practice, 2009, 2011, and 2013 editions. Executive Editor and author of various chapters. – A CEB publication. Copies may be obtained at <http://www.ceb.com/CEBSite/product.asp?catalog%5Fname=CEB&menu%5Fcategory=Bookstore&main%5Fcategory=Practice+Books&sub%5Fcategory=Practice+Books+Business+Law&product%5Fid=BU33822&Page=1>
2. Co-author of the International Franchise Association (“IFA”) publication *A Dispute Resolution Handbook for Franchisees and Franchisors*. – An International Franchise Association publication. A copy may be obtained at <http://www.franchise.org/IndustrySecondary.aspx?id=3466>
3. Author or co-author (as identified) of various papers posted on the website of the successor to Mr. Holmes’ former law firm (see <http://www.holmeslofstrom.com/res.htm>).
4. Chapter Editor for an American Bar Association monograph on Earnings Claims. – An ABA publication. Copies may be obtained at <http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=215725>
5. Mr. Holmes also, at the request of the IFA, prepared revisions to the IFA’s Handbooks on Best Practices in Transfers and Succession Planning. This is an IFA publication. A copy may be available from them. See <http://www.franchise.org/IndustrySecondary.aspx?id=3466>
6. Article: *California Plans Move to “Risk-Based Review” of Franchise Filings* published in *The Franchise Lawyer* Volume 6 Number 4, Spring 2003 a publication of the American Bar Association – Forum on Franchising.
7. 4th Annual Spring Meeting, Corporate Governance and Ethics, April 4, 2003 in Century City, California. *So Your Client Is Thinking of*

*Becoming a Franchisee – A Business Overview and Some Practical Considerations* presented on behalf of the Business Law Section of the California State Bar Association.

8. State Bar of California Education Institute, January 17, 2003 in Berkeley, California. *Is My Client's Business Really Franchiseable? or Business Considerations in Deciding Whether or Not to Franchise* presented on behalf of the Business Law Section of the State Bar of California.
9. Best Practices - A Seminar for Franchisors, Co-Sponsored by Singer Lewak Greenbaum & Goldstein, LLP and Legal Offices of David E. Holmes. January 29, 1998, in Orange, California. *Legal Techniques*. Co-authored with David Krajanowski, CPA.
10. State Bar of California Annual Meeting, September 12, 1997 in San Diego, California. Franchising: 1) *A Business Overview and Practice Considerations - An Introduction* and 2) *Representing Franchisors - Business and Legal Considerations*. Presented on behalf of the Business Law Section of the Franchise Law Committee of the State Bar of California.
11. American Franchise Exhibition (put on by CII [Careers in Industry]), September 12-14, 1997 in Long Beach, California. *International Franchising Structure and Negotiations - A Practical Overview*.
12. International Franchise Association, International Franchise Exposition, April 26, 1996 in Washington, DC and September 5-7, 1997, in Long Beach, California. *How to Negotiate a Master Franchise Agreement*. Presented as a member of a panel.
13. International Franchise Association, 30th Annual Legal Symposium, May 5-6, 1997 in Washington, DC. *Advertising Issues in Franchise Relationships*. Co-authored with John Baer, Esq. and Wayne Mack, Esq.
14. State Bar of California Annual Meeting, October 11, 1996, in Long Beach, California. *Representing Franchisors - An Introduction*. Presented on behalf of the Business Law Section of the Franchise Law Committee of the State Bar of California.
15. Small Business Development Center Program in partnership with the State of California and the U.S. Small Business Administration. Workshop presented on July 12, 1995, Los Angeles, California. *Is*

*Your Business Franchiseable? Business Consideration in Deciding Whether or Not to Franchise.*

16. International Franchise Association, Expofranchise Chile '95, June 22-23, 1995, in Santiago, Chile. *International Franchising & NAFTA, A Practical Overview*. Co-presented with Nancy Womack, Director of Affairs of the International Franchise Association.
17. Business Law News, Vol. 16, No. 2, Spring 1994. (Official publications of the Business Law Section - State Bar of California.) *Crises Management in Franchising*. Co-authored with Charles E. Rumbaugh, Esq.
18. International Franchise Association, 26th Annual Legal Symposium, May 24-25, 1993 in Washington, DC. *Master Franchising/Subfranchising*. Co-authored with David Beyer, Esq.
19. International Franchise Association, 33rd Annual Franchise Convention, February 7-10, 1993 in San Francisco, California. *Basic Aspects of Negotiating International Agreements*.
20. International Franchise Association, 25th Annual Legal Symposium, May 11-12, 1992 in Washington DC. *Registration and Disclosure Laws - Beyond the Basics*. Co-authored with Kim A. Lambert, Esq.

California Franchise Law and Practice, 2009, 2011, and 2013 editions.  
Executive Editor and author of various chapters. – A CEB publication. Copies  
may be obtained at  
<http://www.ceb.com/CEBSite/product.asp?catalog%5Fname=CEB&menu%5Fcategory=Bookstore&main%5Fcategory=Practice+Books&sub%5Fcategory=Practice+Books+Business+Law&product%5Fid=BU33822&Page=1>

21. Co-author of the International Franchise Association ("IFA") publication *A Dispute Resolution Handbook for Franchisees and Franchisors*. – An International Franchise Association publication. A copy may be obtained at <http://www.franchise.org/IndustrySecondary.aspx?id=3466>
22. Author or co-author (as identified) of various (but not necessarily all) papers posted on the website of the successor to Mr. Holmes' former law firm (see <http://www.holmeslofstrom.com/res.htm>).
23. Chapter Editor for an American Bar Association monograph on Earnings Claims. – An ABA publication. Copies may be obtained at <http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=215725>

24. Mr. Holmes also, at the request of the IFA, prepared revisions to the IFA's Handbooks on Best Practices in Transfers and Succession Planning. This is an IFA publication. A copy may be available from them. See <http://www.franchise.org/IndustrySecondary.aspx?id=3466>
25. Article: *California Plans Move to "Risk-Based Review" of Franchise Filings* published in *The Franchise Lawyer* Volume 6 Number 4, Spring 2003 a publication of the American Bar Association – Forum on Franchising.
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27. State Bar of California Education Institute, January 17, 2003 in Berkeley, California. *Is My Client's Business Really Franchiseable? or Business Considerations in Deciding Whether or Not to Franchise* presented on behalf of the Business Law Section of the State Bar of California.
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29. State Bar of California Annual Meeting, September 12, 1997 in San Diego, California. Franchising: 1) *A Business Overview and Practice Considerations - An Introduction* and 2) *Representing Franchisors - Business and Legal Considerations*. Presented on behalf of the Business Law Section of the Franchise Law Committee of the State Bar of California.
30. American Franchise Exhibition (put on by CII [Careers in Industry]), September 12-14, 1997 in Long Beach, California. *International Franchising Structure and Negotiations - A Practical Overview*.

31. International Franchise Association, International Franchise Exposition, April 26, 1996 in Washington, DC and September 5-7, 1997, in Long Beach, California. *How to Negotiate a Master Franchise Agreement*. Presented as a member of a panel.
32. International Franchise Association, 30th Annual Legal Symposium, May 5-6, 1997 in Washington, DC. *Advertising Issues in Franchise Relationships*. Co-authored with John Baer, Esq. and Wayne Mack, Esq.
33. State Bar of California Annual Meeting, October 11, 1996, in Long Beach, California. *Representing Franchisors - An Introduction*. Presented on behalf of the Business Law Section of the Franchise Law Committee of the State Bar of California.
34. Small Business Development Center Program in partnership with the State of California and the U.S. Small Business Administration. Workshop presented on July 12, 1995, Los Angeles, California. *Is Your Business Franchiseable? Business Consideration in Deciding Whether or Not to Franchise*.
35. International Franchise Association, Expofranchise Chile '95, June 22-23, 1995, in Santiago, Chile. *International Franchising & NAFTA, A Practical Overview*. Co-presented with Nancy Womack, Director of Affairs of the International Franchise Association.
36. Business Law News, Vol. 16, No. 2, Spring 1994. (Official publications of the Business Law Section - State Bar of California.) *Crises Management in Franchising*. Co-authored with Charles E. Rumbaugh, Esq.
37. International Franchise Association, 26th Annual Legal Symposium, May 24-25, 1993 in Washington, DC. *Master Franchising/Subfranchising*. Co-authored with David Beyer, Esq.
38. International Franchise Association, 33rd Annual Franchise Convention, February 7-10, 1993 in San Francisco, California. *Basic Aspects of Negotiating International Agreements*.
39. International Franchise Association, 25th Annual Legal Symposium, May 11-12, 1992 in Washington DC. *Registration and Disclosure Laws - Beyond the Basics*. Co-authored with Kim A. Lambert, Esq.

David E. Holmes, Esq.

Expert Witness Information

as of

August 25, 2016

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“Report” = Report submitted.

“Deposition” = Deposition Taken.

“Trial” = Testimony given at trial.

2016

SuperShuttle International *et al.* v. Henning, *et al.*; Sacramento  
Superior Court - Case No. 34-2014-80001841-CU-MC-GDS

Report not submitted and no deposition as of August 25, 2016.

Bennion & Deville Fine Homes *et al.* v. Windermere Real Estate  
Services Company; U. S. District Court – Central District of California;  
Case No. 5:15-CV-1921 R (KKx)

Report not submitted and no deposition as of July 23, 2016.

RPCHorizons adv. Penn Station

Pre-Litigation. Report not submitted and no deposition as of July 23,  
2016.

Comey v. State Farm, *et al.*; Superior Court Orange County; Case  
No. 30-2014-00745930-CU-IC-CJC

Report not submitted. No deposition.

Case settled.

Ahmed v. SuperShuttle Los Angeles; Superior Court – County of  
Orange Case No. 30-2014-00756967 – CU-OE-CJC

Report not submitted. No deposition.

Client prevailed *via* Motion for Summary Judgment.

2014



Viking Associates, Inc. v. TD, Inc, et al., United States District Court –  
Central District of California – Southern Division – Case No. 8:14-cv-  
0472 AG (RNB)x)

Report not submitted as of May 22, 2014.

Case settled and file closed as of June 18, 2014.

Shaffie, et al. v. Cell Phone Repair, LLC, et al., American Arbitration  
Association – San Francisco; Case No. 74 114 00275

Report submitted.

Case settled and file closed as of July 9, 2014.

Hahn v. Massage Envy Franchising, LLC, U. S. District Court,  
Southern District of California,  
Case No. 3:12-CV-00153-DMS-BGS

Report submitted.

2013

Pat & Oscar's Concepts, Inc. v. Tim Foley, et al. – Superior Court,  
San Diego County, Central Division, Case No.: 37-2012-00100956  
CU-BC-CTLConsolidated with Case No. 37-2013-704703-CU-BT-  
CTL

Report. Depo. Trial.

Welch, et al. v. The American Insurance Company, et al. – King  
County Superior Court, Case Number 09-2-32462-0 SEA aka Sarah  
Gosney v. Fireman's Fund Insurance Company, et al., King County  
Superior Court Case No. 09-2-32462-0 SEA

Report. Depo. Trial.

2012

Meersand v. Duffy, et al. – Superior Court of New Jersey, Gloucester  
County Division, Docket No. GLO-1624-10

Report and depo.

Coalson v. Pellegrino, et al., Superior Court of New Jersey Law  
Division – Camden County Docket No. L-2019-11

Report.

2011

Newport v. Burger King Corporation  
U.S. District Court – No. Dist. Of Calif.  
No. CV 10-4511 WHA

Richard J. Stratton, Esq.  
Hanson Bridgett LLP  
425 Market Street, 26<sup>th</sup> Floor  
San Francisco, CA 94105

Report and depo.

2010

Chandran v. Simoneau, et al.  
Santa Clara Superior Court Case No. 109CV143839

Frank Gooch III, Esq.  
Gilchrist & Rutter  
Wilshire Palisades Building  
1299 Ocean Avenue

Suite 900  
Santa Monica, California 90401-1000

Declaration submitted, deposition.

Robert R. Carlson, et al. v. Thumann Incorporated, San Joaquin  
County Superior Court Case No. 39-2009-00229856-CU-FR-STK

Jeffrey B. Setness, Esq.  
Mayall, Hurley, Knutsen, Smith & Green  
2543 Grand Canal Boulevard  
Stockton, California, 95207

To the best of my recollection, no report, depo. or trial.

2009

Stillwell, et al. v. Radioshack Corporation, USD Ct. So. District Calif. –  
Case No. CV 0607 JM(CAB)

Jeffrey L. Fillerup, Esq.  
Luce, Forward, Hamilton & Scripps LLP  
Rincon Center II  
121 Spear Street, Suite 200  
San Francisco, CA 94105

Report and deposition.

2002-2004

R.D.R. Enterprises, Inc. v. Copy Club, Inc., et al

Case No. GIC 774596

Robert Brown, Esq.

Mulvaney, Kahan & Barry  
Seventeenth Floor  
401 West "A" Street  
San Diego, California 92101  
(619) 238-1010

I do not recall if a report was submitted in this matter or not.  
Deposition and trial testimony was given.

2002-2003

Temen v. SIG 5, et al

Mark G. Simons, Esq.  
Robison, Belaustegui, Sharp & Low  
71 Washington Street  
Reno, Nevada 89503  
(775) 329-3151

To the best of my recollection, no report, depo. or trial testimony.

1999

American Arbitration Case Number 72Y1400460-99  
Guess?, Inc. v. Pour le Bebe, Inc. and Pour La Maison, Inc.

David Steinberg, Esq.  
Mitchell, Silberberg & Knupp, LLP  
11377 West Olympic Blvd.  
Los Angeles, CA 90064-1683  
(310) 312-3100

To the best of my recollection, no report, deposition or trial testimony.

1999

Foodmaker, Inc. (Franchisor of the Jack in the Box® system)  
Foodmaker, Inc.. vs. Harris Food Products

Kevin R. Nowicki, Esq.  
Gibson, Dunn & Crutcher  
4 Park Plaza  
Irvine, CA 92614  
(949) 451-3800

To the best of my recollection, no report, deposition. or trial testimony.

1999

U.S. District Court Case No. 98-1086 JSL (RCx)

Jeanne Piaubert Cosmetics vs

G. Thomas MacIntosh; Mackall, Crounse & Moore, PLC

Gregory Yates, Esq.

Law Offices of Gregory A. Yates

9454 Wilshire Blvd., Suite 850

Beverly Hills, CA 90212

(310) 858-6944

I do not recall if a report was submitted in this matter or not.  
Deposition and trial testimony was given.

# EXHIBIT I



John D. Vaughn, State Bar No. 171801  
Jeffrey A. Feasby, State Bar No. 208759  
PEREZ WILSON VAUGHN & FEASBY  
750 B Street, Suite 3300  
San Diego, California 92101  
Telephone: 619-702-8044  
Facsimile: 619-460-0437  
E-Mail: vaughn@perezwilson.com  
E-Mail: feasby@perezwilson.com

Attorneys for Defendant and Counterclaimant  
Windermere Real Estate Services Company

**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. Manuel L. Real

**PLAINTIFF AND  
COUNTERCLAIMANT  
WINDERMERE REAL ESTATE  
SERVICES COMPANY'S INITIAL  
DISCLOSURES**

**[F.R.C.P. 26(a)(1)]**

Courtroom: 6

Plaintiff and Counterclaimant Windermere Real Estate Services Company (“WSC”) hereby submits its initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1). The following disclosures are based on information currently known to WSC. WSC reserves the right to correct, modify, and/or supplement these disclosures in accordance with Federal Rule of Civil Procedure 26(e).

**(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.**

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(i), WSC presently believes that the following individuals are likely to have discoverable information that WSC may use to support its claims or defenses, excluding persons to be used solely for impeachment:

Name	Address and Telephone Number	Subject of Information
Joseph R. Deville	c/o counsel for Plaintiffs and Counterdefendants	All aspects of this litigation.
Robert L. Bennion	c/o counsel for Plaintiffs and Counterdefendants	All aspects of this litigation.
Patrick Robinson	c/o counsel for Plaintiffs and Counterdefendants	Plaintiffs’ allegations and WSC’s defenses to those claims.
Eric Forsberg	c/o counsel for Plaintiffs and Counterdefendants	Plaintiffs’ IT structure and capabilities and their ownership and/or use of relevant web domains. Also issues related to windmerewatch.com and Plaintiffs’ SEO efforts.

Name	Address and Telephone Number	Subject of Information
Robert Sunderland	Sunderland and McCutchan LLP 11770 Bernardo Place Ct, Suite 310 San Diego, CA 92128	The parties' negotiation of various agreements and related documents and historical disputes between the parties.
John Jacobi	c/o counsel for WSC	The various agreements between the parties and the negotiation of those agreements. Discussions between the parties regarding the matters alleged in the First Amended Complaint and First Amended Counterclaim.
Geoff Wood	c/o counsel for WSC	The various agreements between the parties and the negotiation of those agreements. Discussions between the parties regarding the matters alleged in the First Amended Complaint and First Amended Counterclaim.
Jill Jacobi Wood	c/o counsel for WSC	The various agreements between the parties and the negotiation of those agreements. Discussions between the parties regarding the matters alleged in the First Amended Complaint and First Amended Counterclaim.
John "OB" Jacobi	c/o counsel for WSC	The various agreements between the parties and the negotiation of those agreements. Discussions between the parties regarding the matters alleged in the First Amended Complaint and First Amended Counterclaim.

Name	Address and Telephone Number	Subject of Information
Paul Drayna	c/o counsel for WSC	The various agreements between the parties and the negotiation of those agreements. Discussions between the parties regarding the matters alleged in the First Amended Complaint and First Amended Counterclaim.
Noelle Bortfeld	c/o counsel for WSC	WSC's marketing efforts, and historic communications between the parties regarding marketing efforts in Southern California.
Michael Teather	c/o counsel for WSC	Discussions between the parties regarding the matters alleged in the First Amended Complaint and Counterclaim.
Mark Oster	c/o counsel for WSC	Amounts owing to WSC, loans to Counter-Defendants, and other financial matters relevant to the litigation.
Michael Fanning	c/o counsel for WSC	Services offered by WSC to its franchisees and Plaintiffs' history of refusing to accept assistance from WSC when offered.
Don Riley	c/o counsel for WSC	History of dealings between the parties, their past negotiations, and other matters alleged in the First Amended Complaint, and Counterclaim.
Robert Sherrell	c/o counsel for WSC	Counter-Defendants' ownership and/or use of relevant web domains.

Name	Address and Telephone Number	Subject of Information
Rich Johnson	16783 Bernardo Center Drive, Suite D-1 San Diego, CA 92128 (858) 487-5110	Lack of service and support provided by Plaintiffs, as well as actions by Plaintiffs that were harmful to a franchise they were supposed to be supporting.
Brian Gooding	6965 El Camino Real, Suite 107 Carlsbad, CA 92009 (760) 683-8626	Lack of service and support provided by Plaintiffs, as well as actions by Plaintiffs that were harmful to a franchise they were supposed to be supporting.

WSC reserves the right to rely upon information from additional persons as such individuals come to its attention through further discovery and investigation, to rely upon evidence obtained from any persons identified by Plaintiffs and/or Counterdefendants, and to rely upon evidence obtained from the foregoing individuals with respect to any subject. WSC does not consent to or authorize any communications with any of its current or former employees, who should only be contacted through the undersigned counsel for WSC.

**(ii) A copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.**

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(ii), the following categories encompass documents, electronically stored information, and tangible things that WSC presently believes may be used to support its claims or defenses, excluding those used solely for impeachment:

1. Documents related to the preparation of the agreements at issue;

///

1           2. Documents related to communications between the parties  
2 regarding the agreements at issue;

3           3. Documents related to communications between the parties  
4 regarding Windermere Watch; and

5           4. Documents related to loans to Counterdefendants.

6           These documents, to the extent located to date, are located at WSC's premises  
7 or offsite storage, of the law offices of Pérez Wilson Vaughn & Feasby, 750 B  
8 Street, Suite 3300, San Diego, California 92130. WSC reserves the right to rely  
9 upon any additional documents obtained through further discovery and  
10 investigation, and any documents identified or disclosed by Plaintiffs and/or  
11 Counterdefendants.

12           **(iii) A computation of each category of damages claimed by the**  
13 **disclosing party—who must also make available for inspection and copying as**  
14 **under Rule 34 the documents or other evidentiary material, unless privileged**  
15 **or protected from disclosure, on which each computation is based, including**  
16 **materials bearing on the nature and extent of injuries suffered.**

17           WSC seeks damages for Counterdefendants' breach of various agreements in  
18 the amount of \$1,208,655.43 plus pre and post-judgment interest thereon as allowed  
19 by the parties' agreements and/or applicable law.

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1           (iv) For inspection and copying as under Rule 34, any insurance  
2 agreement under which an insurance business may be liable to satisfy all or  
3 part of a possible judgment in the action or to indemnify or reimburse for  
4 payments made to satisfy the judgment.

5           WSC is currently not aware of any insurance policies that may be liable to  
6 satisfy all or part of a possible judgment in the action or to indemnify or reimburse  
7 for payments made to satisfy the judgment.

8  
9 DATED: December 14, 2015 PEREZ WILSON VAUGHN & FEASBY

10  
11 By: /s/ John D. Vaughn

12 John D. Vaughn  
13 Attorneys for  
14 Windermere Real Estate Services Company  
15 John D. Vaughn  
16 Attorneys for  
17 Windermere Real Estate Services Company  
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**CERTIFICATE OF SERVICE**

I am an attorney with the law firm of Pérez Wilson Vaughn & Feasby, whose address is 750 B Street, Suite 3300, San Diego, California 92101. I am over the age of eighteen years, and am not a party to this action.

On December 14, 2015, served the following:

**1. PLAINTIFF AND COUNTERCLAIMANT WINDERMERE REAL ESTATE SERVICES COMPANY'S INITIAL DISCLOSURES [F.R.C.P. 26(a)(1)]**

on the interested parties in this action by:

**ELECTRONIC MAIL:** I caused to be transmitted via electronic means to the electronic mail address(es) noted below a true and correct copy of the aforementioned document(s) from [feasby@perezwilson.com](mailto:feasby@perezwilson.com) on the date ascribed below. The transmission was reported as complete without error. I am aware that the form of original signature must be maintained and must be available for review and copying on the request of the court or any party to this action.

by serving:

<p>MULCAHY LLP James M. Mulcahy (SBN 213547) <a href="mailto:jmulcahy@mulcahyllp.com">jmulcahy@mulcahyllp.com</a> Kevin A. Adams (SBN 239171) <a href="mailto:kadams@mulcahyllp.com">kadams@mulcahyllp.com</a> Douglas R. Luther (SBN 280550) <a href="mailto:dluther@mulcahyllp.com">dluther@mulcahyllp.com</a> Four Park Plaza, Suite 1230 Irvine, California 92614</p>	<p>Attorneys for Plaintiffs and Counter-Defendants</p>
---	--

XX **(FEDERAL):** I declare under penalty of perjury under the laws of the United State of America that I am a member of the Bar of this Court.

Executed at San Diego, California on December 14, 2015.

\_\_\_\_\_  
/s/Jeffrey A. Feasby  
Jeffrey A. Feasby



# EXHIBIT J

**MULCAHY LLP**

James M. Mulcahy (SBN 213547)

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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.

Defendants.

AND RELATED COUNTERCLAIMS

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

) *Hon. Manual L. Real*

)

) **PLAINTIFF BENNION & DEVILLE**

) **FINE HOMES, INC.' FIRST SET OF**

) **REQUESTS FOR PRODUCTION TO**

) **DEFENDANT WINDERMERE REAL**

) **ESTATE SERVICES COMPANY**

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1 PROPOUNDING PARTY: Plaintiff Bennion & Deville Fine Homes, Inc.  
2 RESPONDING PARTY: Defendant Windermere Real Estate Services Company  
3 SET NUMBER: ONE

4 Pursuant to Federal Rules of Civil Procedure ("FRCP") Rule 34, Plaintiff Bennion  
5 & Deville Fine Homes, Inc. hereby requests that Defendant Windermere Real Estate  
6 Services respond separately to each request for production herein under oath and produce  
7 documents and things responsive to the following requests to the offices of Mulcahy LLP, 4  
8 Park Plaza, Ste. 1230, Irvine, California 92614, within thirty (30) days of service of these  
9 requests.

10  
11 **DEFINITIONS**

12 1. "Windermere," "You," and/or "Your," means Defendant Windermere Real  
13 Estate Services Company, all predecessors, successors, predecessors-in-interest,  
14 successors-in-interest, subsidiaries, divisions, parents and/or affiliates, past or present,  
15 any companies that have a controlling interest in Windermere, and any current or former  
16 employee, officer, director, principal, agent, consultant, representative, or attorney  
17 thereof, or anyone acting on Windermere's behalf.

18 2. "FAC" means the "First Amended Complaint" for Case No. 5:15-cv-01921-  
19 R-KK, Docket No. 31, filed on November 16, 2015.

20 3. "FACC" means the "First Amended Counterclaim" filed by You for Case  
21 No. 5:15-cv-01921-R-KK, Docket No. 16, filed on October 14, 2015.

22 4. "Answer to FAC" means the "Answer to First Amended Complaint" filed by  
23 You for Case No. 5:15-cv-01921-R-KK, Docket No. 34, filed on December 7, 2015.

24 5. "B&D Fine Homes" means Plaintiff Bennion & Deville Fine Homes, Inc. or  
25 anyone acting on B&D Fine Home's behalf.

26 6. "B&D SoCal" means Plaintiff Bennion & Deville Fine Homes SoCal, Inc.  
27 or anyone acting on B&D SoCal's behalf.

28 7. "Services SoCal" means Plaintiff Windermere Services Southern California,

1 Inc. or anyone acting on Services SoCal's behalf.

2 8. "B&D Parties" shall mean any or all of B&D Fine Homes, B&D SoCal,  
3 Services SoCal, Bennion and/or Deville.

4 9. "Deville" means Counter-defendant Joseph R. Deville.

5 10. "Bennion" means Counter-defendant Robert L. Bennion.

6 11. "Windermere Watch" means the anti-Windermere marketing campaign  
7 undertaken by Gary Kruger.

8 12. The terms "Franchisee" or "Franchisees" shall mean all actual or prospective  
9 franchisees of the Windermere franchise system.

10 13. The terms "Prospective Franchisee" or "Prospective Franchisees" shall mean  
11 all actual or prospective Franchisees that showed some level of interest in joining the  
12 Windermere franchise system.

13 14. The "Coachella Valley Franchise Agreement" means the "Windermere Real  
14 Estate License Agreement" and all schedules, exhibits, amendments, and addenda  
15 thereto, entered into between the B&D Parties and Windermere on or around August 1,  
16 2001.

17 15. The "Area Representation Agreement" means the "Windermere Real Estate  
18 Services Company Area Representation Agreement for the State of California" and all  
19 schedules, exhibits, amendments, and addenda thereto, entered into between the B&D  
20 Parties and Windermere on or around May 1, 2004.

21 16. The "SoCal Franchise Agreement" means the "Windermere Real Estate  
22 Franchise License Agreement" and all schedules, exhibits, amendments, and addenda  
23 thereto, entered into between the B&D Parties and Windermere on or around March 29,  
24 2011.

25 17. The "Modification Agreement" means the "Agreement Modifying  
26 Windermere Real Estate Franchise License Agreement" entered into between the B&D  
27 Parties and Windermere on or around December 18, 2012.

28 18. "California FDD" means any and all Windermere franchise disclosure

1 documents prepared for California, including all Northern California and Southern  
2 California versions.

3 19. "Southern California Region" means the region granted to the B&D Parties  
4 to serve as Area Representatives pursuant to the Area Representation Agreement.

5 20. The term "Franchise Agreement" means any Windermere license agreement,  
6 franchise agreement, or agreement by any other name that creates a "franchise" as  
7 defined by California Corporations Code § 31005.

8 21. The terms "Franchisee" or "Franchisees" shall mean everyone that has  
9 entered into a Franchise Agreement.

10 22. The terms "Fee" or "Fees" shall mean any and all franchise fee, license fee,  
11 technology fee, administration fee, initial fee, or foundation fee paid or required to be  
12 paid by any Windermere franchisee or licensee in the Southern California Region.

13 23. "Document" is defined to be synonymous in meaning and equal in scope to  
14 the usage of this term in FRCP Rule 34(a) including, without limitation, electronically  
15 stored information. A draft or non-identical copy is a separate document within the  
16 meaning of this term.

17 24. "Litigation" means the above-reference action, Case No. 5:15-cv-01921-R-  
18 KK, Docket No. 31, filed on November 16, 2015 in the United States District Court of  
19 the Central District of California.

20 25. "Communication(s)" means the transmittal of information in the form of  
21 facts, ideas, inquiries, and any exchange or transfer of information whether written, oral,  
22 electronic, or in any form, including any electronic recordings or other wire taps.

23 26. "Person" means any natural person, and current or former agents,  
24 representatives, attorneys or anyone acting or purporting to act on his behalf or under his  
25 control.

26 27. "Entity" or "Entities" means, including without limitation, corporation,  
27 company, firm, partnership, joint venture, association, governmental body or agency, or  
28 persons other than a natural person.

1           28. “Third Party” or Third Parties” means all persons who are not parties to this  
2 Litigation, as well as their officers, directors, employees, agents and attorneys.

3           29. “Correspondence” means both written and oral communications.  
4 Correspondence includes any communication, whether in the form of a letter, note,  
5 memorandum, electronic mail or other communication, whether You are the originator,  
6 the recipient, or third-party observer of such correspondence.

7           30. “Identify” with respect to a natural Person means You are to provide such  
8 Person’s full name, employer, last known address, and last known phone number.

9           31. “Identify” with respect to an Entity means You are to provide the entity’s  
10 full name, state of incorporation or creation of entity, address of its principal place of  
11 business, its current and former parents, subsidiaries, affiliates, predecessors, successors,  
12 employees, managers, members, officers, directors, employees, partners, agents,  
13 representatives, accountants, attorneys, anyone acting or purporting to act on its behalf,  
14 and the full name of the Person most knowledgeable of the entity’s involvement.

15           32. “Identify” with respect to Communications means You are to provide the  
16 date, the subject matter, its type and the persons involved in the Communications.

17           33. “And” and “or” shall be understood as either conjunctive or disjunctive,  
18 whichever is more inclusive in content. The term “any” or “each” should be understood  
19 to include and encompass “all.”

20           34. “Relating to” means, in whole or in part, constituting, containing,  
21 comprising, referring to, embodying, connected to, reflecting, describing, analyzing,  
22 showing, evidencing, discussing, identifying, illustrating, stating, regarding, supporting,  
23 refuting, rebutting, responding to, commenting on, evaluating, about, in respect of,  
24 mentioning, dealing with, or in any way pertaining to, either explicitly or implicitly.

25           35. The use of a verb in any tense shall be construed as including the use of the  
26 verb in all other tenses.

27           36. The singular form of any word shall be deemed to include the plural. The  
28 plural form of any word shall be deemed to include the singular.

1. Each document is to be produced with all non-identical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. If a document responsive to any request cannot be produced in full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible.

3. If You object to the scope or breadth of any of these requests for documents, You should identify, to the extent possible, those documents that You will produce notwithstanding Your objection.

5. If You withhold any document or thing from discovery on the basis of attorney-client privilege, work product protection, or other ground of privilege or immunity, then, for each document withheld, You shall describe in accordance with FRCP Rule 26(b)(5)(A) the nature of the information in a manner that will enable the requesting party to assess the applicability of the claimed privilege or immunity, including a statement of the claim of privilege and all facts relied upon in support of that claim as required by FRCP Rule 26(b)(5)(A).

DOCUMENT REQUESTS TO DEFENDANT

## REQUEST FOR PRODUCTION

A copy of all written agreements entered into between Windermere and the B&D Parties, including all addenda, exhibits, amendments, and schedules thereto.

All Documents Relating to the notice to Your employees and other agents, representatives, consultants, accountants and other persons acting on their behalf, that they must suspend Your document retention or destruction practices and, further, that they must preserve and retain documents pending the completion of this Litigation.

Documents sufficient to Identify Windermere, including all organizational charts and other documents relating to Windermere's corporate structure and reporting relationships within Windermere's parents, subsidiaries, divisions and departments.

All Documents relating to Your document retention or destruction guidelines, policies, protocols or practices.

A copy of all insurance policies that may provide insurance coverage for claims asserted in this Litigation.

All Documents Relating to Your Communications with representatives of the  
California Department of Business Oversight.



**REQUEST NO. 7:**

A copy of all California FDDs submitted by You to the California Department of Business Oversight (or its predecessor the Department of Corporations).

**REQUEST NO. 8:**

All Documents Relating to Your Communications with the B&P Parties.

**REQUEST NO. 9:**

All Documents Relating to the “variety of services” that You provided the B&D Parties as required by the Coachella Valley Franchise Agreement.

**REQUEST NO. 10:**

All Documents Relating to Your efforts “to prevent infringement of the Trademark or unfair competition against [Bennion, Deville, and B&D Fine Homes]” as provided for in Section 4 of the Coachella Valley Franchise Agreement.

**REQUEST NO. 11:**

All Documents Relating to the Fees received by You from any and all current or former Franchisees in the Southern California Region.

**REQUEST NO. 12:**

All Documents Relating to the outstanding Fees owed to You by any and all current or former Franchisees in the Southern California Region.

**REQUEST NO. 13:**

All Documents Relating to any settlement between Windermere and any current or former Franchisees in the Southern California Region, including but not limited to copies of the signed settlement agreements.

**REQUEST NO. 14:**

All Documents Relating to Your termination of the Area Representation Agreement.

**REQUEST NO. 15:**

All Documents Relating to Your efforts to sell Windermere franchises in the Southern California Region.

**REQUEST NO. 16:**

All Documents Relating to the “Windermere System” identified in the Area Representation Agreement.

**REQUEST NO. 17:**

All Documents Relating to the “servicing support” You provided to the B&D Parties “in connection with the marketing, promotion and administration of the Trademark and Windermere System” as stated in Section 3 of the Area Representation Agreement.

**REQUEST NO. 18:**

All Documents Relating to Your “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” as stated in Section 7 of the Area Representation Agreement.

**REQUEST NO. 19:**

All Documents Relating to any fees paid by You to the State of California, or any department or division thereof, for all filings with the Department of Business Oversight (or its predecessor the Department of Corporations).

**REQUEST NO. 20:**

All Documents Relating to the “technology system” You made available to the B&D Parties as referenced in Section 13 of the Area Representation Agreement.

**REQUEST NO. 21:**

All Documents Relating to the financials of the Windermere Foundation, including but not limited to, the donations paid by current or former Franchisees and the subsequent expenditure or use of those donations by the Windermere Foundation.

**REQUEST NO. 22:**

All Documents Relating to the “guidance” You provided by B&D Parties as required by Section 3 of the SoCal Franchise Agreement.

1 **REQUEST NO. 23:**

2 Copies of all written materials You provided to the B&D Parties Relating to the  
3 operation of their Windermere businesses.

4 **REQUEST NO. 24:**

5 All Documents Relating to Your efforts “to prevent infringement of the Trademark  
6 or unfair competition against [Bennion, Deville, and B&D Fine Homes]” as provided for  
7 in Section 6(e) of the SoCal Franchise Agreement.

8 **REQUEST NO. 25:**

9 All Documents Relating to any offer by You to purchase from the B&D Parties the  
10 area representative services provided for in the Area Representation Agreement.

11 **REQUEST NO. 26:**

12 All Documents Relating to communications by or between any person employed  
13 by, or otherwise associated with, Windermere Relating to the registration of the  
14 California FDD with the State of California.

15 **REQUEST NO. 27:**

16 All Documents Relating to communications between You and any other person  
17 Relating to the registration of the California FDD with the State of California.

18 **REQUEST NO. 28:**

19 All Documents Relating to communications by or between any person employed  
20 by, or otherwise associated with, Windermere Relating to Windermere Watch.

21 **REQUEST NO. 29:**

22 All Documents Relating to communications between You and any other person  
23 Relating to Windermere Watch.

24 **REQUEST NO. 30:**

25 All Documents Relating to communications between You and persons affiliated in  
26 any way with Windermere Watch, including but not limited to Gary Kruger and his  
27 associates.

28 ///

**REQUEST NO. 31:**

All Documents Relating to Your encouragement or approval of the B&D Parties' acquisition of new Windermere franchise locations in the Southern California Region since January 1, 2003.

**REQUEST NO. 32:**

All Documents Relating to the communications between You and Franchisees Relating to Windermere Watch.

**REQUEST NO. 33:**

All Documents Relating to the communications between You and the B&D Parties Relating to Windermere Watch.

**REQUEST NO. 34:**

All Documents Relating to the "commercially reasonable efforts" You undertook in an effort "to curtail the anti-marketing activities undertaken by Gary Kruger, his Associates, Windermere Watch and/or the agents of the foregoing persons" as provided for in Section 3(A) of the Modification Agreement.

**REQUEST NO. 35:**

All Documents Relating to Your plan to offset the negative publicity generated by Windermere Watch.

**REQUEST NO. 36:**

All Documents Relating to any and all amounts expended by You to offset the negative publicity generated by Windermere Watch.

**REQUEST NO. 37:**

All Documents reflecting any negotiated changes to the Franchise Agreements of any Franchisee in California.

**REQUEST NO. 38:**

A copy of the "renewal packet" reflected in Paul Drayna's email dated June 14, 2013 attached as Exhibit N to the FAC.

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1 **REQUEST NO. 39:**

2 A copy of all Communications between Michael Teather and the Franchisees in the  
3 Southern California Region.

4 **REQUEST NO. 40:**

5 A copy of all Communications between Paul Drayna and the Franchisees in the  
6 Southern California Region.

7 **REQUEST NO. 41:**

8 A copy of all Communications between Geoff Wood and the Franchisees in the  
9 Southern California Region.

10 **REQUEST NO. 42:**

11 A copy of the Documents Paul Drayna sent "via UPS overnight delivery to the  
12 State of CA" as reflected in his October 31, 2014 email attached as Exhibit G to the FAC.

13 **REQUEST NO. 43:**

14 A copy of the Communications between Paul Drayna and Michael Teather that are  
15 reflected in Michael Teather's October 29, 2014 email to Deville attached as Exhibit T to  
16 the FAC.

17 **REQUEST NO. 44:**

18 All Documents Related to Your interest in acquiring the area representative rights  
19 for the Southern California Region.

20 **REQUEST NO. 45:**

21 All Communications with Franchisees Relating to Your acquisition of the area  
22 representative rights to the Southern California Region.

23 **REQUEST NO. 46:**

24 All Documents Relating to any job offers that You communicated to any Person  
25 affiliated with the B&D Parties.

26 **REQUEST NO. 47:**

27 A copy of all Communications between You and Franchisees Relating to the B&D  
28 Parties.

1 **REQUEST NO. 48:**

2 All Documents Relating to the damages asserted by You in the FACC.

3 **REQUEST NO. 49:**

4 All Documents Relating to the commissions “donated to the Windermere  
5 Foundation” as reflected in paragraph 4 of the FACC.

6 **REQUEST NO. 50:**

7 A copy of all Documents, including but not limited to financials, identifying the  
8 amounts “donated to local organizations” by the Windermere Foundation as reflected in  
9 paragraph 4 of the FACC.

10 **REQUEST NO. 51:**

11 All Documents Relating to the investment of “more than \$11 million into the  
12 Windermere technology system” since 2010 as stated in paragraph 6 of the FACC.

13 **REQUEST NO. 52:**

14 All Documents Relating to the “suite of tools” provided to Franchisees as  
15 represented in paragraph 6 of the FACC.

16 **REQUEST NO. 53:**

17 Copies of all agreements with “other real estate brokerage businesses in other areas  
18 of the United States” that You sell your “technology package” to as represented in  
19 paragraph 6 of the FACC.

20 **REQUEST NO. 54:**

21 All Documents Relating to Bennion and Deville’s exercise of “poor business  
22 judgment in growing faster than their cash flow could support” as stated in paragraph 9 of  
23 the FACC.

24 **REQUEST NO. 55:**

25 All Documents that support Your contention that Bennion and Deville were a  
26 “struggling franchisee” prior to 2007 as represented in paragraph 9 of the FACC.

27 **REQUEST NO. 56:**

28 Copies of all “personal loans” made by You to Bennion and Deville as reflected in

1 paragraphs 9, 10, 39, 41, 58, 59, 60, and 77 of the FACC

2 **REQUEST NO. 57:**

3 All Documents Relating to Your contention in paragraph 9 of the FACC that  
4 Bennion and Deville's "company would soon be insolvent."

5 **REQUEST NO. 58:**

6 All Documents Relating to the B&D Parties' repayment of loans granted by  
7 Windermere, including but not limited to, any financials identifying each individual  
8 payment.

9 **REQUEST NO. 59:**

10 All Documents Relating to the emails You contend were sent by Bennion and  
11 Deville "attempting to recruit agents to leave Windermere Homes & Estates and work for  
12 Bennion and Deville instead" as stated in paragraph 53 of the FACC.

13 **REQUEST NO. 60:**

14 All Documents that support your contention that Services SoCal failed and refused  
15 to collect and remit fees from licensees as represented in paragraph 57 of the FACC.

16 **REQUEST NO. 61:**

17 All Documents Relating to the loans You purportedly extended to Bennion and  
18 Deville as reflected in paragraph 61 of the FACC.

19 **REQUEST NO. 62:**

20 All Documents Relating to the outstanding loan amounts purportedly owed to You  
21 by the B&D Parties.

22 **REQUEST NO. 63:**

23 All Documents Identifying the "actual damages" suffered by You as reflected in  
24 paragraph 184 of the FACC.

25 **REQUEST NO. 64:**

26 All Documents Identifying payments made to You by current or former  
27 Franchisees required by the terms of any settlement between You and the paying  
28 Franchisee.

1 **REQUEST NO. 65:**

2 A copy of the Settlement Agreement between You and Rich King.

3 **REQUEST NO. 66:**

4 All Documents that Identify any agreement between You and a current or former  
5 Franchisee to discount the Fees paid to You by the Franchisee.

6 **REQUEST NO. 67:**

7 All Documents Relating to any Fee forgiveness or discount offered by You to any  
8 Franchisee in the Southern California Region.

9 **REQUEST NO. 68:**

10 A copy of the settlement agreement between You and Windermere West Valley  
11 Partners, LLC as reflected in the 2011 California FDD.

12 **REQUEST NO. 69:**

13 Your Federal tax returns for the years 2011 to present.

14 **REQUEST NO. 70:**

15 Your State tax returns for the years 2011 to present.

16 **REQUEST NO. 71:**

17 All Documents, Communications and correspondence that describe and/or support  
18 each category and each claim for damages claimed in the FACC.

19 **REQUEST NO. 72:**

20 All Documents consisting of or relating to any valuation performed on rights of  
21 Services SoCal under the Area Representation Agreement.

22 **REQUEST NO. 73:**

23 All Documents Relating to any business projections prepared by You on the Area  
24 Representative business for the Southern California Region from January 1, 2010 to  
25 present.

26 **REQUEST NO. 74:**

27 All Documents Relating to any offshore bank accounts held by You in which you  
28 deposit any of the Fees paid from the Franchisees.



**REQUEST NO. 75:**

All Documents Relating to your Third Affirmative Defense for “Statute of Limitations.”

**REQUEST NO. 76:**

All Documents Relating to your Fifth Affirmative Defense for “Intervening or Superseding Acts of Third Parties.”

**REQUEST NO. 77:**

All Documents Relating to your Sixth Affirmative Defense for “Waiver.”

**REQUEST NO. 78:**

All Documents Relating to your Ninth Affirmative Defense for “Detrimental Reliance.”

**REQUEST NO. 79:**

All Documents Relating to your Tenth Affirmative Defense for “Unclean Hands.”

**REQUEST NO. 80:**

All Documents Relating to your Eleventh Affirmative Defense for “Estoppel.”

**REQUEST NO. 81:**

All Documents Relating to your Twelfth Affirmative Defense for “Compliance with Applicable Laws.”

**REQUEST NO. 82:**

All Documents Relating to your Thirteenth Affirmative Defense for “Valid Business Purpose.”

**REQUEST NO. 83:**

All Documents Relating to your Fifteenth Affirmative Defense for “Damages Not Ascertainable.”

**REQUEST NO. 84:**

All Documents Relating to your Sixteenth Affirmative Defense for “Full Performance.”

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1 **REQUEST NO. 85:**

2 All Documents Relating to your Twenty-First Affirmative Defense for “Good  
3 Faith.”

4 **REQUEST NO. 86:**

5 All Documents Relating to your Twenty-Fourth Affirmative Defense for “Conduct  
6 Justified.”

7  
8 DATED: December 21, 2015

MULCAHY LLP

9  
10 By: /s/ Kevin A. Adams

11 Kevin A. Adams

12 *Attorneys for Plaintiffs & Counter-*  
13 *Defendants*

# EXHIBIT K

John D. Vaughn, State Bar No. 171801  
Jeffrey A. Feasby, State Bar No. 208759  
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Attorneys for Defendant and Counterclaimant  
Windermere Real Estate Services Company

**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.

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

Hon. Manuel L. Real

**DEFENDANT WINDERMERE  
REAL ESTATE SERVICES  
COMPANY, INC.'S RESPONSES  
TO PLAINTIFF BENNION &  
DEVILLE FINE HOMES FIRST  
SET OF REQUESTS FOR  
PRODUCTION**

Courtroom: 6

**AND RELATED COUNTERCLAIMS**

PROPOUNDING PARTY: Plaintiff Bennion & Deville Fine Homes, Inc.

RESPONDING PARTY: Defendant Windermere Real Estate Services  
Company

SET NUMBER: One

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Pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendant Windermere Real Estate Services Company ("WSC") provides these responses to plaintiff Bennion & Deville Fine Homes, Inc. ("Plaintiff") First Set of Requests for Production ("Requests") as follows:

**GENERAL OBJECTIONS**

WSC makes these responses solely for the purpose of, and in relation to, this action. WSC has not yet completed discovery in this action and has not yet completed preparation for trial. Consequently, the following responses are given without prejudice to WSC producing evidence of any subsequently discovered facts and supplementing any response.

WSC further objects to any and all requests insofar as they call for material protected by the attorney-client privilege or the work product immunity, and will not produce any communication, document, or other information that is so privileged. Any production of a privileged document would be inadvertent and should not be deemed a waiver of any privilege. In addition, to the extent the request purports to ask WSC to produce and identify privileged documents that were generated after the commencement of this lawsuit, and which relate to the defense of this lawsuit, WSC objects that the request is overbroad, burdensome, and oppressive. WSC will neither produce nor identify any such privileged documents. Nor is WSC obligated to produce or identify third party documents obtained through discovery or in the prosecution or defense of this lawsuit.

WSC further objects to the requests to the extent they purport to require WSC to create documents that are not kept in the normal course of WSC's business or to create a summary of documents.

The preceding objections are incorporated into each of the following responses as if set forth therein in full.

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///

**RESPONSES TO REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:**

A copy of all written agreements entered into between Windermere and the B&D Parties, including all addenda, exhibits, amendments, and schedules thereto.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the grounds that it is merely intended to burden and harass WSC and cause it to expend unnecessary time and expense in this litigation, especially in light of the fact that Plaintiff is already in possession of the documents requested.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC will produce all responsive documents that are within its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 2:**

All Documents Relating to the notice to Your employees and other agents, representatives, consultants, accountants, and other persons acting on their behalf, that they must suspend Your document retention or destruction practices and, further, that they must preserve and retain documents pending the completion of this Litigation.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the grounds that it calls for the disclosure of documents protected by the attorney-client privilege.

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**REQUEST FOR PRODUCTION NO. 3:**

Documents sufficient to Identify Windermere, including all organizational charts and other documents relating to Windermere's corporate structure and reporting relationships within Windermere's parents, subsidiaries, divisions and departments.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

WSC objects to this request on of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence. WSC further objects to this request to the extent it seeks confidential and proprietary/trade secret documents.

**REQUEST FOR PRODUCTION NO. 4:**

All Documents relating to Your document retention or destruction guidelines, policies, protocols or practices.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request to the extent it calls for the production of documents protected by the attorney-client privilege and/or the attorney work product doctrine. WSC further objects to this request to the extent it seeks confidential and proprietary/trade secret documents.

Subject to and without waiving the foregoing objections, WSC responds as follows: Upon the Court's entry of an appropriate protective order, WSC will produce all non-privileged documents that are responsive to this request and that are within its possession, custody, or control.

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///

**REQUEST FOR PRODUCTION NO. 5:**

A copy of all insurance policies that may provide insurance coverage for claims asserted in this Litigation.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC is not aware of any documents that would be responsive to this request.

**REQUEST FOR PRODUCTION NO. 6:**

All Documents Relating to Your Communications with representatives of the California Department of Business Oversight.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request to the extent it calls for the production of documents protected by the attorney-client privilege and/or the attorney work product doctrine. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC will produce all non-privileged documents that are responsive to this request and that are within its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 7:**

A copy of all California FDDs submitted by You to the California Department of Business Oversight (or its predecessor the Department of Corporations).

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**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC will produce all responsive documents that are within its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 8:**

All Documents Relating to Your Communications with the B&D Parties.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and increase the time and cost incurred by WSC in responding to these requests, especially in light of the fact that Plaintiff should have access to the documents it seeks. WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought with reasonable particularity. WSC further objects to this request to the extent it calls for the production of documents protected by the attorney-client privilege.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC will produce all non-privileged documents constituting communications between WSC and the B&D Parties and that are within its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 9:**

All Documents Relating to the "variety of services" that You provided the B&D Parties as required by the Coachella Valley Franchise Agreement.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

2 WSC objects to this request on each of the grounds set forth in the General  
3 Objections set forth above, each of which is incorporated by this reference. WSC  
4 further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that  
5 it does not describe the documents sought with reasonable particularity. WSC  
6 further objects to this request on the grounds that it seeks confidential and  
7 proprietary/trade secret information. WSC further objects to this request on the  
8 ground that it is overbroad, burdensome, and merely intended to harass WSC and  
9 increase the time and cost incurred by WSC in responding to these requests.

10 **REQUEST FOR PRODUCTION NO. 10:**

11 All Documents Relating to Your efforts “to prevent infringement of the  
12 Trademark or unfair competition against [Bennion, Deville, and B&D Fine Homes]”  
13 as provided for in Section 4 of the Coachella Valley Franchise Agreement.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

15 WSC objects to this request on each of the grounds set forth in the General  
16 Objections set forth above, each of which is incorporated by this reference. WSC  
17 further objects to this request to the extent it calls for the production of documents  
18 protected by the attorney-client privilege and/or the attorney work product doctrine.  
19 WSC further objects to this request on the ground that it is overbroad, burdensome,  
20 and merely intended to harass WSC and increase the time and cost incurred by WSC  
21 in responding to these requests. WSC further objects to this request on the grounds  
22 that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought  
23 with reasonable particularity.

24 Subject to and without waiving the foregoing objections, WSC responds as  
25 follows: WSC will produce all non-privileged responsive documents that are within  
26 its possession, custody, or control.

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**REQUEST FOR PRODUCTION NO. 11:**

All Documents Relating to the Fees received by You from any and all current of former Franchisees in the Southern California Region.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and increase the time and cost incurred by WSC in responding to these requests, especially in light of the fact that Plaintiff is already in possession of documents reflecting the information sought.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC will produce documents sufficient to demonstrate the franchise fees it has received from franchisees in the Southern California Region since September 1, 2015.

**REQUEST FOR PRODUCTION NO. 12:**

All Documents Relating to the outstanding Fees owed to You by any and all current or former Franchisees in the Southern California Region.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the grounds that it seeks the private financial information of third parties and/or confidential and proprietary/trade secret information. WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and increase the time and cost incurred by WSC in responding to these requests, especially in light of the fact that Plaintiff is already in possession of documents reflecting the information sought.

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1 Subject to and without waiving the foregoing objections, WSC responds as  
2 follows: Upon the Court's entry of an appropriate protective order, WSC will  
3 produce documents sufficient to demonstrate the franchise fees owed and  
4 outstanding in the Southern California Region since September 1, 2015.

5 **REQUEST FOR PRODUCTION NO. 13:**

6 All Documents Relating to any settlement between Windermere and any  
7 current or former Franchisees in the Southern California Region, including but not  
8 limited to copies of the signed settlement agreements.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

10 WSC objects to this request on each of the grounds set forth in the General  
11 Objections set forth above, each of which is incorporated by this reference. WSC  
12 further objects to this request on the grounds that it seeks the private financial  
13 information of third parties and/or confidential and proprietary/trade secret  
14 information. WSC further objects to this request on the ground that it is overbroad,  
15 burdensome, and merely intended to harass WSC and increase the time and cost  
16 incurred by WSC in responding to these requests. WSC further objects to this  
17 request to the extent it calls for the production of documents protected by the  
18 attorney-client privilege and/or the attorney work product doctrine. WSC further  
19 objects to this request on the grounds that it seeks documents that are neither  
20 relevant to the resolution of this action nor reasonably calculated to lead to the  
21 discovery of admissible evidence.

22 Subject to and without waiving the foregoing objections, WSC responds as  
23 follows: Upon the Court's entry of an appropriate protective order, WSC will  
24 produce all non-privileged responsive documents that are within its possession,  
25 custody, or control.

26 **REQUEST FOR PRODUCTION NO. 14:**

27 All Documents Relating to Your termination of the Area Representation  
28 Agreement.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request to the extent it calls for the production of documents protected by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC will produce all non-privileged documents that are responsive to this request and that are within its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 15:**

All Documents Relating to Your efforts to sell Windermere franchises in the Southern California Region.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request to the extent it calls for the production of documents protected by the attorney-client privilege and/or the attorney work product doctrine. WSC further objects to this request on the grounds that it seeks the private financial information of third parties and/or confidential and proprietary/trade secret information. WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and increase the time and cost incurred by WSC in responding to these requests. WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought with reasonable particularity.

Subject to and without waiving the foregoing objections, WSC responds as follows: Upon the Court's entry of an appropriate protective order, WSC will produce all non-privileged documents that are responsive to this request and that are within its possession, custody, or control.

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1 **REQUEST FOR PRODUCTION NO. 16:**

2 All Documents Relating to the "Windermere System" identified in the Area  
3 Representation Agreement.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

5 WSC objects to this request on each of the grounds set forth in the General  
6 Objections set forth above, each of which is incorporated by this reference. WSC  
7 further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that  
8 it does not describe the documents sought with reasonable particularity. WSC  
9 further objects to this request on the grounds that it seeks confidential and  
10 proprietary/trade secret information. WSC further objects to this request on the  
11 ground that it is overbroad, burdensome, and merely intended to harass WSC and  
12 increase the time and cost incurred by WSC in responding to these requests.

13 **REQUEST FOR PRODUCTION NO. 17:**

14 All Documents Relating to the "servicing support" You provided to the B&D  
15 Parties "in connection with the marketing, promotion and administration of the  
16 Trademark and Windermere System" as stated in Section 3 of the Area  
17 Representation Agreement.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

19 WSC objects to this request on each of the grounds set forth in the General  
20 Objections set forth above, each of which is incorporated by this reference. WSC  
21 further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that  
22 it does not describe the documents sought with reasonable particularity. WSC  
23 further objects to this request on the grounds that it seeks confidential and  
24 proprietary/trade secret information. WSC further objects to this request on the  
25 ground that it is overbroad, burdensome, and merely intended to harass WSC and  
26 increase the time and cost incurred by WSC in responding to these requests.

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1 **REQUEST FOR PRODUCTION NO. 18:**

2 All Documents Relating to Your “preparation and filing of all Franchise  
3 registration statements, disclosure statements or applications required under the laws  
4 of the state of California and/or the United States of America” as stated in Section 7  
5 of the Area Representation Agreement.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

7 WSC objects to this request on each of the grounds set forth in the General  
8 Objections set forth above, each of which is incorporated by this reference. WSC  
9 further objects to this request on the grounds that it seeks documents that are neither  
10 relevant to the resolution of this action nor reasonably calculated to lead to the  
11 discovery of admissible evidence. WSC further objects to this request to the extent  
12 it calls for the production of documents protected by the attorney-client privilege  
13 and/or the attorney work product doctrine.

14 Subject to and without waiving the foregoing objections, WSC responds as  
15 follows: WSC will produce all non-privileged documents that are responsive to this  
16 request and that are within its possession, custody, or control.

17 **REQUEST FOR PRODUCTION NO. 19:**

18 All Documents Relating to any fees paid by You to the State of California, or  
19 any department or division thereof, for all filings with the Department of Business  
20 Oversight (or its predecessor the Department of Corporations).

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

22 WSC objects to this request on each of the grounds set forth in the General  
23 Objections set forth above, each of which is incorporated by this reference. WSC  
24 further objects to this request on the ground that it is overbroad, burdensome, and  
25 merely intended to harass WSC and increase the time and cost incurred by WSC in  
26 responding to these requests. WSC further objects to this request on the grounds  
27 that it seeks documents that are neither relevant to the resolution of this action nor  
28 reasonably calculated to lead to the discovery of admissible evidence.

1 Subject to and without waiving the foregoing objections, WSC responds as  
2 follows: WSC will produce non-privileged documents sufficient to reflect the fees  
3 paid by WSC to the State of California.

4 **REQUEST FOR PRODUCTION NO. 20:**

5 All Documents Relating to the "technology system" You made available to  
6 the B&D Parties as referenced in section 13 of the Area Representation Agreement.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

8 WSC objects to this request on each of the grounds set forth in the General  
9 Objections set forth above, each of which is incorporated by this reference. WSC  
10 further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that  
11 it does not describe the documents sought with reasonable particularity. WSC  
12 further objects to this request on the grounds that it seeks confidential and  
13 proprietary/trade secret information. WSC further objects to this request on the  
14 ground that it is overbroad, burdensome, and merely intended to harass WSC and  
15 increase the time and cost incurred by WSC in responding to these requests.

16 **REQUEST FOR PRODUCTION NO. 21:**

17 All Documents Relating to the financials of the Windermere Foundation,  
18 including but not limited to, the donations paid by current or former Franchisees and  
19 the subsequent expenditure or use of those donations by the Windermere  
20 Foundation.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

22 WSC objects to this request on each of the grounds set forth in the General  
23 Objections set forth above, each of which is incorporated by this reference. WSC  
24 further objects to this request on the grounds that it seeks the private financial  
25 information of third parties. WSC further objects to this request on the grounds that  
26 it seeks documents that are neither relevant to the resolution of this action nor  
27 reasonably calculated to lead to the discovery of admissible evidence.

28 ///



1 Subject to and without waiving the foregoing objections, WSC responds as  
2 follows: WSC does not have possession, custody, or control over any documents  
3 that would be responsive to this request.

4 **REQUEST FOR PRODUCTION NO. 22:**

5 All Documents Relating to the “guidance” You provided by B&D Parties as  
6 required by Section 3 of the SoCal Franchise Agreement.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

8 WSC objects to this request on each of the grounds set forth in the General  
9 Objections set forth above, each of which is incorporated by this reference. WSC  
10 further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that  
11 it does not describe the documents sought with reasonable particularity. WSC  
12 further objects to this request on the grounds that it seeks confidential and  
13 proprietary/trade secret information. WSC further objects to this request on the  
14 ground that it is overbroad, burdensome, and merely intended to harass WSC and  
15 increase the time and cost incurred by WSC in responding to these requests.

16 **REQUEST FOR PRODUCTION NO. 23:**

17 Copies of all written materials You provided to the B&D Parties Relating to  
18 the operation of their Windermere businesses.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

20 WSC objects to this request on each of the grounds set forth in the General  
21 Objections set forth above, each of which is incorporated by this reference. WSC  
22 further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that  
23 it does not describe the documents sought with reasonable particularity. WSC  
24 further objects to this request on the grounds that it seeks confidential and  
25 proprietary/trade secret information. WSC further objects to this request on the  
26 ground that it is overbroad, burdensome, and merely intended to harass WSC and  
27 increase the time and cost incurred by WSC in responding to these requests,  
28 especially in light of the fact that Plaintiff is already in possession of the documents

1 requested or had access to that information until the termination of the B&D Parties'  
2 agreements with WSC.

3 **REQUEST FOR PRODUCTION NO. 24:**

4 All Documents Relating to Your efforts "to prevent infringement of the  
5 Trademark or unfair competition against [Bennion, Deville, and B&D Fine Homes]"  
6 as provided for in Section 6(e) of the SoCal Franchise Agreement.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

8 WSC objects to this request on each of the grounds set forth in the General  
9 Objections set forth above, each of which is incorporated by this reference. WSC  
10 further objects to this request to the extent it calls for the production of documents  
11 protected by the attorney-client privilege and/or the attorney work product doctrine.  
12 WSC further objects to this request on the ground that it is overbroad, burdensome,  
13 and merely intended to harass WSC and increase the time and cost incurred by WSC  
14 in responding to these requests. WSC further objects to this request on the grounds  
15 that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought  
16 with reasonable particularity.

17 Subject to and without waiving the foregoing objections, WSC responds as  
18 follows: WSC will produce all non-privileged responsive documents that are within  
19 its possession, custody, or control.

20 **REQUEST FOR PRODUCTION NO. 25:**

21 All Documents Relating to any offer by You to purchase from the B&D  
22 Parties the area representative services provided for in the Area Representation  
23 Agreement.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

25 WSC objects to this request on each of the grounds set forth in the General  
26 Objections set forth above, each of which is incorporated by this reference. WSC  
27 further objects to this request to the extent it calls for the production of documents  
28 protected by the attorney-client privilege and/or the attorney work product doctrine.

1 WSC further objects to this request on the ground that it is overbroad, burdensome,  
2 and merely intended to harass WSC and increase the time and cost incurred by WSC  
3 in responding to these requests when Plaintiff has these same documents. WSC  
4 further objects to this request on the grounds that it seeks confidential and  
5 proprietary/trade secret information. WSC further objects to this request on the  
6 grounds that it is vague and ambiguous as to the phrase "area representative  
7 services" in the context of this request.

8 Subject to and without waiving the foregoing objections, and within the  
9 probable intent of this request, WSC responds as follows: WSC will produce all  
10 non-privileged responsive document within its possession, custody, or control.

11 **REQUEST FOR PRODUCTION NO. 26:**

12 All Documents Relating to communication by or between any person  
13 employed by, or otherwise associated with, Windermere Relating to the registration  
14 of the California FDD with the State of California.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

16 WSC objects to this request on each of the grounds set forth in the General  
17 Objections set forth above, each of which is incorporated by this reference. WSC  
18 further objects to this request on the grounds that it is vague and ambiguous as to the  
19 phrase "otherwise associated with." WSC further objects to this request to the  
20 extent it calls for the production of documents protected by the attorney-client  
21 privilege and/or the attorney work product doctrine. WSC further objects to this  
22 request on the grounds that it seeks documents that are neither relevant to the  
23 resolution of this action nor reasonably calculated to lead to the discovery of  
24 admissible evidence.

25 Subject to and without waiving the foregoing objections, and within the  
26 probable intent of this request, WSC responds as follows: WSC will produce all  
27 non-privileged responsive document within its possession, custody, or control.

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**REQUEST FOR PRODUCTION NO. 27:**

All Documents Relating to communications between You and any other person Relating to the registration of the California FDD with the State of California.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request to the extent it calls for the production of documents protected by the attorney-client privilege and/or the attorney work product doctrine. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC will produce all non-privileged responsive document within its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 28:**

All Documents Relating to communication by or between any person employed by, or otherwise associated with, Windermere Relating to Windermere Watch.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the grounds that it is vague and ambiguous as to the phrase "otherwise associated with." WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and increase the time and cost incurred by WSC in responding to these requests. WSC further objects to this request to the extent it calls for the production of documents protected by the attorney-client privilege and/or the attorney work product doctrine.

1 Subject to and without waiving the foregoing objections, and within the  
2 probable intent of this request, WSC responds as follows: WSC will produce all  
3 non-privileged responsive document within its possession, custody, or control.

4 **REQUEST FOR PRODUCTION NO. 29:**

5 All Documents Relating to communications between You and any other  
6 person Relating to Windermere Watch.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

8 WSC objects to this request on each of the grounds set forth in the General  
9 Objections set forth above, each of which is incorporated by this reference. WSC  
10 further objects to this request to the extent it calls for the production of documents  
11 protected by the attorney-client privilege and/or the attorney work product doctrine.  
12 WSC further objects to this request on the ground that it is overbroad, burdensome,  
13 and merely intended to harass WSC and increase the time and cost incurred by WSC  
14 in responding to these requests. WSC further objects to this request on the grounds  
15 that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought  
16 with reasonable particularity.

17 Subject to and without waiving the foregoing objections, WSC responds as  
18 follows: WSC will produce all non-privileged responsive document within its  
19 possession, custody, or control.

20 **REQUEST FOR PRODUCTION NO. 30:**

21 All Documents Relating to communications between You and persons  
22 affiliated in any way with Windermere Watch, including but not limited to Gary  
23 Kruger and his associates.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

25 WSC objects to this request on each of the grounds set forth in the General  
26 Objections set forth above, each of which is incorporated by this reference. WSC  
27 further objects to this request to the extent it calls for the production of documents  
28 protected by the attorney-client privilege and/or the attorney work product doctrine.

1 Subject to and without waiving the foregoing objections, WSC responds as  
2 follows: WSC will produce all non-privileged responsive document within its  
3 possession, custody, or control.

4 **REQUEST FOR PRODUCTION NO. 31:**

5 All Documents Relating to Your encouragement or approval of the B&D  
6 Parties' acquisition of new Windermere franchise locations in the Southern  
7 California Region since January 1, 2003.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

9 WSC objects to this request on each of the grounds set forth in the General  
10 Objections set forth above, each of which is incorporated by this reference. WSC  
11 further objects to this request on the ground that it is overbroad, burdensome, and  
12 merely intended to harass WSC and increase the time and cost incurred by WSC in  
13 responding to these requests especially because Plaintiff already has access to the  
14 requested documents. WSC further objects to this request on the grounds that it  
15 violates Rule 34(b)(1)(A) in that it does not describe the documents sought with  
16 reasonable particularity.

17 Subject to and without waiving the foregoing objections, WSC responds as  
18 follows: WSC will produce all responsive documents that are within its possession,  
19 custody, or control.

20 **REQUEST FOR PRODUCTION NO. 32:**

21 All Documents Relating to the communication between You and Franchisees  
22 Relating to Windermere Watch.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

24 WSC objects to this request on each of the grounds set forth in the General  
25 Objections set forth above, each of which is incorporated by this reference. WSC  
26 further objects to this request to the extent it calls for the production of documents  
27 protected by the attorney-client privilege and/or the attorney work product doctrine.  
28 WSC further objects to this request on the ground that it is overbroad, burdensome,



1 and merely intended to harass WSC and increase the time and cost incurred by WSC  
2 in responding to these requests. WSC further objects to this request on the grounds  
3 that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought  
4 with reasonable particularity.

5 Subject to and without waiving the foregoing objections, WSC responds as  
6 follows: Upon the Court's entry of an appropriate protective order, WSC will  
7 produce all non-privileged responsive document within its possession, custody, or  
8 control.

9 **REQUEST FOR PRODUCTION NO. 33:**

10 All Documents Relating to the communication between You and the B&D  
11 Parties Relating to Windermere Watch.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

13 WSC objects to this request on each of the grounds set forth in the General  
14 Objections set forth above, each of which is incorporated by this reference. WSC  
15 further objects to this request to the extent it calls for the production of documents  
16 protected by the attorney-client privilege and/or the attorney work product doctrine.  
17 WSC further objects to this request on the ground that it is overbroad, burdensome,  
18 and merely intended to harass WSC and increase the time and cost incurred by WSC  
19 in responding to these requests, especially in light of the fact that Plaintiff has access  
20 to the documents it seeks.

21 Subject to and without waiving the foregoing objections, WSC responds as  
22 follows: WSC will produce all non-privileged responsive documents within its  
23 possession, custody, or control.

24 **REQUEST FOR PRODUCTION NO. 34:**

25 All Documents Relating to the "commercially reasonable efforts" You  
26 undertook in an effort "to curtail the anti-marketing activities undertaken by Gary  
27 Kruger, his Associates, Windermere Watch and/or the agents of the foregoing  
28 persons" as provided for in Section 3(A) of the Modification Agreement.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

2 WSC objects to this request on each of the grounds set forth in the General  
3 Objections set forth above, each of which is incorporated by this reference. WSC  
4 further objects to this request to the extent it calls for the production of documents  
5 protected by the attorney-client privilege and/or the attorney work product doctrine.

6 Subject to and without waiving the foregoing objections, WSC responds as  
7 follows: WSC will produce all non-privileged responsive documents within its  
8 possession, custody, or control.

9 **REQUEST FOR PRODUCTION NO. 35:**

10 All Documents Relating to Your plan to offset the negative publicity  
11 generated by Windermere Watch.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

13 WSC objects to this request on each of the grounds set forth in the General  
14 Objections set forth above, each of which is incorporated by this reference. WSC  
15 further objects to this request to the extent it calls for the production of documents  
16 protected by the attorney-client privilege and/or the attorney work product doctrine.

17 Subject to and without waiving the foregoing objections, WSC responds as  
18 follows: WSC will produce all non-privileged responsive documents within its  
19 possession, custody, or control.

20 **REQUEST FOR PRODUCTION NO. 36:**

21 All Documents Relating to any and all amounts expended by You to offset the  
22 negative publicity generated by Windermere Watch.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

24 WSC objects to this request on each of the grounds set forth in the General  
25 Objections set forth above, each of which is incorporated by this reference.

26 Subject to and without waiving the foregoing objections, WSC responds as  
27 follows: WSC will produce documents sufficient to demonstrate the amounts  
28 expended.



1 **REQUEST FOR PRODUCTION NO. 37:**

2 All Documents reflecting any negotiated changes to the Franchise  
3 Agreements of any Franchisee in California.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

5 WSC objects to this request on each of the grounds set forth in the General  
6 Objections set forth above, each of which is incorporated by this reference. WSC  
7 further objects to this request on the grounds that it is vague and ambiguous as to the  
8 phrase "negotiated changes." WSC further objects to this request on the grounds  
9 that it is overbroad. WSC further objects to this request on the grounds that it seeks  
10 documents that are neither relevant to the resolution of this action nor reasonably  
11 calculated to lead to the discovery of admissible evidence. WSC further objects to  
12 this request to the extent it seeks third party, and/or confidential and  
13 proprietary/trade secret documents.

14 **REQUEST FOR PRODUCTION NO. 38:**

15 A copy of the "renewal packet" reflected in Paul Drayna's email dated June  
16 14, 2013 attached as Exhibit N to the FAC.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

18 WSC objects to this request on each of the grounds set forth in the General  
19 Objections set forth above, each of which is incorporated by this reference. WSC  
20 further objects to this request on the grounds that it seeks documents that are neither  
21 relevant to the resolution of this action nor reasonably calculated to lead to the  
22 discovery of admissible evidence.

23 Subject to and without waiving the foregoing objections, WSC responds as  
24 follows: WSC will produce all responsive documents that are within its possession,  
25 custody, or control.

26 **REQUEST FOR PRODUCTION NO. 39:**

27 A copy of all Communications between Michael Teather and the Franchisees  
28 in the Southern California Region.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and cause it to spend unnecessary time and expense responding to this request. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence. WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought with reasonable particularity. WSC further objects to this request to the extent it seeks confidential and proprietary/trade secret documents.

**REQUEST FOR PRODUCTION NO. 40:**

A copy of all Communications between Paul Drayna and the Franchisees in the Southern California Region.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 40:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and cause it to spend unnecessary time and expense responding to this request. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence. WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought with reasonable particularity. WSC further objects to this request to the extent it seeks confidential and proprietary/trade secret documents.

**REQUEST FOR PRODUCTION NO. 41:**

A copy of all Communications between Geoff Wood and the Franchisees in the Southern California Region.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

2 WSC objects to this request on each of the grounds set forth in the General  
3 Objections set forth above, each of which is incorporated by this reference. WSC  
4 further objects to this request on the ground that it is overbroad, burdensome, and  
5 merely intended to harass WSC and cause it to spend unnecessary time and expense  
6 responding to this request. WSC further objects to this request on the grounds that it  
7 seeks documents that are neither relevant to the resolution of this action nor  
8 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
9 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
10 not describe the documents sought with reasonable particularity. WSC further  
11 objects to this request to the extent it seeks confidential and proprietary/trade secret  
12 documents.

13 **REQUEST FOR PRODUCTION NO. 42:**

14 A copy of the Documents Paul Drayna sent "via UPS overnight delivery to  
15 the State of CA" as reflected in his October 31, 2014 email attached as Exhibit G to  
16 the FAC.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

18 WSC objects to this request on each of the grounds set forth in the General  
19 Objections set forth above, each of which is incorporated by this reference. WSC  
20 further objects to this request on the grounds that it seeks documents that are neither  
21 relevant to the resolution of this action nor reasonably calculated to lead to the  
22 discovery of admissible evidence.

23 Subject to and without waiving the foregoing objections, WSC responds as  
24 follows: WSC will produce all responsive documents within its possession, custody,  
25 or control.

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**REQUEST FOR PRODUCTION NO. 43:**

A copy of the Communications between Paul Drayna and Michael Teather that are reflected in Michael Teather's October 29, 2014 email to Deville attached as Exhibit T to the FAC.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request to the extent it calls for the production of documents protected by the attorney-client privilege.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC will produce all non-privileged documents that are responsive to this request and that are within its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 44:**

All Documents Relating to Your interest in acquiring the area representative rights for the Southern California Region.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request to the extent it calls for the production of documents protected by the attorney-client privilege and/or the attorney work product doctrine. WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and increase the time and cost incurred by WSC in responding to these requests when Plaintiff has these same documents. WSC further objects to this request on the grounds that it seeks confidential and proprietary/trade secret information.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC will produce all non-privileged responsive document within its possession, custody, or control.

1 **REQUEST FOR PRODUCTION NO. 45:**

2 All Communications with Franchisees Relating to Your acquisition of the  
3 area representative rights to the Southern California Region.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 45:**

5 WSC objects to this request on each of the grounds set forth in the General  
6 Objections set forth above, each of which is incorporated by this reference. WSC  
7 further objects to this request on the grounds that it is argumentative and presents an  
8 incomplete hypothetical.

9 Subject to and without waiving the foregoing objections, WSC responds as  
10 follows: WSC is not aware of any documents that would be responsive to this  
11 request.

12 **REQUEST FOR PRODUCTION NO. 46:**

13 All Documents Relating to any job offers that You communicated to any  
14 Person affiliated with the B&D Parties.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 46:**

16 WSC objects to this request on each of the grounds set forth in the General  
17 Objections set forth above, each of which is incorporated by this reference.

18 Subject to and without waiving the foregoing objections, WSC responds as  
19 follows: WSC is not aware of any documents that would be responsive to this  
20 request.

21 **REQUEST FOR PRODUCTION NO. 47:**

22 A copy of all Communications between You and Franchisees Relating to the  
23 B&D Parties.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 47:**

25 WSC objects to this request on each of the grounds set forth in the General  
26 Objections set forth above, each of which is incorporated by this reference. WSC  
27 further objects to this request on the ground that it is overbroad, burdensome, and  
28 merely intended to harass WSC and cause it to spend unnecessary time and expense

1 responding to this request. WSC further objects to this request on the grounds that it  
2 seeks documents that are neither relevant to the resolution of this action nor  
3 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
4 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
5 not describe the documents sought with reasonable particularity.

6 Subject to and without waiving the foregoing objections, WSC responds as  
7 follows: WSC will produce all documents that are responsive to this request and that  
8 are within its possession, custody, or control.

9 **REQUEST FOR PRODUCTION NO. 48:**

10 All Documents Relating to the damages asserted by You in the FACC.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 48:**

12 WSC objects to this request on each of the grounds set forth in the General  
13 Objections set forth above, each of which is incorporated by this reference. WSC  
14 further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that  
15 it does not describe the documents sought with reasonable particularity.

16 Subject to and without waiving the foregoing objections, WSC responds as  
17 follows: WSC will produce documents sufficient to show the amounts owed by the  
18 B&D Parties for unpaid franchise fees, technology fees, and the liquidated damages  
19 owing under the Modification Agreement.

20 **REQUEST FOR PRODUCTION NO. 49:**

21 All Documents Relating to the commissions “donated to the Windermere  
22 Foundation” as reflected in paragraph 4 of the FACC.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 49:**

24 WSC objects to this request on each of the grounds set forth in the General  
25 Objections set forth above, each of which is incorporated by this reference. WSC  
26 further objects to this request on the grounds that it seeks confidential financial  
27 documents that are neither relevant to the resolution of this action nor reasonably  
28 calculated to lead to the discovery of admissible evidence. WSC further objects to



1 this request on the grounds that it seeks the private financial information of third  
2 parties and/or confidential and proprietary/trade secret information.

3 **REQUEST FOR PRODUCTION NO. 50:**

4 A copy of all Documents, including but not limited to financials, identifying  
5 the amounts "donated to local organizations" by the Windermere Foundation as  
6 reflected in paragraph 4 of the FACC.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 50:**

8 WSC objects to this request on each of the grounds set forth in the General  
9 Objections set forth above, each of which is incorporated by this reference. WSC  
10 further objects to this request on the grounds that it seeks confidential financial  
11 documents that are neither relevant to the resolution of this action nor reasonably  
12 calculated to lead to the discovery of admissible evidence. WSC further objects to  
13 this request on the grounds that it seeks the private financial information of third  
14 parties and/or confidential and proprietary/trade secret information.

15 **REQUEST FOR PRODUCTION NO. 51:**

16 All Documents Relating to the investment of "more than \$11 million into the  
17 Windermere technology system" since 2010 as stated in paragraph 6 of the FACC.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 51:**

19 WSC objects to this request on each of the grounds set forth in the General  
20 Objections set forth above, each of which is incorporated by this reference. WSC  
21 further objects to this request on the ground that it is overbroad, burdensome, and  
22 merely intended to harass WSC and cause it to spend unnecessary time and expense  
23 responding to this request. WSC further objects to this request to the extent it seeks  
24 third party financial information and/or confidential and proprietary/trade secret  
25 documents.

26 **REQUEST FOR PRODUCTION NO. 52:**

27 All Documents Relating to the "suite of tools" provided to Franchisees as  
28 represented in paragraph 6 of the FACC.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 52:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and cause it to spend unnecessary time and expense responding to this request. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence. WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought with reasonable particularity. WSC further objects to this request to the extent it seeks confidential and proprietary/trade secret documents.

Subject to and without waiving the foregoing objections, WSC responds as follows: Upon the Court's entry of an appropriate protective order, WSC will produce documents reflecting the suite of tools made available to franchisees.

**REQUEST FOR PRODUCTION NO. 53:**

Copies of all agreements with "other real estate brokerage businesses in other areas of the United States" that You sell your "technology package" to as represented in paragraph 6 of the FACC.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 53:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the grounds that it seeks confidential documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence. WSC further objects to this request to the extent it seeks third party, confidential, and proprietary/trade secret documents.

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1 **REQUEST FOR PRODUCTION NO. 54:**

2 All Documents Relating to Bennion and Deville's exercise of "poor business  
3 judgment in growing faster than their cash flow could support" as stated in  
4 paragraph 9 of the FACC.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 54:**

6 WSC objects to this request on each of the grounds set forth in the General  
7 Objections set forth above, each of which is incorporated by this reference.

8 Subject to and without waiving the foregoing objections, WSC responds as  
9 follows: WSC will produce all responsive documents within its possession, custody,  
10 or control.

11 **REQUEST FOR PRODUCTION NO. 55:**

12 All Documents that support Your contention that Bennion and Deville were a  
13 "struggling franchisee" prior to 2007 as represented in paragraph 9 of the FACC.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 55:**

15 WSC objects to this request on each of the grounds set forth in the General  
16 Objections set forth above, each of which is incorporated by this reference.

17 Subject to and without waiving the foregoing objections, WSC responds as  
18 follows: WSC will produce all responsive documents within its possession, custody,  
19 or control.

20 **REQUEST FOR PRODUCTION NO. 56:**

21 Copies of all "personal loans" made by You to Bennion and Deville as  
22 reflected in paragraphs 9, 10, 39, 41, 58, 59, 60, and 77 of the FACC.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 56:**

24 WSC objects to this request on each of the grounds set forth in the General  
25 Objections set forth above, each of which is incorporated by this reference. WSC  
26 further objects to this request on the grounds that it is unintelligible as phrased.  
27 WSC further objects to this request on the ground that it is overbroad, burdensome,  
28 and merely intended to harass WSC and cause it to spend unnecessary time and

1 expense responding to this request, especially in light of the fact that Plaintiff has  
2 copies of the relevant loan documents.

3 **REQUEST FOR PRODUCTION NO. 57:**

4 All Documents Relating to Your contention in paragraph 9 of the FACC that  
5 Bennion and Deville's "company would soon be insolvent."

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 57:**

7 WSC objects to this request on each of the grounds set forth in the General  
8 Objections set forth above, each of which is incorporated by this reference.

9 Subject to and without waiving the foregoing objections, WSC responds as  
10 follows: WSC will produce all responsive documents within its possession, custody,  
11 or control.

12 **REQUEST FOR PRODUCTION NO. 58:**

13 All Documents Relating to the B&D Parties' repayment of loans granted by  
14 Windermere, including but not limited to, any financials identifying each individual  
15 payment.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 58:**

17 WSC objects to this request on each of the grounds set forth in the General  
18 Objections set forth above, each of which is incorporated by this reference. WSC  
19 further objects to this request to the extent it calls for the production of documents  
20 protected by the attorney-client privilege and/or the attorney work product doctrine.  
21 WSC further objects to this request on the ground that it is overbroad, burdensome,  
22 and merely intended to harass WSC in that Plaintiff already has access to this  
23 information.

24 Subject to and without waiving the foregoing objections, WSC responds as  
25 follows: WSC will produce non-privileged documents sufficient to demonstrate  
26 payments received from the B&D Parties on the loans given by WSC.

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1 **REQUEST FOR PRODUCTION NO. 59:**

2 All Documents Relating to the emails You contend were sent by Bennion and  
3 Deville "attempting to recruit agents to leave Windermere Homes & Estates and  
4 work for Bennion and Deville instead" as stated in paragraph 53 of the FACC.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 59:**

6 WSC objects to this request on each of the grounds set forth in the General  
7 Objections set forth above, each of which is incorporated by this reference.

8 Subject to and without waiving the foregoing objections, WSC responds as  
9 follows: WSC will produce all responsive documents within its possession, custody,  
10 or control.

11 **REQUEST FOR PRODUCTION NO. 60:**

12 All Documents that support your contention that Services SoCal failed and  
13 refused to collect and remit fees from licensees as represented in paragraph 57 of the  
14 FACC.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 60:**

16 WSC objects to this request on each of the grounds set forth in the General  
17 Objections set forth above, each of which is incorporated by this reference.

18 Subject to and without waiving the foregoing objections, WSC responds as  
19 follows: WSC will produce all responsive documents within its possession, custody,  
20 or control.

21 **REQUEST FOR PRODUCTION NO. 61:**

22 All Documents Relating to the loans You purportedly extended to Bennion  
23 and Deville as reflected in paragraph 61 of the FACC.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 61:**

25 WSC objects to this request on each of the grounds set forth in the General  
26 Objections set forth above, each of which is incorporated by this reference. WSC  
27 further objects to this request to the extent it calls for the production of documents  
28 protected by the attorney-client privilege and/or the attorney work product doctrine.

1 WSC further objects to this request on the grounds that it seeks the private financial  
2 information of third parties and/or confidential and proprietary/trade secret  
3 information.

4 Subject to and without waiving the foregoing objections, WSC responds as  
5 follows: WSC will produce all non-privileged documents that are responsive to this  
6 request and that are within its possession, custody, or control.

7 **REQUEST FOR PRODUCTION NO. 62:**

8 All Documents Relating to the outstanding loan amounts purportedly owed to  
9 You by the B&D Parties.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 62:**

11 WSC objects to this request on each of the grounds set forth in the General  
12 Objections set forth above, each of which is incorporated by this reference. WSC  
13 further objects to this request to the extent it calls for the production of documents  
14 protected by the attorney-client privilege and/or the attorney work product doctrine.

15 Subject to and without waiving the foregoing objections, WSC responds as  
16 follows: WSC will produce non-privileged documents sufficient to demonstrate the  
17 amounts outstanding loan amounts.

18 **REQUEST FOR PRODUCTION NO. 63:**

19 All Documents Identifying the "actual damages" suffered by You as reflected  
20 in paragraph 184 of the FACC.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 63:**

22 WSC objects to this request on each of the grounds set forth in the General  
23 Objections set forth above, each of which is incorporated by this reference. WSC  
24 further objects to this request on the grounds that it seeks documents that are neither  
25 relevant to the resolution of this action nor reasonably calculated to lead to the  
26 discovery of admissible evidence as WSC has voluntarily dismissed that claim.

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**REQUEST FOR PRODUCTION NO. 64:**

All Documents Identifying payments made to You by current or former Franchisees required by the terms of any settlement between You and the paying Franchisee.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 64:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the grounds that it seeks confidential documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC is not aware of any documents that would be responsive to this request.

**REQUEST FOR PRODUCTION NO. 65:**

A copy of the Settlement Agreement between You and Rich King.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 65:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the grounds that it seeks confidential documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence. WSC further objects to this request on the grounds that it is vague and ambiguous as to the phrase "Settlement Agreement." WSC further objects to this request on the grounds that it seeks the private financial information of third parties.

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1 Subject to and without waiving the foregoing objections, and within the  
2 probable intent of this request, WSC responds as follows: Upon the Court's entry of  
3 an appropriate protective order, WSC will produce the Mutual Termination of  
4 Windermere Real Estate Franchise License Agreement between WSC and Rich  
5 King.

6 **REQUEST FOR PRODUCTION NO. 66:**

7 All Documents that Identify any agreement between You and a current or  
8 former Franchisee to discount the Fees paid to You by the Franchisee.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 66:**

10 WSC objects to this request on each of the grounds set forth in the General  
11 Objections set forth above, each of which is incorporated by this reference. WSC  
12 further objects to this request on the grounds that it seeks documents that are neither  
13 relevant to the resolution of this action nor reasonably calculated to lead to the  
14 discovery of admissible evidence. WSC further objects to this request on the  
15 grounds that it seeks the private financial information of third parties and  
16 confidential and proprietary/trade secret information.

17 **REQUEST FOR PRODUCTION NO. 67:**

18 All Documents Relating to any Fee forgiveness or discount offered by You to  
19 any Franchisee in the Southern California Region.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 67:**

21 WSC objects to this request on each of the grounds set forth in the General  
22 Objections set forth above, each of which is incorporated by this reference. WSC  
23 further objects to this request on the grounds that it seeks documents that are neither  
24 relevant to the resolution of this action nor reasonably calculated to lead to the  
25 discovery of admissible evidence to the extent it seeks documents after September 1,  
26 2015. WSC further objects to this request on the grounds that it seeks the private  
27 financial information of third parties and confidential and proprietary/trade secret  
28 information.



1 **REQUEST FOR PRODUCTION NO. 68:**

2 A copy of the settlement agreement between You and Windermere West  
3 Valley Partners, LLC as reflected in the 2011 California FDD.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 68:**

5 WSC objects to this request on each of the grounds set forth in the General  
6 Objections set forth above, each of which is incorporated by this reference. WSC  
7 further objects to this request on the grounds that it seeks confidential documents  
8 that are neither relevant to the resolution of this action nor reasonably calculated to  
9 lead to the discovery of admissible evidence. WSC further objects to this request on  
10 the grounds that it seeks the private financial information of third parties and  
11 confidential and proprietary/trade secret information.

12 **REQUEST FOR PRODUCTION NO. 69:**

13 Your Federal tax returns for the years 2011 to present.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 69:**

15 WSC objects to this request on each of the grounds set forth in the General  
16 Objections set forth above, each of which is incorporated by this reference. WSC  
17 further objects to this request on the grounds that it seeks confidential financial  
18 documents that are neither relevant to the resolution of this action nor reasonably  
19 calculated to lead to the discovery of admissible evidence. WSC further objects to  
20 this request on the grounds that it seeks confidential financial information.

21 **REQUEST FOR PRODUCTION NO. 70:**

22 Your State tax returns for the years 2011 to present.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 70:**

24 WSC objects to this request on each of the grounds set forth in the General  
25 Objections set forth above, each of which is incorporated by this reference. WSC  
26 further objects to this request on the grounds that it seeks confidential financial  
27 documents that are neither relevant to the resolution of this action nor reasonably

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1 calculated to lead to the discovery of admissible evidence. WSC further objects to  
2 this request on the grounds that it seeks confidential financial information.

3 **REQUEST FOR PRODUCTION NO. 71:**

4 All Documents, Communications and correspondence that describe and/or  
5 support each category and each claim for damages claimed in the FACC.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 71:**

7 WSC objects to this request on each of the grounds set forth in the General  
8 Objections set forth above, each of which is incorporated by this reference. WSC  
9 further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that  
10 it does not describe the documents sought with reasonable particularity.

11 Subject to and without waiving the foregoing objections, WSC responds as  
12 follows: WSC will produce documents sufficient to show the amounts owed by the  
13 B&D Parties for unpaid franchise fees, technology fees, and the liquidated damages  
14 owing under the Modification Agreement.

15 **REQUEST FOR PRODUCTION NO. 72:**

16 All Documents consisting of or relating to any valuation performed on rights  
17 of Services SoCal under the Area Representation Agreement.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 72:**

19 WSC objects to this request on each of the grounds set forth in the General  
20 Objections set forth above, each of which is incorporated by this reference. WSC  
21 further objects to this request on the grounds that it seeks confidential financial  
22 documents that are neither relevant to the resolution of this action nor reasonably  
23 calculated to lead to the discovery of admissible evidence. WSC further objects to  
24 this request on the grounds that it seeks confidential and proprietary/trade secret  
25 information.

26 Subject to and without waiving the foregoing objections, WSC responds as  
27 follows: WSC is not aware of any documents that would be responsive to this  
28 request.



**REQUEST FOR PRODUCTION NO. 73:**

All Documents Relating to any business projections prepared by You on the Area Repetitive business for the Southern California Region from January 1, 2010 to present.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 73:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the grounds that it seeks confidential financial documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence. WSC further objects to this request on the grounds that it seeks confidential and proprietary/trade secret information.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC is not aware of any documents that would be responsive to this request.

**REQUEST FOR PRODUCTION NO. 74:**

All Documents Relating to any offshore bank accounts held by You in which you deposit any of the Fees paid from the Franchisees.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 74:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC is not aware of any documents that would be responsive to this request.

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1 **REQUEST FOR PRODUCTION NO. 75:**

2 All Documents Relating to your Third Affirmative Defense for “Statute of  
3 Limitations.”

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 75:**

5 WSC objects to this request on each of the grounds set forth in the General  
6 Objections set forth above, each of which is incorporated by this reference. WSC  
7 further objects to this request on the ground that it is overbroad, burdensome, and  
8 merely intended to harass WSC and cause it to spend unnecessary time and expense  
9 responding to this request. WSC further objects to this request on the grounds that it  
10 seeks documents that are neither relevant to the resolution of this action nor  
11 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
12 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
13 not describe the documents sought with reasonable particularity. WSC further  
14 objects to this request to the extent it calls for the production of documents protected  
15 by the attorney-client privilege and/or the attorney work product doctrine.

16 Subject to and without waiving the foregoing objections, WSC responds as  
17 follows: WSC will produce all non-privileged responsive documents that were  
18 within its possession, custody, or control.

19 **REQUEST FOR PRODUCTION NO. 76:**

20 All Documents Relating to your Fifth Affirmative Defense for “Intervening or  
21 Superseding Acts of Third Parties.”

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 76:**

23 WSC objects to this request on each of the grounds set forth in the General  
24 Objections set forth above, each of which is incorporated by this reference. WSC  
25 further objects to this request on the ground that it is overbroad, burdensome, and  
26 merely intended to harass WSC and cause it to spend unnecessary time and expense  
27 responding to this request. WSC further objects to this request on the grounds that it  
28 seeks documents that are neither relevant to the resolution of this action nor

1 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
2 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
3 not describe the documents sought with reasonable particularity. WSC further  
4 objects to this request to the extent it calls for the production of documents protected  
5 by the attorney-client privilege and/or the attorney work product doctrine.

6 Subject to and without waiving the foregoing objections, WSC responds as  
7 follows: WSC will produce all non-privileged responsive documents that were  
8 within its possession, custody, or control.

9 **REQUEST FOR PRODUCTION NO. 77:**

10 All Documents Relating to your Sixth Affirmative Defense for “Waiver.”

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 77:**

12 WSC objects to this request on each of the grounds set forth in the General  
13 Objections set forth above, each of which is incorporated by this reference. WSC  
14 further objects to this request on the ground that it is overbroad, burdensome, and  
15 merely intended to harass WSC and cause it to spend unnecessary time and expense  
16 responding to this request. WSC further objects to this request on the grounds that it  
17 seeks documents that are neither relevant to the resolution of this action nor  
18 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
19 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
20 not describe the documents sought with reasonable particularity. WSC further  
21 objects to this request to the extent it calls for the production of documents protected  
22 by the attorney-client privilege and/or the attorney work product doctrine.

23 Subject to and without waiving the foregoing objections, WSC responds as  
24 follows: WSC will produce all non-privileged responsive documents that were  
25 within its possession, custody, or control.

26 **REQUEST FOR PRODUCTION NO. 78:**

27 All Documents Relating to your Ninth Affirmative Defense for “Detrimental  
28 Reliance.”

**RESPONSE TO REQUEST FOR PRODUCTION NO. 78:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and cause it to spend unnecessary time and expense responding to this request. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence. WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought with reasonable particularity. WSC further objects to this request to the extent it calls for the production of documents protected by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC will produce all non-privileged responsive documents that were within its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 79:**

All Documents Relating to your Tenth Affirmative Defense for “Unclean Hands.”

**RESPONSE TO REQUEST FOR PRODUCTION NO. 79:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and cause it to spend unnecessary time and expense responding to this request. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence. WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought with reasonable particularity. WSC further

1 objects to this request to the extent it calls for the production of documents protected  
2 by the attorney-client privilege and/or the attorney work product doctrine.

3 Subject to and without waiving the foregoing objections, WSC responds as  
4 follows: WSC will produce all non-privileged responsive documents that were  
5 within its possession, custody, or control.

6 **REQUEST FOR PRODUCTION NO. 80:**

7 All Documents Relating to your Eleventh Affirmative Defense for  
8 “Estoppel.”

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 80:**

10 WSC objects to this request on each of the grounds set forth in the General  
11 Objections set forth above, each of which is incorporated by this reference. WSC  
12 further objects to this request on the ground that it is overbroad, burdensome, and  
13 merely intended to harass WSC and cause it to spend unnecessary time and expense  
14 responding to this request. WSC further objects to this request on the grounds that it  
15 seeks documents that are neither relevant to the resolution of this action nor  
16 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
17 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
18 not describe the documents sought with reasonable particularity. WSC further  
19 objects to this request to the extent it calls for the production of documents protected  
20 by the attorney-client privilege and/or the attorney work product doctrine.

21 Subject to and without waiving the foregoing objections, WSC responds as  
22 follows: WSC will produce all non-privileged responsive documents that were  
23 within its possession, custody, or control.

24 **REQUEST FOR PRODUCTION NO. 81:**

25 All Documents Relating to your Twelfth Affirmative Defense for  
26 “Compliance with Applicable Laws.”

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**RESPONSE TO REQUEST FOR PRODUCTION NO. 81:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and cause it to spend unnecessary time and expense responding to this request. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence. WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought with reasonable particularity. WSC further objects to this request to the extent it calls for the production of documents protected by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC will produce all non-privileged responsive documents that were within its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 82:**

All Documents Relating to your Thirteenth Affirmative defense for "Valid Business Purpose."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 82:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and cause it to spend unnecessary time and expense responding to this request. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence. WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought with reasonable particularity. WSC further



1 objects to this request to the extent it calls for the production of documents protected  
2 by the attorney-client privilege and/or the attorney work product doctrine.

3 Subject to and without waiving the foregoing objections, WSC responds as  
4 follows: WSC will produce all non-privileged responsive documents that were  
5 within its possession, custody, or control.

6 **REQUEST FOR PRODUCTION NO. 83:**

7 All Documents Relating to your Fifteenth Affirmative Defense for “Damages  
8 Not Ascertainable.”

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 83:**

10 WSC objects to this request on each of the grounds set forth in the General  
11 Objections set forth above, each of which is incorporated by this reference. WSC  
12 further objects to this request on the ground that it is overbroad, burdensome, and  
13 merely intended to harass WSC and cause it to spend unnecessary time and expense  
14 responding to this request. WSC further objects to this request on the grounds that it  
15 seeks documents that are neither relevant to the resolution of this action nor  
16 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
17 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
18 not describe the documents sought with reasonable particularity. WSC further  
19 objects to this request to the extent it calls for the production of documents protected  
20 by the attorney-client privilege and/or the attorney work product doctrine.

21 Subject to and without waiving the foregoing objections, WSC responds as  
22 follows: WSC will produce all non-privileged responsive documents that were  
23 within its possession, custody, or control.

24 **REQUEST FOR PRODUCTION NO. 84:**

25 All Documents Relating to your Sixteenth Affirmative Defense for “Full  
26 Performance.”

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**RESPONSE TO REQUEST FOR PRODUCTION NO. 84:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and cause it to spend unnecessary time and expense responding to this request. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence. WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought with reasonable particularity. WSC further objects to this request to the extent it calls for the production of documents protected by the attorney-client privilege and/or the attorney work product doctrine.

Subject to and without waiving the foregoing objections, WSC responds as follows: WSC will produce all non-privileged responsive documents that were within its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 85:**

All Documents Relating to your Twenty-First Affirmative Defense for "Good Faith."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 85:**

WSC objects to this request on each of the grounds set forth in the General Objections set forth above, each of which is incorporated by this reference. WSC further objects to this request on the ground that it is overbroad, burdensome, and merely intended to harass WSC and cause it to spend unnecessary time and expense responding to this request. WSC further objects to this request on the grounds that it seeks documents that are neither relevant to the resolution of this action nor reasonably calculated to lead to the discovery of admissible evidence. WSC further objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does not describe the documents sought with reasonable particularity. WSC further



1 objects to this request to the extent it calls for the production of documents protected  
2 by the attorney-client privilege and/or the attorney work product doctrine.

3 Subject to and without waiving the foregoing objections, WSC responds as  
4 follows: WSC will produce all non-privileged responsive documents that were  
5 within its possession, custody, or control.

6 **REQUEST FOR PRODUCTION NO. 86:**

7 All Documents Relating to your Twenty-Fourth Affirmative Defense for  
8 “Conduct Justified.”

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 86:**

10 WSC objects to this request on each of the grounds set forth in the General  
11 Objections set forth above, each of which is incorporated by this reference. WSC  
12 further objects to this request on the ground that it is overbroad, burdensome, and  
13 merely intended to harass WSC and cause it to spend unnecessary time and expense  
14 responding to this request. WSC further objects to this request on the grounds that it  
15 seeks documents that are neither relevant to the resolution of this action nor  
16 reasonably calculated to lead to the discovery of admissible evidence. WSC further  
17 objects to this request on the grounds that it violates Rule 34(b)(1)(A) in that it does  
18 not describe the documents sought with reasonable particularity. WSC further  
19 objects to this request to the extent it calls for the production of documents protected  
20 by the attorney-client privilege and/or the attorney work product doctrine.

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1        Subject to and without waiving the foregoing objections, WSC responds as  
2 follows: WSC will produce all non-privileged responsive documents that were  
3 within its possession, custody, or control.

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5 DATED: January 20, 2016        PEREZ WILSON VAUGHN & FEASBY

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7  
8 By: \_\_\_\_\_

9        John D. Vaughn  
10        Jeffrey A. Feasby  
11        Attorney for Windermere Real Estate  
12        Services Company  
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