

# **EXHIBIT A**

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

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APPEARANCES

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ALSO PRESENT:            JOSEPH DEVILLE  
ROBERT BENNION  
ERIC FORSBERG - Afternoon  
                                 session only

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DEPOSITION OF GEOFFREY P. WOOD

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Mr. Adams	11
Mr. Feasby	None

EXHIBIT INDEX

EXHIBITS FOR IDENTIFICATION	PAGE
EXHIBIT 2            Amended Notice of Deposition of Windermere Real Estate Services Company Pursuant to Federal Rules of Civil Procedure, Rule 30(b)(6)	pre
EXHIBIT 3            Email dated August 19, 2016, from Jeff Feasby to Kevin Adams, re Deposition Topics	pre
EXHIBIT 4            Exhibit A - Windermere Real Estate License Agreement, B&D0000522-0000529 with attached Affiliate Fee Schedule	pre
EXHIBIT 5            Windermere Real Estate Services Company Area Representation Agreement for the State of California	pre



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CERTIFICATE

STATE OF WASHINGTON    )  
                                  ) ss.  
COUNTY OF KITSAP        )

I, the undersigned Washington Certified Court Reporter, hereby certify that the foregoing deposition upon oral examination of GEOFFREY P. WOOD was taken stenographically before me on August 25, 2016, and thereafter transcribed under my direction;

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and 8th day of September 2016.

1 is the name Windermere, right?

2 A. That's right.

3 Q. But you don't know whether or not Windermere  
4 is obligated to protect that principal service, right?

5 A. I don't know if the agreement does that.

6 Q. Okay. Now, wouldn't you agree that  
7 Windermere, at the very least, has a good-faith  
8 obligation to protect that name?

9 MR. FEASBY: Objection. Form.

10 THE WITNESS: I don't know if it's an  
11 obligation, but I do know that as an operator of a  
12 franchise, it's very important to me to our -- that  
13 our brand is protected.

14 BY MR. ADAMS:

15 Q. And you feel that Windermere has done  
16 everything that it could be do to protect its brand?

17 A. We have.

18 Q. Who is Gary Kruger?

19 A. The Rat Man.

20 Q. And who do you understand the Rat Man to be?

21 A. Crazy Man.

22 Q. Why is he crazy -- strike that.

23 Why do you believe he is crazy?

24 A. Because of his antics.

25 Q. And what are those?

1           A.       His website that he creates -- he's created.

2                   He was a client with a transaction that  
3       there were apparently rats in the -- one of the walls  
4       of his house, and he filed a lawsuit, and he lost the  
5       lawsuit and has, ever since then, done everything he  
6       can to disparage Windermere.

7           Q.       And harm the Windermere brand?

8           A.       That's true.

9           Q.       And do you believe that Windermere has done  
10      everything in its power to protect the Windermere  
11      brand from harm from Mr. Kruger?

12          A.       Yes, I do.

13          Q.       All right. If you look at the last page of  
14      this Exhibit 4. If you see this Affiliate Fee  
15      Schedule that we've already briefly looked at.

16                  The Affiliate Fee Schedule identifies a  
17      technology fee of \$10 per month per licensed agent and  
18      agent assistant.

19                  Do you see that?

20          A.       I do.

21          Q.       What, in 2001, did this \$10 fee get  
22      Mr. Bennion and Mr. Deville?

23          A.       I can't tell you exactly what it provided  
24      them. I can, in general terms, tell you that it gave  
25      them access to our internet site, Windermere.com.

1 A. Okay.

2 Q. Isn't that what he's saying here?

3 A. That's what he's saying.

4 Q. And you knew of that memo?

5 A. I don't --

6 MR. FEASBY: Objection. Asked and

7 answered.

8 A. -- recall.

9 Q. Do you have any reason to believe that you

10 did not see that memo before it was sent out to the

11 owners, managers, and agents?

12 A. I don't remember.

13 Q. Do you know if you are included as a

14 recipient to mailings that are sent out to all owners,

15 managers, and agents?

16 A. Sometimes not.

17 Q. And is that standard practice for you to be

18 excluded from those mailings to all owners, managers,

19 and agents?

20 A. It depends on who's sending out mailings.

21 Q. Don't you think it's important for you, as a

22 CEO, to know the memos that are being sent out to all

23 of your owners?

24 A. No.

25 Q. Why not?

1           A.     Because they're -- we have staff in our  
2 company that are perfectly capable of sending these  
3 out. We're not -- we're not a top-down organization  
4 as I said earlier.

5           Q.     And you don't believe it's important for you  
6 to know what message is being relayed to owners,  
7 managers, and agents about Mr. Kruger?

8           A.     What I need to know is that we're sending  
9 out something that addresses Mr. Kruger. I don't get  
10 caught up in the details of what the memo says.

11          Q.     And it doesn't concern you that Mr. Grimm is  
12 telling something to the owners, managers, and agents  
13 that you claim is inaccurate?

14          A.     That happens.

15          Q.     And you don't have a mechanism in place at  
16 Windermere to prevent these types of false messages  
17 from being sent out?

18          A.     No.

19                   MR. FEASBY: Objection. Argumentative.  
20 Also object as to form.

21 BY MR. ADAMS:

22          Q.     What is the institutional marketing fee?

23          A.     Where do you see that?

24          Q.     In 2009, Windermere was entering into  
25 addendums that required owners to pay an institutional

1 Questions, addressing dissatisfied homebuyers.

2 Do you see that?

3 A. I do.

4 Q. And is this one of the FAQs that was put  
5 together by JayRay, as reflected on that second page  
6 of Exhibit 108?

7 A. I don't know.

8 Q. Do you have any reason to believe that it  
9 was not put together by JayRay?

10 A. It may have been a combination of JayRay and  
11 our staff. That's why I don't know who put this  
12 together.

13 Q. Do you have any reason to believe that this  
14 is something other than the FAQs reflected in the  
15 second page of Exhibit 108?

16 A. This -- yeah -- I don't know.

17 Q. Now, you are the recipient identified in  
18 this letter from JayRay, right?

19 A. Yes.

20 Q. And as you sit here, you have no knowledge  
21 one way on or the other as to what they did or what  
22 was put together; is that right?

23 A. I don't recall. It's in 2010. That's six  
24 years ago.

25 Q. It's amazing that you don't recall any of

1 the work that JayRay did in connection with Windermere  
2 Watch.

3 Don't you believe that to be pretty  
4 astounding?

5 A. No.

6 MR. FEASBY: Objection. Argumentative.

7 THE WITNESS: When you handed me this  
8 document right here that has Frequently Asked  
9 Questions, I would think that JayRay had some  
10 influence of what was put together, but I can't say  
11 they did everything -- did this whole document.

12 BY MR. ADAMS:

13 Q. Isn't it true this document was a document  
14 that was created and provided to you as part of this  
15 February 10th, 2010, letter from JayRay?

16 A. It could be.

17 Q. But you have no idea?

18 A. I have no idea.

19 Q. You have no idea when this document was  
20 created?

21 A. That's true.

22 Q. You have no idea who created this document?

23 A. That's true.

24 Q. You didn't take Windermere Watch very  
25 seriously, did you?

1 MR. FEASBY: Objection. Form.

2 THE WITNESS: I took it very seriously.

3 BY MR. ADAMS:

4 Q. Then what did you do to try to counteract  
5 Windermere Watch?

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

8 THE WITNESS: I've told you.

9 BY MR. ADAMS:

10 Q. You have not told me.

11 A. I've told you that I met with attorneys  
12 about this, and -- and we hired a PR firm.

13 Q. But then you were just hands-off, correct?

14 A. You know, whenever there were concerns  
15 around Rat Man, we would make sure people had access  
16 to this -- the tools from JayRay.

17 (Whereupon Exhibit 110 was  
18 marked for the record.)

19 Q. I'm handing you a document that has been  
20 marked as Exhibit 110. It's a single-page letter that  
21 you drafted.

22 Do you see that?

23 A. Yes.

24 Q. Do you recall drafting this letter?

25 A. I do not.



1 Q. Do you recognize this letter?  
2 A. I do.  
3 Q. When was it created?  
4 A. I could not tell you.  
5 Q. Was this letter the letter that JayRay  
6 identified in their letter as a Key Message presented  
7 by Windermere?  
8 A. I don't know.  
9 Q. Is it fair to say that other people at  
10 Windermere draft documents for you to sign?  
11 A. Yes.  
12 Q. And that oftentimes you don't even read  
13 those documents; is that true?  
14 A. No.  
15 Q. So did you read this document?  
16 A. Yes.  
17 Q. When did you read it?  
18 A. I don't know.  
19 Q. Do you remember reading it?  
20 A. I do.  
21 Q. Where were you when you read it?  
22 A. I don't remember.  
23 Q. What do you remember about this document?  
24 A. (Reviewing Exhibit 110.) It's a document to  
25 deal with -- with the Rat Man -- with Gary Kruger.

1 Q. And was this document ever sent to anyone?  
2 A. I think it was meant to be sent out to  
3 clients.  
4 Q. And was it?  
5 A. I would assume so.  
6 Q. Why would you have that assumption?  
7 A. Because this would have been provided to all  
8 of our franchisees to use.  
9 Q. And who assisted in the drafting of this  
10 document?  
11 A. I don't recall.  
12 Q. You don't recall a single person that  
13 drafted this document?  
14 A. Could have been our -- our PR person.  
15 Q. But it wasn't you?  
16 A. No.  
17 Q. Did you revise the document?  
18 A. I -- I probably had some input into what it  
19 said.  
20 Q. What makes you say that?  
21 A. Because that's usually how we do things.  
22 It's collaborative.  
23 Q. And JayRay assisted in the creation of this  
24 document, didn't they?  
25 A. I don't know.

1 Q. Do you remember any?

2 A. This may have been after we meet with  
3 JayRay.

4 Q. Has Windermere ever changed its logo?

5 A. I don't think so. I'm not sure.

6 Q. You as a CEO don't know if your company has  
7 ever changed its logo?

8 A. We've changed some logos, like our Premier  
9 marks. The actual Windermere logo, I -- I don't know.  
10 I think it's -- I think it's the same as it's always  
11 been, but our -- our marketing department may have  
12 refined it, made subtle changes to it over the years.

13 Q. Wouldn't that be important for a CEO of the  
14 company to know whether or not the logo that  
15 represented the brand was changed?

16 MR. FEASBY: Objection. Form.

17 THE WITNESS: No.

18 BY MR. ADAMS:

19 Q. Look at the top of the page on Exhibit 110,  
20 please.

21 Do you see the Windermere logo?

22 A. Yes.

23 Q. Do you believe that to be the logo that  
24 Windermere has always used?

25 A. I think that, actually, we have made a

1 change, and it's the addition of the words Real  
2 Estate.

3 Q. And when did that occur?

4 A. I cannot tell you. I think it was Noelle  
5 Bortfeld when she came on as the marketing director.

6 Q. And do you have any reason to believe that  
7 Windermere Real Estate was changed -- strike that.

8 Do you have any reason to believe that this  
9 logo was changed in 2010?

10 A. It may have been. I don't know. I don't  
11 remember.

12 Q. Do you have any reason to believe that it  
13 was not changed in 2010?

14 A. I don't know.

15 Q. Okay. Please look for me at Exhibit 10.

16 A. (Reviewing Exhibit 10.)

17 Q. Okay. Exhibit 10 has been marked in  
18 connection with earlier depositions, and this document  
19 was prepared in 2010 by JayRay, wasn't it?

20 A. I don't know.

21 Q. Okay. This document is titled Phone  
22 Scripts.

23 What do you understand this to be?

24 A. Phone scripts.

25 Q. Phone scripts for what?

1           A.       For -- for -- it looks to me like it's phone  
2       scripts to deal with concerns about Gary Kruger.

3           Q.       And phone scripts is one of the items that  
4       JayRay identified in their letter that they were  
5       providing for Windermere, correct?

6           A.       Correct.

7           Q.       And this, in fact, is a phone script  
8       consistent with what JayRay had identified, correct?

9           A.       Correct.

10          Q.       Do you have any reason to believe that  
11       JayRay did not prepare this phone script?

12          A.       I do not know.

13          Q.       Do you have any reason to believe that they  
14       did not prepare it?

15          A.       My guess is it would have been a combination  
16       of JayRay and our staff.

17          Q.       Okay. I don't want you to guess.

18                   Do you have any independent recollection  
19       that JayRay participated in the creation of this phone  
20       script?

21          A.       They may have.

22          Q.       But do you have any independent recollection  
23       of that?

24          A.       I do not.

25          Q.       Okay. At the bottom of this document there

1 is a response to potential agent inquiries concerning  
2 Windermere Watch, correct?

3 A. The response?

4 Q. There's a response, correct.

5 A. Okay.

6 Q. Do you see that?

7 A. Uh-huh.

8 Q. Yes?

9 A. I do.

10 Q. And in that response, this phone script from  
11 Windermere tells owners to state, "I know you're  
12 frustrated about this, and so am I. But Windermere is  
13 working on this. In fact, they've got a plan in place  
14 to make sure that these folks have no impact on  
15 listings and sales."

16 Do you see that?

17 A. I do.

18 Q. Did you agree with that?

19 A. A plan in place?

20 Q. Did you agree with that statement that I  
21 just read from Windermere's phone script?

22 A. I don't know.

23 Q. Do you think it's important for the CEO of  
24 the company to know whether or not Windermere has a  
25 plan in place to deal with Windermere Watch?

1           A.     Yeah, it is important.

2           Q.     And did Windermere have a plan in place?

3           A.     I can't -- I don't know.

4                     MR. FEASBY:  Objection.  Form.

5  BY MR. ADAMS:

6           Q.     You don't know?

7           A.     We took the advice of JayRay and followed

8  it.

9           Q.     You took the advice of JayRay and followed

10  it.

11                     And what advice was that?

12          A.     That, again, I was -- that was not my area

13  of expertise.

14          Q.     How do you know it was followed?

15          A.     I'm assuming it was followed.

16          Q.     Do you have any independent recollection of

17  whether or not Windermere followed JayRay's advice?

18          A.     I do not know.

19                             (Whereupon Exhibit 111 was

20                             marked for the record.)

21                     MR. FEASBY:  Counsel, now would be a

22  good time to break for lunch?

23                     MR. ADAMS:  Let me do this, then we'll

24  break.

25                     MR. FEASBY:  Sure.

1 WindermereWatch.com website?

2 A. I was unaware of that.

3 Q. Were you aware that the real estate number  
4 of the employees for Windermere down in Southern  
5 California were identified on the Windermere Watch  
6 website?

7 A. I was not aware of that.

8 Q. Were you aware that Windermere Watch took  
9 photos of the Windermere agents and Windermere owners  
10 and posted them on the Windermere Watch website?

11 A. I was unaware of that.

12 Q. Is that something, as a CEO, you would like  
13 to have known about?

14 A. It would be nice to know, yes.

15 Q. And it would have been important to you to  
16 know that your agents are now personally appearing on  
17 the Windermere Watch website, right?

18 A. Yes.

19 Q. And these agents are appearing next to words  
20 such as "fraud," "fraudulent," and similar language.

21 Did you know that?

22 A. I did not.

23 Q. You knew that the terms "fraud,"  
24 "fraudulent," and similar language was posted on the  
25 Windermere Watch site, correct?



1 first page, such as Office 365 email, right?

2 A. Right.

3 Q. And TouchCMA, correct?

4 A. Correct.

5 Q. Listing syndication, right?

6 A. Yep.

7 Q. As well as customer support, correct?

8 A. Yes.

9 Q. Isn't it true that Office 365 Email did not  
10 work for the owners in Southern California?

11 A. I don't know.

12 Q. Isn't it also true that TouchCMA was not  
13 applicablè to the California region?

14 A. I don't know.

15 Q. Does anyone ever raise that issue with you?

16 A. No.

17 Q. And aren't you aware of the listing  
18 syndication issues for those properties listed on  
19 Windermere.com of agents in California?

20 A. I'm not.

21 Q. Are you aware that the customer support that  
22 was provided by Windermere would often take days, if  
23 not weeks, to get back to agents and owners in  
24 California?

25 A. I don't know. I don't know if that was, in

1 fact, a fact.

2 Q. Well, we'll look at it in just a little bit.

3 But as you sit here now, you have no idea?

4 A. No.

5 Q. Is that something that would interest you as  
6 the CEO of a franchise brand?

7 A. Again, as I explained earlier, we had  
8 somebody who was a CEO of our technology company. It  
9 was -- it was his bailiwick. He was the person that  
10 would care about this.

11 Q. And if you knew that these items were not  
12 working properly, if at all, in Southern California,  
13 would you have increased their tech fee?

14 A. I think we would have figured out a way to  
15 make -- make sure that the stuff is working properly.

16 Q. Did you?

17 A. I don't know.

18 Q. Is this the first time you're hearing about  
19 deficiencies with these items?

20 A. I've heard about -- I've heard about it  
21 through the case.

22 Q. And have you made any efforts to investigate  
23 whether or not this is, in fact, the case?

24 A. No.

25 Q. Now, throughout the 2013 year, there are no

1           A.       I -- I don't know.

2           Q.       And did you personally do anything other  
3 than Mr. -- getting Mr. Drayna in the mix to combat  
4 Windermere Watch?

5           A.       I did not.

6           Q.       Did you ever communicate a plan to  
7 Mr. Deville in which Windermere would be combating  
8 Windermere Watch?

9           A.       I did not.

10          Q.       Did you ever instruct anyone else at  
11 Windermere to communicate any type of plan to  
12 Mr. Deville with respect to Windermere Watch?

13          A.       I did not.

14          Q.       Why not?

15          A.       I don't know. We had -- I had people that  
16 were focused on trying to fix it, but...

17          Q.       Now, in the 2013 year, this freeze for the  
18 owners tech fees in Southern California went away,  
19 correct?

20          A.       I'm not sure.

21          Q.       But you're aware -- you are sure that at  
22 some point the freeze was lifted and the tech fees  
23 were increased for owners in Southern California,  
24 right?

25          A.       Yes.

1           A.       I don't remember that.

2           Q.       Okay. Do you remember any specifics about  
3 your conversations with Mr. Bennion and Mr. Deville  
4 about how to resolve the Windermere Watch situation?

5           A.       I recall the meeting with Pestotnik where we  
6 all decided there was nothing that we could do about  
7 it.

8           Q.       And so on February 11th when you decided  
9 there was nothing you could do about it, you had  
10 concluded that you had complied with your obligation  
11 that you had just signed in the contract two months  
12 earlier regarding commercially reasonable efforts?

13          A.       I'm sorry?

14          Q.       Sure. On February 11th, at the time you met  
15 with Mr. Pestotnik, you concluded there was nothing  
16 else you could do about Mr. Kruger, right?

17          A.       That's what this says I think. It says here  
18 that we -- that there's nothing that we could do about  
19 Mr. Kruger's site and that the next step was to engage  
20 an SEO expert.

21          Q.       And who was that expert?

22          A.       Again, that's was -- that's a question for  
23 York Baur.

24          Q.       But you are aware that Windermere did, in  
25 fact, engage a SEO expert?

## **EXHIBIT B**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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

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AND RELATED COUNTERCLAIMS )

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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  
  
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1 APPEARANCES

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22 ALSO PRESENT:

23 JOSEPH DEVILLE  
24 ROBERT BENNION (morning session only)  
25 LUCAS CHEADLE, VIDEOGRAPHER

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DEPOSITION OF PAUL S. DRAYNA

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Mr. Adams	15
Mr. Feasby	None



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17		Paul Drayna, Applicant: Windermere	
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1 SEATTLE, WASHINGTON; MONDAY, AUGUST 22, 2016

2 8:55 A.M.

3 -oOo-

4 THE VIDEOGRAPHER: Good morning. We are  
5 on the record at 8:55 a.m. on August 22, 2016. This  
6 is the video recorded deposition of Paul Drayna. My  
7 name is Lucas Cheadle. I'm here with court reporter,  
8 Cindie Kennedy. We are here from Veritext Legal  
9 Solutions at the request of counsel for plaintiff.  
10 This deposition is being held at 600 University  
11 Street, Suite 320 in Seattle, Washington.

12 The caption of the case is Bennion &  
13 Deville Fine Homes, Inc., et al., versus Windermere  
14 Real Estate Services Company, Case Number  
15 5:15-cv-01921-R-KK.

16 Please note that audio and video  
17 recording will take place unless all parties agree to  
18 go off the record. Microphones are sensitive and may  
19 pick up whispers or private conversations and cellular  
20 interference. I'm not related to any party in this  
21 action nor am I financially interested in the outcome  
22 in any way.

23 If there are any objections, please  
24 state them at the time of your appearance, beginning  
25 with the noticing attorney.

1 MR. ADAMS: Yes. Kevin Adams on behalf  
2 of Bennion & Deville Fine Homes, Inc., Bennion &  
3 Deville Fine Homes SoCal, Inc., Windermere Services  
4 Southern California, Inc., Robert Bennion and Joseph  
5 Deville.

6 MR. FEASBY: This way? Okay.

7 THE WITNESS: Paul Drayna.

8 MR. FEASBY: Jeff Feasby, counsel for  
9 defendant and counter-claimant, Windermere Real Estate  
10 Services Company.

11 THE VIDEOGRAPHER: Thank you.

12 The witness will be sworn in, and  
13 counsel may begin the examination.

14 THE COURT REPORTER: Would you raise  
15 your right hand, please.

16 Do you solemnly swear or affirm that the  
17 testimony you give shall be the truth, the whole  
18 truth, and nothing but the truth?

19 THE WITNESS: I do.

20 THE COURT REPORTER: Thank you.

21 PAUL S. DRAYNA, witness herein, having been  
22 first duly sworn on oath,  
23 was examined and testified  
24 as follows:

25 EXAMINATION

1 BY MR. ADAMS:

2 Q. Good morning, Mr. Drayna. I know we've been  
3 introduced already, but for purposes of the deposition  
4 and the court reporter, my name is Kevin Adams, and I  
5 represent several of the parties in this action. I  
6 represent Bennion & Deville Fine Homes, Inc., Bennion  
7 & Deville Fine Home SoCal, Inc., Windermere Services  
8 Southern California, Inc., Robert Bennion and Joseph  
9 Deville.

10 Have you had your deposition taken before?

11 A. I have not.

12 Q. Now, I understand that you are a practicing  
13 lawyer; is that correct?

14 A. That is correct.

15 Q. And have you ever been in a deposition  
16 before?

17 A. Yes.

18 Q. Okay. With that understanding, I'm going to  
19 give you a handful of admonitions or ground rules for  
20 today's deposition, but I anticipate that your  
21 attorney has probably gone through several of these  
22 with you, and so I'm going to keep this very short.

23 Today I'm going to be asking you questions  
24 that may call for your best estimate. Now, I don't  
25 want you guessing at any of the questions, but I am

1 entitled to your estimate. So if you can estimate for  
2 me approximately when something occurred, I am  
3 entitled to that answer I would ask for it today.

4 Do you understand that?

5 A. Yes.

6 Q. Okay. I may ask you questions today that  
7 you know as soon as I start to ask the question and  
8 you want me to cut to the chase, but it's important  
9 for a clear record that I ask the complete question.  
10 So I ask that you give me the courtesy of letting me  
11 ask the complete question before you answer, and I  
12 will do my best today to let you answer completely  
13 before I move on to the next question.

14 Do you understand that?

15 A. Yes.

16 Q. Sometimes I have a tendency to talk fast.  
17 We have a lot of material we're going to go through  
18 today. I ask that you please answer audibly to all of  
19 the questions. If you do not understand one of my  
20 questions, because possibly I have misspoke or I have  
21 spoken too quickly, let me know. I'll do me best to  
22 be clear in my questions. And I want to make sure  
23 that you understand it before you answer.

24 Do you understand that?

25 A. Yes.

1 technology fee change from \$10 to \$12 around January  
2 of 2005?

3 A. No.

4 Q. Do you believe that a document was required  
5 to be filed with the Department of Business Oversight  
6 concerning this fee increase?

7 MR. FEASBY: Objection. Calls for a  
8 legal conclusion.

9 THE WITNESS: At the time, that was not  
10 our understanding that such a filing was required.

11 BY MR. ADAMS:

12 Q. And today do you have a different  
13 understanding?

14 A. No.

15 Q. In 2007, there were additional -- let me  
16 strike that.

17 Windermere was increasing its technology  
18 fees fairly often during the course of its  
19 relationship with Mr. Bennion and Mr. Deville.

20 Is that an accurate representation?

21 MR. FEASBY: Objection. Form.

22 THE WITNESS: I -- I -- yeah. I'm not  
23 sure that I would agree with the use of the word  
24 "often."

25 BY MR. ADAMS:

1 Q. Okay. Well, let's just look at this then.  
2 January 1st of 2007, Windermere increased  
3 its technology fees up to \$17 per agent per month,  
4 correct?

5 A. Again, I'm not -- I recall that that  
6 increase took place. Exactly when, I forget.

7 Q. And are you also aware that the technology  
8 fee was then increased to \$22 at some point in 2008?

9 A. I'm aware that it was increased. Again, I  
10 forget the exact timing.

11 Q. And that later in 2008, the technology fee  
12 was increased again to \$25 per agent per month?

13 A. Again, I -- I am aware that that increase  
14 took place. I forget the timing.

15 Q. Were any documents filed by Windermere with  
16 the Department of Business Oversight regarding these  
17 fee increases?

18 A. No.

19 Q. Who's Gary Kruger?

20 A. Mr. Kruger is an individual who operates a  
21 website at the domain name WindermereWatch.com or dot  
22 org or dot something.

23 Q. Have you ever met Mr. Kruger?

24 A. I have not.

25 Q. When did you first learn about him?



1 A. No.

2 Q. Did you assist in the drafting of those  
3 FAQs?

4 A. Yes.

5 (Whereupon Exhibit 8 was  
6 marked for the record.)

7 Q. I'm handing you a document I've marked as  
8 Exhibit 8. Exhibit 8 purports to be a memorandum,  
9 again to all Windermere owners and managers, from you  
10 and John Demco.

11 Do you see that?

12 A. I do.

13 Q. And the memorandum is dated May 1, 2008,  
14 correct?

15 A. Yes, it is.

16 Q. And is this memorandum generated in response  
17 to Mr. Johnson and Mr. Gooding's request?

18 A. No.

19 Q. Did you draft this memorandum?

20 A. I'm sure that I must have participated in  
21 its preparation. I don't remember who generated the  
22 first draft or how that went.

23 Q. Why was it drafted?

24 A. May I have a -- I, frankly, don't remember  
25 this document. May I have a moment to read it,

1 please?

2 Q. Sure.

3 A. (Reviewing Exhibit 8.) Thank you. I have  
4 read it.

5 Q. Can you please repeat my last question? I  
6 forgot it.

7 A. So did I.

8 (The reporter read back:

9 "Q. Why was it drafted.")

10 THE WITNESS: I -- as I said, I didn't  
11 actually remember this document, nor do I remember  
12 necessarily exactly why it was drafted. It appears,  
13 from its content, that it was drafted in response to  
14 continuing inquiries from Windermere franchise owners  
15 and managers, asking about Mr. Kruger and his  
16 activities and specifically why we had not or were not  
17 suing him for defamation.

18 BY MR. ADAMS:

19 Q. And this memorandum was sent out to all  
20 Windermere owners and managers, correct?

21 A. That's what it says.

22 Q. And by all "Windermere owners and managers,"  
23 that's all franchisees, licensees, area  
24 representatives; is that correct?

25 A. That -- I do not personally send it out, so

1 I don't know who actually received it, but that would  
2 be what that implies, yes.

3 Q. Do you contend that someone put your name on  
4 this document without ever telling you?

5 A. Not at all.

6 Q. Do you understand what the legal elements  
7 are for a claim of defamation?

8 A. I do.

9 Q. And what are those elements, to your  
10 understanding?

11 A. It's the publication of a false statement  
12 that causes harm.

13 Q. And Windermere filed this lawsuit against  
14 Mr. Kruger for defamation in 2015, correct?

15 A. We did file a lawsuit against him in 2005;  
16 that's correct.

17 Q. Okay. And Windermere believed, and still  
18 believes, that the statements by Mr. Kruger had  
19 crossed the lines and have been demonstrably false,  
20 correct?

21 MR. FEASBY: Objection. Form.

22 THE WITNESS: It would be more accurate  
23 to say that some statements by Mr. Kruger we believed  
24 constituted defamation and crossed the line.

25 BY MR. ADAMS:

1 Q. Okay. In this letter that you are  
2 identified as an author of, it states: "We believed,  
3 and still believe, that some of the statements  
4 Mr. Kruger had made crossed those lines and have been  
5 demonstrably false," correct?

6 A. Some of those statements, yes.

7 Q. Okay. And I just correctly read this  
8 letter?

9 A. I -- I was not following along on the page  
10 with you as you read.

11 Q. All right. What basis did you have for  
12 stating that Mr. Kruger's statements are false and  
13 have crossed the line?

14 MR. FEASBY: Objection.  
15 Mischaracterizes testimony. Calls, potentially, for  
16 attorney/client communications.

17 THE WITNESS: I think I can provide an  
18 answer without disclosing privileged communications.

19 The contents of Mr. Kruger's  
20 publications, both on his website and in other  
21 formats, has changed over time. And so it's -- it's a  
22 little difficult to answer your questions sort of  
23 globally without sort of pinpointing a particular  
24 time. I honestly don't remember, at the time that the  
25 lawsuit was filed, what the specific statements were

1       that we believed constituted actionable defamation.

2               A great deal of the material published  
3       by Mr. Kruger, primarily on his website, is taken from  
4       court filings in lawsuits filed against Windermere  
5       franchises throughout the system, including certainly  
6       many such lawsuits filed against Mr. Bennion and  
7       Mr. Deville and their companies in California.

8               And to the extent that those -- that  
9       content quotes from public records, it is the truth.  
10      These lawsuits existed. These court filings were  
11      filed.

12              So that is why the document says we  
13      believe that some of his statements constituted  
14      actionable defamation because a great deal, at this  
15      point certainly the vast majority of what is on his  
16      website and is not. It is a publication of,  
17      allegedly, the truth.

18      BY MR. ADAMS:

19              Q.     Okay. And you told all Windermere owners  
20      and managers that Windermere was confident that it  
21      would win the case on the merits, but in the end  
22      dismissed the lawsuit voluntarily.

23              A.     Again, I -- just to be clear, I'm identified  
24      as one of two authors of this document, so I  
25      participated in -- in this communication.

1 Q. Is that -- what I just stated, is that  
2 accurate? Let me strike that.

3 This letter that you're identified as an  
4 author for states that, "While we were confident that  
5 we would win our case on the merits, in the end we  
6 dismissed our lawsuit against Mr. Kruger voluntarily."

7 A. I can say this because I don't believe it's  
8 -- I guess I will -- I'm -- I feel comfortable I can  
9 say this because I'm certain that this is information  
10 that has been previously provided to Mr. Deville and  
11 to his attorney, Mr. Sunderland. At the end of the  
12 day, the reason that the lawsuit was dropped was  
13 twofold.

14 Number one, there was a pretrial settlement  
15 conference that was presided over by a retired judge.  
16 It was actually the retired judge/mediator, if you  
17 will. It was not formally a mediation; it was a  
18 settlement conference. But it was the settlement  
19 judge who actually suggested -- recommended that we  
20 just drop our case and walk away based on his  
21 assessment that while we would certainly win on the  
22 merits, that win would be limited to very few specific  
23 sentences that were actionable defamation but that the  
24 Court could not and would not enter an order ordering  
25 Mr. Kruger to discontinue all of his activities or

1 take down his website in its entirety.

2 And if our goal was, as it was, to have him  
3 stop completely, that that was not a result that we  
4 could achieve through litigation; that was a result  
5 that could only be achieved through settlement. And  
6 as this document indicates, there were settlement  
7 negotiations that went on.

8 And there's one fact that this document does  
9 not reference, but I -- which I, again, am certain has  
10 been shared previously with Bob and Bob and their  
11 lawyer, Bob Sunderland, and that is, money aside, that  
12 it is true that he asked for more money than -- that  
13 there was a difference in the dollar amounts.

14 More importantly, the settlement offer we  
15 made was conditioned on some very specific and very  
16 strong enforcement mechanisms. We had a significant  
17 concern that I would speculate that your clients  
18 share, that Mr. Kruger is actually mentally ill and  
19 that what we did not -- what did not make sense to us  
20 was to write him a check of any size without  
21 meaningful enforcement mechanisms in place to ensure  
22 that he would actually stop his activities.

23 And so the real issue, the real reason the  
24 case didn't settle was not actually money. The money  
25 difference was -- there was a difference, but that was

1 not the deal-killer point. The deal-killer point was  
2 his refusal to agree to any meaningful enforcement  
3 mechanisms as part of a settlement.

4 And our belief was at the time, that we  
5 would write him a big check; he would stop briefly;  
6 and then it would all just start up again, and we  
7 would be back to square one, and that made no business  
8 sense.

9 BY MR. ADAMS:

10 Q. Were you required to write him a big check  
11 as part of the successful outcome in the lawsuit?

12 A. The -- there was -- he was asking for money.

13 Q. And, according to this letter, it was  
14 conveyed to owners and managers that Windermere would  
15 have prevailed in litigation, correct?

16 A. Again, as I just said, the -- what -- what  
17 we believed, based on the input from the settlement  
18 judge, which I'm -- I feel comfortable talking about  
19 because I don't believe there's a privilege issue  
20 there as between us and him.

21 The settlement judge said, you will  
22 certainly win on -- with respect to -- it's  
23 hypothetically. You know, if his entire website --  
24 out of his entire website, there was maybe five  
25 percent of it that was actionably defamation, and 95



1 percent of it consisted of quoting public records,  
2 talking about lawsuits, actually posting verbatim  
3 court filings, and other -- it was either publishing  
4 the truth, factually these lawsuits were filed, these  
5 pleadings were actually filed, these allegations were  
6 made against Mr. Bennion and Mr. Deville and their  
7 companies and their brokers, among many others, or it  
8 consisted of his opinions.

9 And both of those categories of information,  
10 the truth and his opinions, were legally privileged  
11 under defamation law, as we understood it at the time,  
12 and it was the settlement judge's opinion that we  
13 would go to trial, we would win, that we would get a  
14 judgment that we would never collect, and he would not  
15 stop.

16 Q. But a successful -- strike that.

17 Had Windermere been adjudicated the  
18 prevailing party in the defamation action against  
19 Mr. Kruger, Windermere would not have been obligated  
20 to pay Mr. Kruger anything, correct?

21 A. That's -- that's true.

22 Q. Okay. And by dismissing -- by voluntarily  
23 dismissing the action, Windermere actually emboldened  
24 Mr. Kruger to take more action against Windermere and  
25 its franchisees, correct?

1           A.       I wouldn't say that it --

2                   MR. FEASBY:  Objection.  Form.

3                   THE WITNESS:  Yeah, I -- I don't know  
4       that I would agree with the word "emboldened."  It  
5       certainly -- I think it certainly angered him.

6       BY MR. ADAMS:

7           Q.       Okay.  This letter that you co-authored  
8       states that, "He has tried to spin this decision in  
9       subsequent mailings as evidence that we were simply  
10      using the lawsuit to harass him or that we were afraid  
11      to face a jury."

12                   You also state, "Since we dropped the  
13      lawsuit, his mailings have been increasingly frequent  
14      and bitter."

15           A.       I think that's consistent with what I just  
16      said, that he -- dropping the lawsuit certainly made  
17      him angry.

18           Q.       And Windermere dropped the lawsuit because  
19      it didn't want to finance any further pursuit of that  
20      lawsuit, correct?

21                   MR. FEASBY:  Objection.  Misstates the  
22      testimony.

23                   THE WITNESS:  Also, to some degree, it  
24      involves privileged communications.

25                   As I said, the main issue was his

1 refusal to agree to any meaningful enforcement  
2 mechanisms as part of a settlement. That was the main  
3 concern. And our understanding, again, based on input  
4 from the settlement judge, was taking this case to  
5 trial will cost a lot of money, you will certainly  
6 win, and a win does not mean he has to stop, and he  
7 won't.

8 The judge, after his interactions with  
9 Mr. Kruger, frankly, agreed with our assessment that  
10 he was, if not clinically mentally ill, certainly  
11 unstable.

12 BY MR. ADAMS:

13 Q. But the voluntary dismissal only made things  
14 worse, didn't it?

15 A. That is true.

16 Q. What was Mr. Kruger's price for settlement?

17 MR. FEASBY: Objection. Form.

18 THE WITNESS: That, I actually think,  
19 does get into attorney/client privilege.

20 BY MR. ADAMS:

21 Q. What amount did Mr. Kruger relay to  
22 Windermere that his price would be to go away?

23 A. That -- that really --

24 MR. FEASBY: Objection as to form,  
25 again.

1 June 11, 2012, correct?

2 A. It does.

3 Q. And if we look back at Exhibit 21, the  
4 Southern California application was effective on the  
5 exact same date as the Northern California  
6 application, correct?

7 A. That appears to be true.

8 Q. Based on this information, does it appear  
9 that you received Mr. Bennion and Mr. Deville's  
10 audited financials prior to June 11, 2012?

11 A. Based on this, it would appear that I must  
12 have.

13 Q. And it would have been around the same time  
14 or close to the same time that you received  
15 Windermere's audited financials, correct?

16 A. It must have been.

17 Q. Who were Raye and Francine, with respect to  
18 the Southern California region?

19 A. Raye and Francine were the owners of a  
20 franchise in San Diego.

21 Q. And in August, 2012, Raye Scott was having  
22 some serious issues regarding Windermere Watch; is  
23 that accurate?

24 A. I don't recall.

25 Q. Do you recall exchanging emails with Raye

1 Scott in August 2012?

2 A. Not specifically.

3 Q. Do you recall phone calls with Raye Scott in  
4 2012?

5 A. I do remember a phone call with Raye Scott.  
6 I don't remember the timing of it.

7 Q. How many times did you have a phone call  
8 with Raye Scott over the course of your time at  
9 Windermere?

10 A. Oh, I have no idea.

11 Q. More than once?

12 A. Possibly.

13 Q. Do you have any estimate?

14 A. I honestly don't.

15 Q. And your role as general counsel for  
16 Windermere would regularly have you speaking with  
17 franchisees in the system?

18 A. I speak with franchisee and franchise owners  
19 on a regular basis, yes.

20 Q. And do you recall any conversations with  
21 Raye Scott concerning Windermere Watch?

22 A. I do vaguely remember what we had a  
23 conversation about Windermere Watch, yes.

24 Q. More than once?

25 A. I don't remember.

1 Q. Is it possible you had more than one  
2 conversation regarding it?

3 A. Yeah, it is possible.

4 Q. And what were the contents of that  
5 conversation?

6 A. My recollection of it is -- is vague, but my  
7 -- I believe she was concerned about Windermere Watch  
8 or wanted more under -- more information, wanted an  
9 understanding of what is this about, what are we or  
10 aren't we doing, why or why not. It was a  
11 conversation along those lines.

12 Q. And did Raye Scott tell you that they  
13 received a crude postcard from Windermere Watch that  
14 had nasty comments about Windermere?

15 A. Probably.

16 Q. And were you aware of those postcards?

17 A. Yes.

18 Q. And you'd seen them for some time?

19 A. Yes.

20 Q. And that Raye Scott was concerned that this  
21 postcard and the other activities of Windermere Watch  
22 could be far reaching and damaging?

23 A. You appear to be reading from an email that  
24 I don't specifically remember, but that is possible  
25 that she expressed that concern.

1 Q. Did you agree that Windermere Watch's  
2 conduct could be far-reaching and damaging?

3 A. No.

4 Q. Why not?

5 A. It was my personal belief, which I note to  
6 be shared, what was shared by many other people  
7 including other franchise owners, that speaking  
8 colloquially, the activities of Mr. -- the postcards,  
9 the mailing, the websites, the most common reaction we  
10 heard from people was, who is this guy; he looks like  
11 he's nuts.

12 The overwhelming majority of people who  
13 encountered it or who have experience with it did not  
14 feel that it was a far-reaching issue. They felt that  
15 it was the -- clearly, the actions of somebody who was  
16 crazy, to use the informal word.

17 Q. And you understood that Raye Scott had  
18 actually sent an email -- composed and sent an email  
19 to Gary Kruger, asking to be left alone?

20 A. I don't remember that.

21 Q. And that in 2000 -- August of 2012,  
22 Mr. Kruger was posting the roster of every agent in  
23 Raye Scott's brokerage with phone number, names, and  
24 real estate numbers on the Windermere Watch web --  
25 website.

1                   Were you aware of that?

2           A.       I am aware that at some point Mr. Kruger  
3 began posting names and license numbers. I don't  
4 remember him posting phone numbers, but it's possible  
5 he did.

6           Q.       And that Raye Scott asked you, "We'd like to  
7 know what Windermere has done or is trying to do to  
8 put an end to this person and their anonymous ranting,  
9 not only Online, but in print, also."

10          A.       It's possible she asked me that.

11          Q.       Do you remember that at all?

12          A.       As I said, I -- I have a vague recollection  
13 of having a conversation with her about this issue.

14          Q.       And did you tell her what Windermere had  
15 done about this?

16          A.       My -- my vague recollection is that I  
17 explained to her that there -- our understanding was  
18 that there was very little that we could do for  
19 reasons that we've previously discussed here today.

20          Q.       And did you tell Raye Scott that there was  
21 other conduct that Windermere was planning on doing  
22 down the road, but hadn't done yet with respect to  
23 Windermere Watch?

24          A.       It's possible. I don't remember that.

25          Q.       As you sit here today, do you remember



1 anything around August 2012 that Windermere was  
2 planning on doing with respect to Windermere Watch but  
3 had not yet done?

4 A. August 2012 would have been about the  
5 time -- and here, again, I'm -- I need to -- forgive  
6 me while I pause and think.

7 This is, again, straying into an area where  
8 I -- I need to be careful not to disclose privileged  
9 attorney/client communications.

10 I can say that in August of -- in or about  
11 that time in mid -- or summer of 2012, we were  
12 exploring the possibility of trying to establish  
13 communications with Mr. Kruger, to open a dialogue, to  
14 see if a negotiated settlement could be reached.

15 Q. Now Raye -- Raye Scott and Francine Finn,  
16 F-I-N-N, ultimately left the system, didn't they?

17 A. They did.

18 Q. And one of the stated reasons for leaving  
19 the system was Windermere Watch, wasn't it?

20 A. I don't recall. It's possible.

21 Q. Why do you believe they left the system?

22 A. My recollection is they -- I remember that  
23 there was a -- we have an annual owner's retreat for  
24 an annual gathering of all of our franchise owners.

25 I remember that there was a year that they

1           A.     Yes, that sounds familiar.

2           Q.     Okay. And Mr. Bennion and Mr. Deville  
3 actually had a side deal for their own tech fees,  
4 didn't they?

5           A.     I don't know that I would characterize it as  
6 a side deal. They consistently -- over a period of  
7 years, they often had special deals, accommodations,  
8 fee deferrals, fee forgiveness. They routinely had  
9 different deals.

10          Q.     And the -- and the fee increase at issue in  
11 this September 19th email chain, was a tech fee  
12 increase that would not have affected them directly  
13 but, instead, just the franchisees in their region,  
14 correct?

15          A.     I don't recall. I don't know. I would have  
16 to read back through this whole chain to see if that's  
17 the case.

18          Q.     Okay. We'll get to that one.

19                 Now, by October 2012, the Windermere Watch  
20 website and all of these postings of phone numbers and  
21 pictures and agents had gotten to a point where  
22 Mr. Bennion and Mr. Deville informed Windermere that  
23 they are entertaining the idea of leaving the system,  
24 correct?

25          A.     In late 2012, that's correct.

1 Q. And in order to keep them in the system,  
2 Windermere agreed to many concessions, correct?

3 A. That's correct.

4 Q. Okay. Both financial concessions in the  
5 form of fee deferment and eradication of certain  
6 royalties, correct?

7 A. I -- I don't know that there were fees  
8 deferred. There were fees forgiven.

9 Q. Uh-huh.

10 A. I think of a deferral as you don't have to  
11 pay now but you to have pay eventually.

12 Q. Okay.

13 A. I think fee forgiveness would be a more  
14 accurate way to characterize that.

15 Q. Sure. And there was ramp-up schedules put  
16 in place?

17 A. I believe that's correct, yeah.

18 Q. And Windermere also agreed to take action  
19 with respect to Windermere Watch?

20 A. We agreed to -- I don't want to misquote the  
21 document. There is, of course, a -- eventually, an  
22 agreement was entered into. And I don't want to  
23 mischaracterize it or -- or misquote it.

24 Q. And this agreement is known as the  
25 modification agreement, correct?

1 A. Yes.

2 Q. And it modified both Mr. Bennion and  
3 Mr. Deville's license agreements, correct?

4 A. That is correct.

5 Q. That would be the 2001 license agreement,  
6 right?

7 A. In Coachella -- Coachella Valley, correct.

8 Q. And the 2011 license agreement for  
9 San Diego?

10 A. I believe that is what the agreement says,  
11 yes.

12 Q. And that modification agreement came about  
13 principally because of the troubles that Mr. Bennion  
14 and Mr. Deville were experiencing with respect to  
15 Windermere Watch?

16 MR. FEASBY: Objection. Form.

17 THE WITNESS: Yeah, I think the reality  
18 is more complicated than that. I think that the  
19 Windermere Watch was clearly an issue. There was also  
20 an issue that a very large balance of fees had accrued  
21 that were owed, and that was also an issue.

22 BY MR. ADAMS:

23 Q. Windermere Watch was such an issue that by  
24 November 2012, it had just come out that Mr. Kruger  
25 had started a second Windermere Watch website?

1           A.     I don't actually remember that, but -- well,  
2     let me correct myself.

3                     What I remember is, going back to -- we  
4     talked earlier about Andrea Marques. Is that her  
5     name, the franchise owner in, I want to say -- I'm not  
6     going to speculate. I don't want to get it wrong.  
7     There was a franchise owner in -- in Southern  
8     California who engaged outside counsel who succeeded  
9     in getting Mr. Kruger's primary website shut down  
10    briefly. And during that brief period that the  
11    original website was offline, he basically put up a  
12    mirror site. I don't remember that he had a second  
13    different website at any point.

14          Q.     Do you recall if it was a different domain  
15    name for his mirror site?

16          A.     It was very -- it was like  
17    WindermereWatch2.com or something like that, that I  
18    recall.

19          Q.     So you do recall that he had a second domain  
20    name, WindermereWatch2.com?

21          A.     I remember that he -- I don't remember how  
22    long that continued to exist. I remember that was  
23    something he initially put up because, again, I  
24    believe it was Ms. Marques had an attorney who sent a  
25    letter to the company that was hosting his original

1 website and demanded that it be taken down, based on  
2 the allegation that it contained copyright  
3 infringement.

4 It was very briefly taken offline for a  
5 matter of days, as I recall. And during that dark  
6 period, he put up -- he registered the second domain  
7 name, posted somewhere else and got another website.  
8 And I don't remember that it was -- the substance was  
9 any different. It was just something he did to get  
10 back online until his original hosting company  
11 ultimately turned his website back on.

12 Q. And Mr. Deville brought this second website,  
13 WindermereWatch2.com, to your attention on October 29,  
14 2012, correct?

15 A. I don't remember that, but that's possible  
16 (Whereupon Exhibit 24 was  
17 marked for the record.)

18 Q. I'm handing you a single-paged document  
19 that's been marked Exhibit 24. This document appears  
20 to be an email chain. The most recent email in the  
21 chain is dated October 29, 2012, from Mr. Deville to  
22 you and others.

23 Do you recognize this document?

24 A. I -- I -- I don't remember it, but I -- it's  
25 -- it's -- I'm sure that I receive it. I see my name

1 is listed under recipients.

2 Q. Does it refresh your memory as to when you  
3 learned about this second website from Mr. Kruger?

4 A. I -- I don't know that this is -- I don't  
5 remember the timing of when Ms. Marques had her lawyer  
6 take down the first domain. This was -- I don't  
7 remember if the timing is the same. It's possible  
8 that that actually happened before this. And  
9 Mr. Forsberg may have just discovered it in October of  
10 2012, but I'm not sure that it was new at that time.

11 Q. So it's possible that Windermere knew about  
12 this second website before this email in October of  
13 2012?

14 A. And I would venture to say that Mr. Deville  
15 was aware of it, too. I believe he was copied on all  
16 those communications with Ms. Marques and her  
17 attorney.

18 Q. Do you specifically recall Mr. Deville or  
19 Mr. Bennion receiving notice of this second website of  
20 Mr. Kruger?

21 A. I -- I can't say that I do.

22 Q. Do you know of any documents that identify  
23 Mr. Deville or Mr. Bennion's receipt of knowledge of  
24 this second website of Mr. Kruger?

25 A. It would just be -- I -- the emails back and

1     forth among us, between me, Mr. Deville and  
2     Mr. Bennion, Ms. Marques, her attorney. There was a  
3     flurry of emails that went around back at the time  
4     that she had her lawyer attempt to get his website  
5     taken down. I would have to go back and look at  
6     those. I don't remember if there was a specific  
7     email.

8           Q.     Would you agree that leading up to the  
9     modification agreement in December 2012, that  
10    Mr. Kruger's activities had become more focus on  
11    Windermere in California than Seattle?

12          A.     I don't know that I would agree with that.  
13    I think that the -- the content of his website  
14    contained -- the content of his website was composed,  
15    again as we discussed, primarily of court filings,  
16    court documents, factual information about lawsuits.

17                 And I'm not sure that it's accurate to say  
18    that there was more information about California than  
19    about Seattle or anywhere else.

20          Q.     And were there more direct mailings in  
21    California than Seattle from Windermere Watch, to your  
22    knowledge?

23          A.     I don't know that.

24          Q.     Okay. And did you ever recall sending an  
25    email, where you acknowledge that the focus of



1 Windermere Watch is more concentrated on California at  
2 that time than Seattle?

3 A. At that time, I -- I don't specifically  
4 remember sending that email. It is possible. I  
5 acknowledge that's possible I said that. What our --  
6 our experience over time was that his focus would  
7 shift around the network from place to place, with no  
8 apparent logic, frankly.

9 It would just from time to time, he would  
10 focus on a particular area. What I would say is, his  
11 focuses -- foci seemed to be prompted by court  
12 filings. It appeared that he was monitoring court  
13 filings for new lawsuits naming Windermere as a party.

14 And -- and there was a period of time where  
15 Mr. Bennion and Mr. Deville's companies in Southern  
16 California were on the receiving end of a number of  
17 lawsuits, some of which were -- sounded on paper quite  
18 sensational -- sensationalistic. And that may have  
19 attracted his attention.

20 Q. So in 2012 there was a period of time where  
21 Mr. Kruger's activities were more directed toward  
22 California?

23 A. That is certainly possible, yes.

24 Q. And because of these activities of  
25 Windermere Watch, Windermere ultimately agreed to make

1 an effort to deal with Mr. Kruger, correct?

2 MR. FEASBY: Objection -- never mind.  
3 Sorry. Strike that.

4 THE WITNESS: It is true that in late  
5 2012, we entered into an agreement with Mr. Bennion  
6 and Mr. Deville, that -- and that Windermere Watch was  
7 one of the subjects of that agreement.

8 BY MR. ADAMS:

9 Q. And leading up to that agreement, you  
10 discussed the contents of the agreement with Rob  
11 Sunderland, the attorney for Mr. Deville and  
12 Mr. Bennion, correct?

13 A. That is correct.

14 Q. Okay. And in your email exchange with  
15 Mr. Sunderland, you explained that Windermere promises  
16 a good faith effort to deal with Mr. Kruger, correct?

17 A. That's possible.

18 Q. Okay. And what did you understand a good  
19 faith effort to include?

20 MR. FEASBY: Objection. Form.

21 THE WITNESS: I think that -- I think I  
22 need to be careful here about disclosing privileged  
23 attorney/client communications.

24 BY MR. ADAMS:

25 Q. Well, I'm not asking you what you talked

1 about with your client. I'm asking you what you  
2 understand a good faith effort to include --

3 MR. FEASBY: Same --

4 BY MR. ADAMS:

5 Q. -- irrespective of what anyone said to you  
6 or what you said to them.

7 MR. FEASBY: Same objection.

8 THE WITNESS: I think -- speaking only  
9 for myself, and not based on communications with my  
10 clients, my understanding of a good faith effort would  
11 be to engage in a dialogue with Mr. Bennion and  
12 Deville about the issue, try to identify actions that  
13 we were in agreement would be effective and both cost  
14 effective and actually have a desired effect.

15 Again, a recurring concern of ours,  
16 certainly, was to not throw gas on the fire, to not do  
17 something that would make the situation worse. And we  
18 had a number of instances, over the years, where we  
19 had seen that happen, including the instance -- the  
20 incidents that we discussed with Ms. Marques and her  
21 attorney, who succeeded in getting his website shut  
22 down for a couple of days, only to come back with a  
23 vengeance, clearly angrier than he had been a few days  
24 before.

25 So I think a good faith effort meant,

1 let's talk about this and figure what can be done,  
2 come to some agreements about what we think can be  
3 done that will be effective, cost effective and not  
4 make the situation worse.

5 BY MR. ADAMS:

6 Q. And was Mr. Deville advocating that  
7 Windermere throw gas on the fire?

8 A. At the time, I don't think so, no.

9 Q. What about Mr. Bennion; was he advocating  
10 that Windermere take action that would throw gas on  
11 the fire?

12 A. Not -- not at that time, no.

13 Q. At some other time, did he advocate that?

14 A. I believe that -- I believe that, over time,  
15 it appears there's been some suggestions that -- it  
16 appears there's a suggestion that more could have or  
17 should have been done, which in our view would have  
18 been throwing gas on the fire.

19 (Whereupon Exhibit 25 was  
20 marked for the record.)

21 Q. I'm handing you a multi-page document that  
22 we have marked as Exhibit 25.

23 This is a document titled Agreement  
24 Modifying Windermere Real License Franchise License  
25 Agreements?

1 Do you see that?

2 A. I do.

3 Q. And is this the modification agreement that  
4 we were referring to earlier?

5 A. It is; although, I'm unsure if it is the  
6 final fully-executed version of it, as it seems to be  
7 missing the signatures of Mr. Bennion and Deville and  
8 their attorney.

9 Q. And if you look for me on page Bates number  
10 WSC1224 --

11 A. I don't have that page.

12 Q. Of course.

13 MR. FEASBY: I'm missing it, too.

14 BY MR. ADAMS:

15 Q. Here, I have it. I'll show your counsel  
16 first.

17 MR. FEASBY: I've got it here. Yeah.  
18 Attach that to the back.

19 MR. ADAMS: Yeah. Thank you.

20 MR. FEASBY: So we'll add -- just for  
21 the record, we'll add Pages WSC22 -- 224 and 225.

22 THE WITNESS: I would point out the  
23 exhibit is still then missing 1223.

24 MR. FEASBY: Oh, do you want to use  
25 mine? It's highlighted.

1 MR. ADAMS: It's just yellow  
2 highlighting. If you're okay with it, I'm fine with  
3 it.

4 MR. FEASBY: All right.

5 THE WITNESS: Thank you.

6 MR. ADAMS: No, thank you.

7 THE WITNESS: Yes.

8 MR. ADAMS: So --

9 THE WITNESS: I --

10 MR. FEASBY: Just, I don't mean to  
11 interrupt.

12 Mr. Drayna, can you just confirm,  
13 then, that's WSC1215 through WSC1225?

14 THE WITNESS: That is correct.

15 BY MR. ADAMS:

16 Q. Okay. So this now has the signatures --

17 A. Yes.

18 Q. -- that you were referring to as being  
19 absent a few moments ago, correct?

20 A. Yes. I do, therefore, recognize this as the  
21 modification agreement. And it does appear to be the  
22 final fully executed version.

23 Q. Very good. Please go with me to page 1 of  
24 that document.

25 A. Yes.

1 Q. If you go to bottom of page 1, the  
2 second-to-last sentence states: "Wherein, the parties  
3 contend that Mr. Kruger and/or others' actions through  
4 the Windermere Watch websites violates state,  
5 California and Washington, and/or federal laws."

6 Do you see that?

7 A. I do.

8 Q. What laws do you contend were being violated  
9 as of December 18, 2012?

10 MR. FEASBY: Objection. Calls for a legal  
11 conclusion.

12 THE WITNESS: I am not sure. I'm -- I'm  
13 not sure.

14 BY MR. ADAMS:

15 Q. Okay. You drafted this document, correct?

16 A. No, I did not.

17 Q. Did you work on the drafting of this  
18 document?

19 A. I tried to, yes.

20 Q. And when you say tried to, you were not  
21 successful in that; is that correct?

22 A. Mr. Sunderland drafted this document. We --  
23 as I recall, we requested a number of changes, which  
24 Mr. Deville objected.

25 Q. So this document was entirely drafted by

1 Mr. Bennion and Mr. Deville and their counsel?

2 A. It is possible there was some back and  
3 forth. I -- I remember that there were a number of  
4 edits that we requested that -- that were not agreed  
5 to.

6 Q. And when --

7 A. So I would say that the majority of the  
8 drafting was done by Mr. Sunderland.

9 Q. And Windermere capitulated to all of these  
10 demands that Mr. Bennion and Mr. Deville were giving  
11 you?

12 THE WITNESS: We --

13 MR. FEASBY: Objection. Argumentative.

14 THE WITNESS: We executed the document  
15 that is marked Exhibit 25.

16 BY MR. ADAMS:

17 Q. But had no say in the contents of the  
18 document whatsoever?

19 A. We signed this agreement.

20 Q. And you never received a Word version of  
21 this document to make changes to?

22 A. I think I did receive a Word version, and I  
23 sent back redline changes, which I think the majority  
24 of which were rejected.

25 Q. But some were accepted, right?



1           A.       That's possible.

2           Q.       Okay. Now, a few moments ago, we were  
3 talking about the good faith efforts that were being  
4 discussed between you and Mr. Sunderland with respect  
5 to Windermere's actions to Windermere Watch.

6                    Do you recall that?

7           A.       I recall we were talking about, what does  
8 good faith mean. I don't recall that Mr. Sunderland  
9 and I got into any specifics about what exactly would  
10 be done.

11          Q.       Do you recall exchanging emails with  
12 Mr. Sunderland about the good faith efforts?

13          A.       Yes. I believe we -- you already marked one  
14 those as an exhibit.

15          Q.       So the answer is yes?

16          A.       Mr. Sunderland and I, in exchanging this,  
17 used the term "good faith efforts." But, again, I  
18 don't recall that he and I went into -- into any  
19 specifics about what that would mean.

20          Q.       Turn with me to page 2 of this modification  
21 agreement, please.

22                    Section 3A, titled Windermere Watch in the  
23 middle of page?

24          A.       Yes.

25          Q.       Do you see that?

1           A.       I do.

2           Q.       It says, "WSC agrees that it shall make  
3       commercially reasonable efforts to actively pursue  
4       counter marketing and other methods seeking to curtail  
5       the anti-marketing activities undertaken by Gary  
6       Kruger, his associates, Windermere Watch, and/or the  
7       agents of the foregoing persons."

8                   Do you recall contributing at all to the  
9       language of that provision?

10          A.       I may have. I -- again, I remember  
11       exchanging redlines back and forth. And my  
12       recollection is that a great many of our proposed  
13       redlines or our proposed edits were rejected. Whether  
14       or not -- I don't remember specifically the wording of  
15       that paragraph and how that came to be.

16          Q.       Okay. Now, isn't it true that Mr. Deville  
17       and Mr. Bennion included in their draft of the  
18       modification agreement the language that Windermere  
19       "shall pursue litigation" against Mr. Kruger?

20          A.       That may be -- yes, I think that may be  
21       correct.

22          Q.       And instead of that language "shall pursue  
23       litigation," you proposed that Windermere promise a  
24       good faith effort to deal with Mr. Kruger, correct?

25          A.       That's possible, yes.

1 Q. Okay. But this contract language that we're  
2 looking at, it doesn't say that Windermere is required  
3 to pursue litigation, nor does it say that Windermere  
4 would undertake a good faith effort, correct?

5 A. Not in the paragraph we're looking at right  
6 now, no.

7 Q. Instead, it says that Windermere "shall make  
8 a commercially reasonable effort," right?

9 A. It does say that.

10 Q. And commercially re -- reasonable effort was  
11 reached after some negotiations between Windermere and  
12 Mr. Deville and Mr. Bennion concerning the language  
13 that this section would contain, correct?

14 A. Thank you for refreshing my recollection.  
15 You asked me earlier if Mr. Bennion and Mr. Deville  
16 were advocating actions that we felt would throw gas  
17 on the fire. And this refreshes my recollection that  
18 they were, that their first drafted proposed that we  
19 should -- that we shall initiate litigation against  
20 him, which was a course of conduct that we believed  
21 would actually make the situation worse, not better.

22 So you are correct that we did land on a  
23 different language in the final draft of this because  
24 we felt that their proposed course of action was  
25 inadvisable.

1 Q. And this language, "commercially reasonable  
2 effort," was some mutual agreement above and beyond  
3 that of good faith effort that you had proposed in  
4 your prior email, correct?

5 MR. FEASBY: Objection. Form.

6 THE WITNESS: I don't understand the  
7 question.

8 BY MR. ADAMS:

9 Q. What does commercially reasonable efforts  
10 mean?

11 MR. FEASBY: Objection to --

12 THE WITNESS: The --

13 MR. FEASBY: -- form.

14 THE WITNESS: You'd -- commercially  
15 reasonable efforts is a legal term of art. And I am  
16 not sure that I can say what it means in the context  
17 of an agreement governed by California Law, but I can  
18 say in general, commercially reasonable efforts means  
19 a level of effort that would be reasonable --  
20 considered reasonable by prudent business people in --  
21 under the circumstances.

22 BY MR. ADAMS:

23 Q. And is that different than good faith  
24 effort?

25 MR. FEASBY: Objection. Form.

1 THE WITNESS: I'm not sure whether there  
2 would be a legal distinction between those two terms  
3 under California Law.

4 BY MR. ADAMS:

5 Q. So is it your position that this reference  
6 to commercially reasonable efforts that ultimately  
7 made its way into this agreement is no different than  
8 what you had proposed, good faith efforts?

9 A. I'm not saying that. I -- I'm not sure that  
10 that I know what the technical distinction would be  
11 between those two terms under California Law.

12 Q. You are the general counsel for Windermere?

13 A. That is true.

14 Q. Is there someone else at Windermere that can  
15 explain what they meant by commercially reasonable  
16 efforts that they agreed to provide Mr. Bennion and  
17 Mr. Deville when signing this contract?

18 A. I believe I've already testified that what I  
19 understood the agreement to be was that we would  
20 engage in a dialogue to identify actions that both  
21 sides of us and Mr. Deville and Mr. Bennion felt would  
22 be effective -- both cost effective, but also actually  
23 help and not make the situation worse. And that is  
24 what we understood the agreement to be.

25 Q. Why does this agreement have the term

1 commercially reasonable efforts instead of good faith  
2 efforts?

3 A. I -- I don't recall the exact back and forth  
4 of how we were -- landed on those words.

5 Q. Do you recall memorializing this back and  
6 forth in emails with Mr. Sunderland?

7 A. I remember that Mr. Sunderland and I  
8 exchanged emails on the subject, and I'm sure you are  
9 about to refresh my memory about a particular point.

10 Q. Okay. I'll let the documents speak for  
11 themselves at a later time.

12 If you look at the bottom of that paragraph  
13 3A, the very last sentence reads, "The failure of WSC  
14 to eliminate WindermereWatch.com shall not constitute  
15 a breach of this agreement, so long as WSC has made  
16 commercially reasonable efforts to curtail the impact  
17 of the activities of Kruger and/or Windermere Watch."

18 Do you see that?

19 A. I do.

20 Q. What commercially reasonable efforts has  
21 Windermere undertaken to curtail the impacts of the  
22 activities of Kruger and Windermere Watch?

23 A. So this agreement was executed in December  
24 of 2012. In January of 2013, we attempted to schedule  
25 a -- we actually didn't attempt. We scheduled a

1 conference call with Mr. Bennion, Mr. Deville,  
2 Mr. Sunderland, and Tim Pestotnik, the attorney in San  
3 Diego who had previously jointly represented all of  
4 us, to -- along with some of the executives of  
5 Windermere Services Company, to talk about Windermere  
6 Watch and what exactly could or should be done.

7 The initial -- that conference call was  
8 initially scheduled for January. It was then delayed,  
9 due to Mr. Bennion and Mr. Deville being unavailable,  
10 and I believe it eventually actually took place in  
11 February of 2013.

12 During that phone call, there was discussion  
13 about the possibility -- the option of litigation.  
14 And my recollection is that there was unanimous  
15 agreement that there was no good legal solution to  
16 this problem and that, assuming Mr. Kruger would, in  
17 fact, throw gas on the fire, to use the phrase that  
18 we've been using, and have the very real risk of  
19 making the situation worse, not better.

20 And there was a unanimous agreement that  
21 litigation would not be initiated, that that was a bad  
22 idea. There was also discussion about the possibility  
23 of contacting Mr. Kruger, to open a dialogue and  
24 negotiations. I mentioned earlier that we had made  
25 some attempt at that earlier in 2012, ultimately

1       unsuccessfully.

2               And so we raised the possibility of  
3       attempting to reopen those negotiations, possibly  
4       through some neutral third-party, to negotiate a -- to  
5       negotiate a payment, that we will pay you to take down  
6       your website and go away.

7               And my recollection of that conversation is  
8       that Mr. Deville was adamantly opposed to the idea of  
9       paying Mr. Kruger anything and did not want us to  
10      pursue that, and was concerned that -- he was  
11      concerned that even attempting those negotiations  
12      would throw gas on the fire, so to speak.

13              The ultimate resolution or the ultimate end  
14      result of that phone call was that there was agreement  
15      that the only solution that seemed to make both  
16      financial sense and practical sense, was to engage  
17      in -- this was really a technology problem, not a  
18      legal problem, not a money problem. This was a  
19      technology issue.

20              And the issue was when somebody Googled the  
21      name Bob Deville, Bob Bennion, Windermere at Palm  
22      Springs, et cetera. The issue was Google results.  
23      And the issue was people finding his website, and that  
24      there was less concern about his website existing if  
25      nobody ever could find it. And that the -- that,



1       therefore, this was really a technology question and  
2       that what we wanted to pursue was some effort to  
3       engage in so-called SEO, search engine optimization,  
4       efforts, to press down, push down, suppress  
5       Mr. Kruger's ranking in Google search results of  
6       certain key terms.

7                 And based on that, we asked our York Baur,  
8       who was the CEO of Windermere Solutions, LLC, our  
9       affiliated technology company, to engage with this  
10      dialogue and offer some guidance of what could be  
11      done.

12                Mr. Baur engaged -- in turn, brought in an  
13      outside consultant with expertise in the -- on the  
14      topics of SEO and reputation management who provided a  
15      memo with some recommendations of this is what could  
16      be done and could not be done and who had to do it and  
17      how.

18                And there was eventually a meeting that took  
19      place where Mr. Baur, I believe OB Jacobi, I believe  
20      Geoff Wood, that's everyone from our side, actually  
21      flew down to Southern California, met with -- I think  
22      both Bob Bennion and Bob Deville were present. I was  
23      not. And I believe that also Rich Johnson and Brian  
24      Gooding were also present.

25                And there was a meeting that took place to

1 talk about this issue among other technology issues  
2 more globally. And the result of that dialogue was a  
3 conclusion that, as a practical matter because of the  
4 way SEO works -- and I'm not an expert on this topic.  
5 This is -- you will have to speak with Mr. Baur about  
6 this for the technical details. But my high level  
7 understanding is that, because of the way SEO actually  
8 works in the real world, there was nothing that we, up  
9 here in Seattle, could do to effect the result that  
10 Bob Bennion and Bob Deville wanted and that they  
11 ultimately had to -- would you like me to pause --  
12 that ultimately they had to -- they had to do the  
13 heavy lifting themselves, but that this was really  
14 something that they had to do on their end for, again,  
15 technical reasons that I -- of which I have a very  
16 limited understanding.

17 Q. Is that everything?

18 A. Those are, I think, the key actions of which  
19 I am aware.

20 Q. Okay. So I had asked you to identify the  
21 commercially reasonable efforts that Windermere  
22 undertook to curtail the impact and activities of  
23 Mr. Kruger and Windermere Watch. And you have  
24 identified for me a conference call, some efforts by  
25 Mr. Baur, possibly the retention of outside

1           A.       I do not.

2                               (Whereupon Exhibit 27 was  
3                               marked for the record.)

4           Q.       I'm handing you a document that has been  
5           numbered Exhibit 27. This is another multi-page email  
6           chain. The email at the top of the page is from  
7           Mr. Bennion to Mr. Deville, cc'ing you and others,  
8           dated March 29, 2013.

9                       Do you see that?

10          A.       I do.

11          Q.       And does this email chain refresh your  
12          recollection, as to Lloyd's of London pulling their  
13          quote after learning of Windermere Watch?

14          A.       Give me a moment while I read it.  
15          (Reviewing Exhibit 27.) I see that this was an email,  
16          that I was one of the addressees. I -- I don't  
17          actually remember this or, if I received it, I don't  
18          remember reading the portion talking about the  
19          insurance issue.

20          Q.       Okay. What about the email from  
21          Mr. Deville, the second one down on the page, where he  
22          states, "Please advise where we are with the WRE  
23          watch"?

24                       Do you see that?

25          A.       I do.

1 Q. Did you respond to this email?  
2 A. I don't recall.  
3 Q. Do you know if anyone responded to this  
4 email from Windermere?  
5 A. I don't know.  
6 Q. Where was Windermere at that time with the  
7 Windermere Watch issue?  
8 A. In March 2013, so this was a month after we  
9 had -- we had the conference call in February, where  
10 the agreement was to try and do something technical  
11 with search engine optimization. I'm -- I don't  
12 recall where we were with Mr. Baur and his consultant,  
13 in terms of their work in trying to identify possible  
14 courses of action.  
15 Q. Had they done anything, between the meeting  
16 in January and this March 2 -- 29th date?  
17 A. I don't know.  
18 Q. Who would know?  
19 A. You'd have to ask Mr. Baur.  
20 Q. And who was Mr. Baur's direct report?  
21 A. Mr. Baur reports to himself. He's the CEO  
22 of Windermere Solutions.  
23 Q. And he doesn't report to Mr. Wood at all?  
24 A. He doesn't -- he reports to the shareholders  
25 of that entity. I believe that -- I believe that

1           A.       Again, that -- I don't think I can answer  
2       that question without divulging communications with my  
3       clients.

4           Q.       Let me put it this way. Did you observe a  
5       communication from one of your clients to Mr. Deville  
6       in response to his last email we just identified as  
7       Exhibit 27?

8           A.       I don't remember. I don't remember this  
9       email, I don't remember seeing Exhibit 27, nor do I  
10      remember if there was a response to it.

11                               (Whereupon Exhibit 28 was  
12                               marked for the record.)

13          Q.       And on April 20th, Mr. Deville again sent an  
14      email to you and others, asking where we are with  
15      Windermere Watch.

16                    Do you remember that email?

17          A.       Not specifically, but --

18          Q.       Do you remember generally?

19          A.       I remember generally that there were a  
20      series of emails.

21          Q.       And were you just ignoring those emails?

22          A.       Again, I cannot answer that question without  
23      disclosing communications between me and my clients.

24          Q.       Did you respond to any of Mr. Deville's  
25      emails?

1           A.     I don't believe I did.

2           Q.     I'm handing you single email, a single-paged  
3 email that we've marked as Exhibit 28. This is an  
4 email from Mr. Deville on April 20th to you and others  
5 informing you again that "Windermere Watch has come to  
6 bite us in the butt."

7                     Do you see that, the first line?

8           A.     I do.

9           Q.     And he talks about a \$5 million listing that  
10 they lost because of Windermere Watch.

11                    Do you see that?

12          A.     I do.

13          Q.     And the last sentence in Mr. Deville's email  
14 states, "Please advise what has been done since our  
15 phone discussion months ago about Windermere Watch and  
16 what the plan is to make this go away."

17                    Do you see that?

18          A.     I do.

19          Q.     What had happened between your phone  
20 discussion in April 20th?

21          A.     Again, I'm not sure what the status was at  
22 that point of efforts by Mr. Baur to identify or  
23 pursue technical solutions.

24          Q.     Is it possible Mr. Baur hadn't done anything  
25 by April 20th?

1           A.       It appears to be possible.

2                               (Whereupon Exhibit 29 was  
3                               marked for the record.)

4           Q.       All right. I'm handing you a document  
5       that's been marked Exhibit 29. This is another email  
6       chain. The top chain in the email is an email from  
7       Mr. Deville to Mr. Sunderland, but then the second  
8       email is from Mr. Bennion to Mr. Deville and  
9       Mr. Drayna, dated June 12, 2013.

10                   Do you see that?

11           A.       I do.

12           Q.       And in that email, Mr. Bennion tells you,  
13       "Yes, Paul, I really need an update. This is  
14       extremely uncomfortable and I was grilled on this."

15                   And he's referring to Windermere Watch,  
16       correct?

17           A.       Allow me to read it to see what he's  
18       referring to (reviewing Exhibit 29). Yes, it appears  
19       to be -- that appears to be what he is referring to.

20           Q.       And Mr. Deville's email preceding that,  
21       directed to you says, "Paul, please let me know what  
22       is being done about Windermere Watch."

23                   Do you see that?

24           A.       I do.

25           Q.       And did you respond to Mr. Deville's email

1 directed at you?

2 A. I don't believe I did.

3 Q. Why not?

4 A. I can't answer that question without  
5 disclosing communications between me and my clients.

6 Q. And now we're in June 12th. Are you able to  
7 identify the efforts, if any, that Mr. Baur has  
8 undertaken to combat Windermere Watch?

9 A. I do not know what efforts Mr. Baur had  
10 accomplished by that time.

11 Q. Is it possible he hadn't done anything?

12 A. That is possible.

13 Q. Do you have any reason to believe that he  
14 did do anything as of this point?

15 A. I don't recall that I -- I believe he was  
16 working on something, but I don't recall the exact  
17 dates.

18 (Whereupon Exhibit 30 was  
19 marked for the record.)

20 Q. I'm handing you a document that is marked as  
21 Exhibit 30. This is another email chain. This time,  
22 the top email in the chain is from Mr. Deville to you,  
23 Geoff Wood and others, dated July 31st, 2013.

24 Do you see that?

25 A. I do.



1 Q. Do you recognize this email?

2 A. I believe I do.

3 Q. And in the email, Mr. Deville asks --

4 A. I'm sorry. May I have a moment to read it?

5 Q. You may.

6 A. (Reviewing Exhibit 30.) Thank you. Go

7 ahead.

8 Q. Okay. By July 1st, 2013, you still had not

9 responded to any of Mr. Deville's or Mr. Bennion's

10 pleas concerning Windermere Watch, had you?

11 A. I don't believe I had.

12 Q. In Mr. Deville's email he states, "Geoff and

13 Paul, we continue to get bombarded with the same

14 negative campaign against Windermere in the desert, at

15 the coast, and in our San Diego markets. Addressing

16 this issue needs to be made a priority. There has

17 been nothing forthcoming from Seattle on this matter.

18 And I respectfully mention again, we feel this is the

19 responsibility of the franchisor to protect its brand

20 and the brand we are selling."

21 Do you agree that it is the franchisor's

22 responsibility to protect the brand?

23 A. I agree that the franchise agreement

24 obligates us to defend the trademark.

25 Q. But you do not believe that there is an

1 obligation above and beyond the protection of the  
2 trademark?

3 A. I'm -- I'm not -- I think that the brand is,  
4 somewhat, a vague term. I'm not sure what that means.  
5 We have a responsibility to defend the trademark,  
6 which we take seriously.

7 Q. Mr. Drayna, you're in franchising and you've  
8 been doing it for some time, correct?

9 A. That's true.

10 Q. You have some independent understanding as  
11 to the term "brand" as it relates to franchising,  
12 don't you?

13 A. I do.

14 Q. What do you understand brand to be?

15 A. Brand is the -- the goodwill associated with  
16 the trademark.

17 Q. And do you feel that it was Windermere's  
18 responsibility to protect the goodwill associated with  
19 its mark?

20 A. I believe that we made an agreement with  
21 Mr. Bennion and Mr. Deville to take commercially  
22 reasonable efforts with regard to Windermere Watch.  
23 As I've already testified, I believe that we did so.

24 Q. That doesn't answer my question.

25 Can you please repeat my question?

1 (The reporter read back:  
2 "Q. And do you feel that it  
3 was Windermere's responsibility  
4 to protect the goodwill  
5 associated with its mark?")  
6 A. I believe that it was our responsibility to  
7 defend the trademarks and the rights that are  
8 associated with the trademarks.  
9 Q. Okay. In this email we're looking at,  
10 Exhibit 30 --  
11 A. Yes.  
12 Q. -- Mr. Deville states that these new San  
13 Diego owners, Mr. Gooding and Mr. Johnson, say that  
14 Windermere Watch is directly affecting their  
15 recruiting ability.  
16 Do you see that?  
17 A. Yes.  
18 Q. Did it concern Windermere that Windermere  
19 Watch is directly affecting the ability of these new  
20 franchisees to operate?  
21 A. I don't know that I can -- go ahead.  
22 MR. FEASBY: One second. Can you read  
23 back the question?  
24 (The reporter read back:  
25 "Q. Did it concern Windermere

1                   that Windermere Watch is  
2                   directly affecting the ability  
3                   of these new franchisees to  
4                   operate?")

5                   MR. FEASBY: Object to the form and to  
6                   the extent it calls for disclosure of attorney/client  
7                   communications.

8                   THE WITNESS: I agree it does encroach  
9                   into the realm of attorney/client communication.  
10                  Also, I don't -- to the extent that Windermere, the  
11                  company, was the company concerned, I don't know that  
12                  I can speak for the mental state of the company on  
13                  that point, without divulging attorney/client  
14                  communications.

15                 BY MR. ADAMS:

16                 Q.       I have not asked you to tell me what your  
17                 discussions are with your client or clients. Instead  
18                 I've asked you your position on this. But I'm going  
19                 to move on anyhow.

20                 Did you personally respond to Mr. Deville's  
21                 plea on July 31st that something be done concerning  
22                 Windermere Watch?

23                 A.       I don't recall.

24                 Q.       Do you recall if you ever responded to  
25                 Mr. Deville's pleas?

1 A. Yes, I did.

2 Q. When?

3 A. At some point in 2013, I remember that we  
4 had -- that there was some exchange back and forth  
5 between us in 2013. I don't remember the exact timing  
6 of that.

7 Q. Do you know if anybody else at Windermere  
8 responded to this July 31st plea of Mr. Deville  
9 concerning Windermere Watch?

10 A. I do not know.

11 Q. Now, would you agree that it's not realistic  
12 sometimes that audit financials be completed by the  
13 end of March 2013?

14 A. It is certainly true that our audited  
15 financials have occasionally taken longer. I believe  
16 that June 2013 ours actually were done right toward  
17 the end of March or earlier April.

18 Q. But you expressed to your area  
19 representatives that you appreciate the fact it may  
20 not be realistic to get those audits completed by the  
21 end of March, right?

22 A. It had been our experience that it was  
23 occasionally difficult to get them done by at that  
24 time frame, yes.

25 Q. And that difficulty was not a huge concern

1 Q. Now, throughout August 2013 and forward,  
2 Windermere continued receiving comments from its  
3 franchisees and concerns from its franchisees about  
4 Windermere Watch, correct?

5 A. I'm sure that's true.

6 Q. Do you remember any?

7 A. Again, I don't remember specifics.

8 Q. Okay. Now Mr. King threatened to leave  
9 because of Windermere Watch, didn't he?

10 A. I believe we already saw that marked as an  
11 exhibit, yes.

12 Q. And Mr. Deville sent an email to you on  
13 August 10th, asking you to tell him what's going on  
14 with Windermere Watch, right?

15 A. I -- I -- again, there were a number of  
16 emails. I don't remember the dates

17 (Whereupon Exhibit 48 was  
18 marked for the record.)

19 Q. I'm handing you a document we've just  
20 identified as -- marked 48.

21 A. (Reviewing 48.)

22 Q. This is a multi-page document that contains  
23 emails between you, Mr. Johnson, and Mr. Deville,  
24 along with others.

25 Do you see that?

1           A.     I do.

2           Q.     Okay. And the email at the bottom of the  
3 page, there's some concerns voiced by Mr. King, right?

4           A.     No. This is from Rich Johnson, not Rich  
5 King.

6           Q.     I'm sorry. Thank you.

7                 Mr. Johnson, concerns voiced by Mr. Johnson,  
8 right?

9           A.     Yes, it does.

10          Q.     And in response, Mr. Deville writes the  
11 email at the top. And he says, "Hello, Rich. I'm  
12 forwarding your email to our Seattle Windermere  
13 attorney."

14                 Do you see that?

15          A.     I do.

16          Q.     And he's referring to you, right?

17          A.     It appears he is.

18          Q.     And Mr. Deville is referring to you as "our  
19 Seattle Windermere attorney."

20          A.     He did refer to me that way.

21          Q.     Okay. And he says, "I've requested  
22 information on what's being done to combat this issue,  
23 as I am having the same problem in the desert and  
24 coastal offices."

25                 You see that?

1           A.       I do.

2           Q.       It says, "I've not heard back from Paul  
3 Drayna yet, but we'll ask once again for an update and  
4 what approach Windermere Seattle is taking on this."

5                   And then specifically Deville says to you,  
6 "Paul, could you please forward any information that  
7 you may have on responding and addressing this matter  
8 to Rich Johnson and copy me on what you send him.  
9 Thank you."

10                   Do you see that?

11          A.       I do.

12          Q.       Did you send an email to Mr. Deville between  
13 the meeting back in February of 2013 and this August  
14 10th email from Mr. Deville concerning the Windermere  
15 Watch matter?

16          A.       I was going to say. No, I don't think I  
17 did.

18          Q.       And I don't assume you want to explain why?

19          A.       I believe that I cannot explain why without  
20 disclosing privileged communications with my clients.

21          Q.       Do you know if anyone from Windermere  
22 contacted Mr. Deville about that Windermere Watch  
23 issue during at that time period?

24          A.       I do not know.

25          Q.       Now, in August of 2013 Mr. Sunderland gets



1 involved and sends you an email regarding the silence  
2 from Windermere on the Windermere Watch issue, right?

3 A. I do remember Mr. Sunderland -- I do  
4 remember an email from Mr. Sunderland, yes.

5 Q. And within a day, less than a day from  
6 receipt of Mr. Sunderland's email, you respond and  
7 send Mr. Sunderland an email and try to call him,  
8 don't you?

9 A. That may be correct. I don't remember  
10 exactly.

11 Q. And you didn't respond to Mr. Deville until  
12 he had to have his attorney contact you, right?

13 A. That appears to be what happened.

14 Q. And then, finally, on August 27th, you  
15 respond to Mr. Deville and try to set up a time to  
16 talk, don't you?

17 A. I believe I did try to set up a time to talk  
18 to him, yes.

19 (Whereupon Exhibit 49 was  
20 marked for the record.)

21 Q. I'm handing you a document I've just marked  
22 as 49. This is a multi-page email chain. The last  
23 email chain is from you to Mr. Deville dated August  
24 27th, 2013.

25 Do you see that?

1           A.       I do.

2           Q.       It says, "I've not heard back from Paul  
3 Drayna yet, but we'll ask once again for an update and  
4 what approach Windermere Seattle is taking on this."

5                   And then specifically Deville says to you,  
6 "Paul, could you please forward any information that  
7 you may have on responding and addressing this matter  
8 to Rich Johnson and copy me on what you send him.  
9 Thank you."

10                   Do you see that?

11          A.       I do.

12          Q.       Did you send an email to Mr. Deville between  
13 the meeting back in February of 2013 and this August  
14 10th email from Mr. Deville concerning the Windermere  
15 Watch matter?

16          A.       I was going to say. No, I don't think I  
17 did.

18          Q.       And I don't assume you want to explain why?

19          A.       I believe that I cannot explain why without  
20 disclosing privileged communications with my clients.

21          Q.       Do you know if anyone from Windermere  
22 contacted Mr. Deville about that Windermere Watch  
23 issue during at that time period?

24          A.       I do not know.

25          Q.       Now, in August of 2013 Mr. Sunderland gets

1 Q. And this language, "commercially reasonable  
2 effort," was some mutual agreement above and beyond  
3 that of good faith effort that you had proposed in  
4 your prior email, correct?

5 MR. FEASBY: Objection. Form.

6 THE WITNESS: I don't understand the  
7 question.

8 BY MR. ADAMS:

9 Q. What does commercially reasonable efforts  
10 mean?

11 MR. FEASBY: Objection to --

12 THE WITNESS: The --

13 MR. FEASBY: -- form.

14 THE WITNESS: You'd -- commercially  
15 reasonable efforts is a legal term of art. And I am  
16 not sure that I can say what it means in the context  
17 of an agreement governed by California Law, but I can  
18 say in general, commercially reasonable efforts means  
19 a level of effort that would be reasonable --  
20 considered reasonable by prudent business people in --  
21 under the circumstances.

22 BY MR. ADAMS:

23 Q. And is that different than good faith  
24 effort?

25 MR. FEASBY: Objection. Form.

1 an email that shows I did.

2 Q. Why did you wait until January 27th to  
3 contact Mr. Pestotnik?

4 A. I -- I don't remember what prompted that  
5 email in January of 2014.

6 (Whereupon Exhibit 50 was  
7 marked for the record.)

8 Q. I'm handing you a document I've just  
9 identified as Exhibit 50. This is an email that  
10 purports to be an email from you to Mr. Pestotnik  
11 dated January 27th, 2014.

12 Do you see that?

13 A. I do.

14 Q. Do you remember this email?

15 A. Vaguely, yes.

16 Q. Why didn't this email to Mr. Pestotnik occur  
17 before January of 2014?

18 A. I don't recall.

19 Q. What prompted this email in January 2014?

20 A. I also don't recall that.

21 Q. If you were so certain that there was  
22 nothing that could be done from a legal standpoint,  
23 why on earth are you even contacting an attorney at  
24 this point?

25 A. Again, I don't recall what happened in

1 January of 2014 that prompted us to reach out to  
2 Mr. Pestotnik to seek a referral to somebody who  
3 practices in the area of defamation and First  
4 Amendment law.

5 Q. And this is just 11 days after Mr. Wood  
6 informed Mr. Deville there was nothing that could be  
7 done from a legal standpoint.

8 Were you aware of that?

9 A. I was not.

10 Q. Do you believe that there was something that  
11 could have been done from a legal standpoint?

12 A. I don't remember what was going on in  
13 January of 2014. What this email shows is that we  
14 were -- I think it shows that we were engaging in  
15 precisely the analysis you -- you mentioned earlier,  
16 which was, has anything changed, is there something  
17 that may be -- is there something that has changed  
18 that would allow us to take some action now that we  
19 previously thought was inadvisable. I -- I don't  
20 remember what the -- I don't remember anything about  
21 this, or what came of it.

22 Q. I understood from your earlier testimony  
23 that Mr. Deville told you not to pursue a legal  
24 action; isn't that correct?

25 A. Mr. Deville, in February of 2013, was

1 adamantly opposed to legal action, as was everybody  
2 concerned.

3 Q. And you're doing it anyhow?

4 A. No, this does not -- reaching out to a  
5 lawyer to say, we're interested in maybe talking to  
6 someone again, can you give us a referral, does not  
7 constitute legal action.

8 Q. A referral for an attorney who practices in  
9 the area of defamation, correct?

10 A. To consult with, to explore whether or not  
11 any action could or should be taken.

12 Q. But the referral was for an attorney who  
13 practices in the area of defamation?

14 A. That is what we were asking for.

15 Q. And why didn't you do this earlier, if it  
16 was just some informal meeting as you are alluding to?

17 A. As I said, I -- I don't recall what led us  
18 to -- what led me to send this email in January 2014  
19 nor do I remember what, if anything, came of it.

20 Q. In February -- strike that.

21 In the 2013 year, did Windermere engage a PR  
22 firm to help combat Windermere Watch?

23 A. I'm not sure.

24 Q. Who would know that?

25 A. Noelle Bortfeld.

1 Q. And Gooding and Johnson's start -- growing  
2 concern in February -- I should say, more concerned in  
3 February of 2014 about the presence of Windermere  
4 Watch, correct?

5 A. Forgive me. One moment. I don't recall if  
6 there -- I don't recall if there was further  
7 interactions with them at that time.

8 Q. Just a week or two after you contacted  
9 Mr. Pestotnik concerning the referral of a defamation  
10 attorney, you also reach out to Mr. Sunderland about  
11 using Mr. Sunderland's private investigator that had  
12 previously looked into Mr. Kruger, correct?

13 A. I do remember that, yes.

14 Q. Why?

15 A. I think that we were -- I actually don't  
16 remember why we reached out to him at that time for  
17 the private investigator's contact information. I  
18 remember we did it. I don't honestly remember why.

19 Q. And did you pursue a private investigator?

20 A. I believe I had one phone conversation with  
21 him, but nothing further.

22 Q. Why not?

23 A. I don't recall.

24 Q. You don't recall why you reached out to him  
25 and you don't recall why you didn't pursue it?

1           A.     I don't. I remember asking Robert --  
2     Mr. Sunderland, for the -- for his name and number. I  
3     remember having one phone conversation with him, but  
4     we did not end up engaging him to do anything.

5           Q.     And you don't recall why?

6           A.     I don't.

7           Q.     Was that your decision?

8           A.     No.

9           Q.     March 3rd, 2014, in response to the numerous  
10    concerns and complaints voiced Mr. Bennion and  
11    Mr. Deville and franchisees in the Southern California  
12    region, a letter is sent from Geoff, Jill, and OB  
13    concerning Windermere Watch and other items.

14                Are you familiar at all with this letter I'm  
15    referring to?

16          A.     I am. Sorry.

17          Q.     Did you draft it?

18          A.     I'm sorry. Hold on one second. I just  
19    moved and the microphone cable made a noise. Am I  
20    still connected? Great. Sorry.

21          Q.     Did you draft this letter?

22          A.     I participated in its drafting.

23          Q.     And in the letter -- let me strike that.

24                Geoff, Jill, and OB are all executive  
25    officers of Windermere, correct?



1 A. That is true.

2 Q. What their formal titles?

3 A. Geoff's title is CEO. Jill's formal title  
4 is president. And OB, actually, I need to correct  
5 myself. I don't believe that OB is formally an  
6 officer of Windermere Real Estate Services Company.  
7 He is a -- he is an officer of Windermere Real Estate  
8 Company, the company that owns and operates the real  
9 estate offices.

10 Q. So Windermere -- you said Windermere Real  
11 Estates -- what was the name of that company?

12 A. The company I work for is Windermere Real  
13 Estate Services Company, DBA Windermere Services  
14 Company, or WSC for short.

15 Q. Are any of the -- well, strike that.

16 Are the real estate offices owned by that  
17 entity considered company-owned locations?

18 A. No.

19 Q. What are they considered?

20 A. Windermere Real Estate Services Company does  
21 not own any brokerage offices.

22 Q. What entity owns brokerage offices?

23 A. Windermere Real Estate Company does.

24 Q. That's what I was getting at. Thank you.

25 A. It's a separate corporation with separate

1 ownership.

2 Q. And are these offices franchise locations?

3 A. Yes.

4 Q. Each with a separate franchise agreement?

5 A. There is one franchise agreement for the  
6 corporation. The corporation has multiple offices.

7 Q. And are any of those offices within a mile  
8 radius of a franchise, another franchise location?

9 A. I'm not sure, off the top of my head. But  
10 I'm -- I don't know.

11 Q. Who would know?

12 A. Google Maps? Sorry.

13 Mr. Wood might know what the distances are  
14 between the offices.

15 Q. And these locations are all identified on  
16 Windermere's website?

17 A. Yes.

18 Q. All of the Windermere Real Estate Company's  
19 locations?

20 A. Yes.

21 Q. And all of the franchisee locations?

22 A. Yes. To clarify, they are franchisee  
23 locations, the Windermere Real Estate Company  
24 locations.

25 Q. In this letter from these executive

1 officers, they state that, "During the February 11th,  
2 2013, call, we unanimously agree that legal action  
3 would not prevent Mr. Kruger's activities and legal  
4 action would exacerbate the problem by aggravating  
5 Mr. Kruger and possibly attracting media attention."

6 Did you agree with that?

7 A. Yes, I did.

8 Q. Why did you contact Mr. Pestotnik just two  
9 weeks earlier?

10 A. As I --

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

13 THE WITNESS: As I've said, I don't  
14 actually remember what prompted the email to  
15 Mr. Pestotnik. I also believe that nothing came of  
16 it.

17 BY MR. ADAMS:

18 Q. Okay. In this letter, the executive  
19 officers at Windermere also say, "We also agree to  
20 make reasonable efforts to counter the impact of  
21 Windermere Watch, a hostile website run by Gary  
22 Kruger."

23 Isn't it true, though, that they agreed to  
24 make commercially reasonable efforts?

25 A. I believe that was the wording in the

[illegible]

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

IN WITNESS WHEREOF, I have hereunto set my  
hand and 6th day of September, 2016.

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

W

MEMORANDUM

To: All Windermere Owners and Managers

From: Paul Drayna, General Counsel, Windermere Services  
John Demco, Demco Law Firm, P.S.

Date: May 1, 2008

Re: Gary Kruger

We continue to be asked "why haven't you done anything to stop these mailings from the rat guy?" The short answer is because even if we sued him and won, the mailings would continue. The first amendment right of free speech makes it very difficult – appropriately so – to stop these kinds of campaigns.

Windermere Services did file a lawsuit against Mr. Kruger in 2005 for defamation – which by definition is the publication of a false statement that causes harm. You cannot sue somebody for telling the truth, nor can you sue somebody for merely stating an opinion. We believed – and still believe – that some of the statements Mr. Kruger has made crossed those lines, and have been demonstrably false.

While we were confident that we would win our case on the merits, in the end we dismissed our lawsuit against Mr. Kruger voluntarily. He has tried to spin this decision in subsequent mailings as evidence that we were simply using the lawsuit to "harass" him, or that we were afraid to "face a jury." The truth is we dropped our lawsuit against Mr. Kruger because even though we were confident we'd win, it would have been a hollow victory and accomplish nothing.

Because of the first amendment the court could not have ordered Mr. Kruger to stop his mailings entirely. The best we could have hoped for is that the court would have ordered him to stop making certain very narrow types of misleading or false statements. In short the mailings would not have stopped. If anything we were concerned that he would have felt emboldened. While we likely would have been awarded money damages as well, the reality is that Mr. Kruger has no assets. We would have never collected a penny, and had he declared bankruptcy (something he told us he was considering) any resulting judgment could have been discharged. We would have spent a lot of money to obtain a hollow moral victory, but in the end accomplished little or nothing. The only thing that was certain was that we couldn't guarantee the mailings would stop. That's really all we wanted.

Finally, it's important for you to know that that throughout our dealings with Mr. Kruger he repeatedly offered to stop his campaign entirely in exchange for money. A lot of money. More than we were willing to pay. While Mr. Kruger has claimed in subsequent mailings that our

Exhibit No.

8

Drayna

8-22-16

Cynthia A. Kennedy, CSR, RPR

WSC 1637

Ex. 72

lawyers tried to “force” him to give up his free speech rights, the fact is that he was the one offering to give it up in exchange for hush money.

Shortly before our scheduled trial date we were required to attend a settlement conference with Mr. Kruger. At the settlement conference a Superior Court judge mediated between the parties. That’s right – Mr. Kruger had a judge helping him to negotiate with us. And through the judge Mr. Kruger once again offered to sell his silence. We were simply not willing to pay his price. While Mr. Kruger would like you to believe that this is about “protecting the public” from “unethical” agents – in fact it’s about Mr. Kruger trying to irritate us enough to pay him to go away and be quiet.

Since we dropped the lawsuit his mailings have become increasingly frequent and bitter. He is obviously upset that we didn’t cave in to his extortion scheme. Now he’s punishing all of you, no doubt hoping that if he carries on long enough we’ll reconsider and pay his price.

We hope you will understand and agree with our decision to simply ignore Mr. Kruger. Every successful business has its detractors, and the law makes it virtually impossible to stop such people from telling the world what they think. The best we can do is carry on creating great experiences for our clients, and generating an increasingly louder and louder chorus of positive feedback to drown out this one desperate, angry voice.

---

**From:** Bob Deville  
**Sent:** Monday, October 29, 2012 2:32 PM  
**To:** 'Geoff Wood'; 'Paul Drayna'; Don Riley (donriley@windermere.com);  
'bbennion@windermereocal.com'  
**Cc:** attny-Robert Sunderland (rsunderland@sunmclaw.com)  
**Subject:** FW: Another Windermere-watch...

Just one more problem today to deal with

Bob Deville  
Broker/Owner  
Windermere Real Estate Southern California  
A Division of Bennion & Deville Fine Homes, Inc.

---

**From:** Eric Forsberg  
**Sent:** Monday, October 29, 2012 2:16 PM  
**To:** Bob Deville; Bob Bennion  
**Subject:** Another Windermere-watch...

<http://windermere-watch2.com>

So the guy is ready if one goes down.

---  
**Eric Forsberg - Director of Technology**  
Windermere Real Estate Southern California  
*A Division of Bennion & Deville Fine Homes, Inc.*  
74-996 HWY 111  
Indian Wells, CA 92210  
**Office:** 760-674-3452  
**Fax:** 760-674-3453

# **AGREEMENT MODIFYING WINDERMERE REAL ESTATE FRANCHISE LICENSE AGREEMENTS**

This "Agreement" is entered into as of December 18, 2012 by and among Windermere Real Estate Services Company, a Washington Corporation (referred to herein as "WSC"); Windermere Services Southern California, Inc., a California corporation ("Area Representative"); Bennion & Deville Fine Homes, Inc., a California corporation dba Windermere Real Estate Coachella Valley and/or Windermere Real Estate SoCal, and Bennion & Deville Fine Homes SoCal Inc., dba Windermere Real Estate SoCal (collectively referred to herein as "B&D"). The above-named persons and/or entities are sometimes collectively referred to as "the Parties".

## **Recitals**

WSC entered into a Windermere Real Estate License Agreement with Bennion & Deville Fine Homes, Inc. dated August 1, 2001. Area Representative was not a party to that original license agreement, but was subsequently added as a party by subsequent addenda thereto.

WSC and Area Representative entered into a Windermere Real Estate Franchise License Agreement with Bennion & Deville Fine Homes SoCal, Inc., dated March 29, 2011.

These agreements, as previously amended, are hereby collectively referred to as the "License Agreements." The Parties hereto desire to modify certain terms and conditions of the License Agreements.

Wherein an individual named Gary Kruger previously filed a lawsuit in Washington State Superior Court bearing case number 05-2-34433-4 SEA naming Windermere Real Estate Northeast, Inc., George Rudiger, Joan Whittaker and Windermere Real Estate Services Company alleging misrepresentation and/or other causes of action.

Wherein subsequent to the dismissal of the aforementioned lawsuit, Mr. Kruger and/or associates of Mr. Kruger have continuously engaged in an anti-marketing campaign against Windermere Real Estate Services Company and its franchisees including the utilization of web-based information and various website postings targeting Windermere (see [www.windermerewatch.com](http://www.windermerewatch.com) and [www.windermerewatch2.com](http://www.windermerewatch2.com)).

Wherein B&D believe that Windermere Watch has resulted in significant lost revenue to B&D.

Wherein the Parties contend that Mr. Kruger and/or others' actions through the Windermere Watch websites violate State (California & Washington) and/or federal laws.

Wherein through this Agreement, the Parties further intend to modify the terms and conditions of the License Agreements, as well as that certain Promissory Note dated

**Exhibit No.**

25

Drayna

8-22-16

Cynthia A. Kennedy, CSR, RPR

WSC 1215



**Agreement to Modify Windermere Real Estate License Agreements**

December 31, 2008 in the original principal sum of \$465,308.37, executed by Bennion & Deville Fine Homes, Inc. as Maker.

NOW, THEREFORE, for and in consideration of the promises and terms set forth herein, the undersigned Parties agree as follows:

**TERMS & CONDITIONS**

1. **Incorporation of Recitals.** The above recitals are incorporated herein by reference.

2. **Benefit of Counsel.** The Parties acknowledge that they have had the opportunity to and have in fact obtained the advice of legal counsel prior to entering into this Agreement. Each of the Parties hereto executes this Agreement with full knowledge of its significance and with the express intention of affecting its legal consequences.

3. **Consideration.** In consideration for the full and timely performance of each of the terms and conditions of this Agreement in the manner prescribed herein, the Parties agree to the following:

A. **Windermere Watch:** WSC agrees that it shall make commercially reasonable efforts to actively pursue counter-marketing, and other methods seeking to curtail the anti-marketing activities undertaken by Gary Kruger, his Associates, Windermere Watch and/or the agents of the foregoing persons. Such efforts may include litigation, at WSC's discretion. WSC shall pay all attorney's fees, costs, and other third party fees and costs associated with addressing Windermere Watch as contemplated herein. WSC shall seek input, suggestion and confer with B&D prior to taking action(s) regarding Gary Kruger and Windermere Watch. WSC covenants that it shall indemnify B&D and its directors, officers, owners and shareholders in any demand, action, proceeding, mediation, arbitration, lawsuit and/or Complaint of any nature whatsoever asserted by Gary Kruger, his Associates, Windermere Watch and/or the agents of the foregoing persons. Said indemnity includes the payment of Attorney's Fees and other costs/fees necessary to defend B&D, and its directors, officers, owners and shareholders and/or the payment of any judgment, settlement and/or award against the foregoing Parties. The indemnity shall not apply however to any claims arising from actions by B&D, or any of its shareholders, officers, directors or agents, which were not authorized in advance by WSC. B&D acknowledges that WSC has not and cannot guarantee any particular outcome of the efforts contemplated herein. The failure of WSC to eliminate windmerewatch.com shall not constitute a breach of this Agreement, so long as WSC has made commercially reasonable efforts to curtail the impact of the activities of Kruger and/or windmerewatch.

B. **Waiver of Unpaid Franchise & Technology Fees:** WSC and Area Representative hereby agree to waive and forgive Past Due Franchise Fees, and Technology Fees owing under the License Agreements in the sum total of

**Agreement to Modify Windermere Real Estate License Agreements**

\$1,151,060. A detailed breakdown of the amounts forgiven is attached as Exhibit A, and the amounts waived are summarized as follows:

(i) **Promissory Note:** Waiver and forgiveness of the complete unpaid balance remaining from original note dated December 31, 2008 including all past due fees and accrued interest with a present balance left of \$399,960.00.

(ii) **Franchise & Technology Fees for Bennion & Deville Fine Homes SoCal Inc., dba Windermere Real Estate SoCal:** Waiver and forgiveness of all Past Due Franchise and Technology Fees as well as all related charges for late fees and/or interest through March 31, 2012 in the amount of \$191,025.00 including any accrued late fees, interest and/or claims for recapture of previously discounted fees.

(iii) **Franchise & Technology Fees for Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate Coachella Valley:** Waiver and forgiveness of all Past Due Franchise and Technology Fees as well as all related charges for late fees and/or interest through March 31, 2012 in the amount of \$560,075.00 including any accrued late fees, interest and/or claims for recapture of previously discounted fees.

**C. Ramp up and Payment of Fees for April 2012 through present.** In addition, WSC and Area Representative agree to grant B&D a temporary reduction in Ongoing Franchise License Fees for a period of eight months. The "ramp up" reduction shall be applied retroactively as follows:

Months	Discount
April and May 2012	90%
June and July 2012	75%
August and September 2012	50%
October and November 2012	25%

Effective with fees for December 2012 (due in January 2013), Ongoing Franchise Fees shall revert to the full amount with no discount. WSC and Area Representative acknowledge that B&D has already paid fees for April through July 2012, inclusive, with the discounts applied. In consideration of the accommodations granted herein, B&D agrees to pay all fees for August through November 2012 to WSC and/or Area Representative no later than December 31, 2012. A detailed breakdown of the amounts owing through October is attached hereto as Exhibit A, but B&D acknowledge this does not include fees for November 2012 which have not yet been reported.

**D. Limitation & Cap Regarding Future Technology Fees:**  
Bennion & Deville Fines Homes, Inc., dba Windermere Real Estate Southern

**Agreement to Modify Windermere Real Estate License Agreements**

California and/or Windermere Real Estate Coachella Valley and Bennion & Deville SoCal Inc., dba Windermere Real Estate SoCal collectively shall be required to pay no more than a total \$25,000 per month of Technology Fees for a period of five years from the date of execution of this Agreement by all Parties. Said fees are to be calculated on the basis of \$25.00 per Agent.

**E. Five Year Term From B&D:** In exchange for consideration contained within Sections 3, B-C inclusive, and subject to Section 3, E herein, B&D covenant to remain as Windermere Real Estate franchisees for five years from the date of execution of this Agreement by all Parties. This term shall automatically expire in the event WSC becomes insolvent, files bankruptcy, fails to maintain proper licensing as required by State and/or Federal Regulations (provided that expiration of WSC's license(s) to sell new franchises in California shall not be considered such a failure for purposes of this Agreement), sells more than 50% of its interest in WSC or assigns the day-to-day administration and/or management of WSC's activity to any other entity without approval of B&D and/or if it is adjudicated that WSC has committed a material, uncured breach of this Agreement.

**F. Liquidated Damages Clause:** In the event B&D terminates its franchise with WSC prior to the expiration of five years from the date of execution of this Agreement by all Parties, the waiver and forgiveness as set forth within Sections 3, B (i)-(iii) shall be pro-rated against the total elapsed years from said date (including any increment thereof) on a straight line basis with no additional interest and/or other accrued fees.

**G. Personal Guarantee.** WSC and Area Representative agree that neither Robert L. Bennion nor Joseph R. Deville shall be personally liable for any of the amounts forgiven and/or waived pursuant to Sections 3, B (i)-(iii) above. All prior personal guarantees of said amounts are hereby released. The personal guarantees set forth in the License Agreements, and prior addenda thereto, shall continue to apply to amounts that become due and owing under the License Agreements on or after April 1, 2012.

**4. Warranty of Non-Reliance.** Each Party hereto represents and warrants that they have selected and retained their own experts and consultants to inspect, analyze and advise them regarding the nature, extent and cause of the alleged problems which are the subject of the this Agreement. Each Party further represents and warrants that they are not relying upon any representation, opinion, conclusion, recommendation or estimate expressed by or provided by any other Party and/or any other Party's experts or consultants.

**5. Warranty of Non-Assignment.** Each Party hereto represents and warrants that it has not sold, transferred, conveyed, assigned or hypothecated any of the rights, claims, or causes of action for the payments contemplated within Section 3, B (i)-(iii) herein.

**Agreement to Modify Windermere Real Estate License Agreements**

6. **No Admission of Liability.** The Parties acknowledge that the execution of this Agreement restructures previous obligations as to and between the Parties but said Agreement shall at no time and in any manner to be considered as an admission of liability or responsibility on the part of any Party.

7. **Attorney's Fees.** Notwithstanding the term contained within Section 3, A herein pertaining to the payment of attorney's fees and costs regarding Gary Kruger and Windermere Watch, the Parties hereto acknowledge and agree that each of them are to bear their own costs, expenses and attorney's fees arising out of or connected with the negotiation, drafting and execution of this Agreement, except that, in the event any action is brought by any Party hereto to enforce this Agreement the prevailing Party shall be entitled to reasonable attorney's fees and costs in addition to all other relief to which the Party or those Parties may be entitled.

8. **Construction of Agreement.** This Agreement shall be construed in accordance with its fair meaning, the captions being for the convenience of the Parties only and not intended to describe or define the provision in the portions of the Agreement to which they pertain. Each Party has agreed to the use of the particular language of the provisions of this Agreement, and any question of doubtful interpretation shall not be resolved by any rule of interpretation providing for interpretation against the Party who causes an uncertainty to exist or against the draftsman. The Parties further agree that Civil Code Section 1654, or any similar common law or equitable principle, is not applicable to this Agreement. Therefore, the terms of this Agreement have been freely negotiated by the Parties and this Agreement shall not be construed against any other Party or drafter. Nothing in this Agreement shall affect in any way those certain Loan Agreements, Promissory Notes and related documents between Robert L Bennion and Joseph R. Deville as Borrowers, and CARMED, LLC or Washington Loan Company, Inc. as Lenders.

9. **Governing Law.** This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed under the laws of the State of California. By signing this Agreement, the Parties select Riverside County Superior Court – Main in Riverside, California, and/or U.S. District Court located in Los Angeles, California as the proper and sole venue for any action filed to enforce, construe, or interpret this and/or any previous agreement(s) between the Parties.

10. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and each of their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, affiliates and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, associates and/or corporations connected with them including without limitation their insurers, sureties, and attorneys.

11. **Severability.** If any provision, or any part thereof, of this Agreement shall for any reason be held to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Agreement shall not be affected thereby.



Agreement to Modify Windermere Real Estate License Agreements

12. **Effective Date.** The Parties hereto deem this Agreement to be signed as of the latest day, month and year on which a Party executes this Agreement.

13. **Notices.** Communications between the parties to this agreement must be in writing and must be delivered personally, sent by first class mail, by facsimile, or by Federal Express to the following addresses:

**If to WSC:** Geoffrey P. Wood, CEO  
Windermere Real Estate Services Company  
5424 Sand Point Way NE  
Tel: (206) 527-3801  
Fax: (206) 526-7629  
E-Mail: gwood@windermere.com

**If to B&D:** Joseph R. Deville, President  
Bennion & Deville Fine Homes, Inc.  
71691 Highway 111  
Rancho Mirage, CA 92270  
Tel: (760) 770-6801  
Fax: (760) 770-6951  
E-Mail: bdeville@windermereocal.com

A party may change the listed address by written notice to the others. Communications are effective when actually received.

14. **Counterparts.** This Agreement may be executed in several counterparts and all so executed shall constitute one agreement, which shall be binding upon all parties hereto, notwithstanding that all Parties' signatures do not appear on the same page. If an original signature is affixed by a Party to a counterpart of this Agreement, and a facsimile and/or electronic file (such as a "pdf" or "tif" file as attached to an e-mail) of such originally executed counterpart signature is thereafter telecopied or e-mailed to a Party or Parties' attorneys of record, the telecopied facsimile or e-mail shall be afforded the same validity as the originally executed counterpart, and may be relied upon by all Parties for any and all purposes relating to the Agreement.

15. **Confidentiality.** The terms of the Agreement include information of a proprietary and/or confidential nature. The Parties expressly understand and agree that it shall constitute a breach of the Agreement to disclose the terms of the same except to the Parties' attorneys and/or accountants or as may be required under a Court Order, subpoena and/or pursuant to an action to enforce the terms of the Agreement.

16. **Entire Agreement.** The Parties hereto have entered into this Agreement after extensive review and discussion. The Parties have incorporated the sum and substance of all such discussions and representations leading up to this Agreement within this document. As such, this Agreement constitutes the entire agreement to modify any previous obligations between the Parties hereto and as such, there are no other representations, agreements or promises, either written or oral, either as an inducement to

**Agreement to Modify Windermere Real Estate License Agreements**

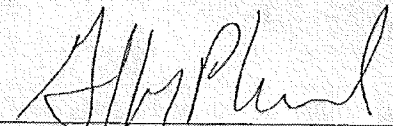
enter into this Agreement or as to its meaning or effect, which are not contained herein. It is the Parties' intent that any ambiguity or conflicting term between this Agreement and any other document or other agreement between the Parties shall be construed such that the terms within this Agreement supersede, control and take priority over any such conflicting term.

17. **Warranty of Authority.** Each individual executing this document on behalf of any Party represents that he/she has been authorized by said Party to execute this document, and does so execute this document on behalf of said Party.

18. **Amendment.** This Agreement may only be modified if the modification is in writing and is signed by the Party against whom enforcement is sought.

**Party Signatures:**

Dated: Dec. 21, 2012

  
\_\_\_\_\_  
Geoffrey P. Wood, CEO  
Windermere Real Estate Services Company

Dated: \_\_\_\_\_, 2012

\_\_\_\_\_  
Joseph R. Deville, President  
Bennion & Deville Fines Homes, Inc., dba  
Windermere Real Estate Coachella Valley and/or  
Windermere Real Estate SoCal; and Bennion &  
Deville Fine Homes SoCal Inc., dba Windermere  
Real Estate SoCal

Dated: \_\_\_\_\_, 2012

\_\_\_\_\_  
Robert L. Bennion, Officer  
Bennion & Deville Fines Homes, Inc., dba  
Windermere Real Estate Coachella Valley and/or  
Windermere Real Estate SoCal; and Bennion &  
Deville Fine Homes SoCal Inc., dba Windermere  
Real Estate SoCal

Dated: \_\_\_\_\_, 2012

\_\_\_\_\_  
Joseph R. Deville, President  
Windermere Services Southern California, Inc.

Agreement to Modify Windermere Real Estate License Agreements

Approved for Form:

Dated: Dec-21, 2012



Paul S. Drayna, WSBA#26636  
General Counsel for Windermere Real Estate  
Services Company

Dated: \_\_\_\_\_, 2012

Robert J. Sunderland, Esq.  
Sunderland | McCutchan, LLP  
Counsel for Bennion & Deville Fines Homes, Inc.,  
dba Windermere Real Estate Coachella Valley  
and/or Windermere Real Estate SoCal; and Bennion  
& Deville Fine Homes SoCal Inc., dba Windermere  
Real Estate SoCal

## Agreement to Modify Windermere Real Estate License Agreements

## EXHIBIT A TO AGREEMENT MODIFYING FRANCHISE AGREEMENTS

## AMOUNTS TO BE WAIVED (Through 3/31/12)

Source	WSC	WSSC	Total
Promissory Note dated 12/31/08	\$399,960	\$0	\$399,960
CV Ongoing Franchise Fees	\$202,500	\$202,500	\$405,000
CV Technology Fees	\$155,075	\$0	\$155,075
CV TOTAL	\$357,575	\$202,500	\$560,075
SoCal Ongoing Franchise Fees	\$85,000	\$85,000	\$170,000
SoCal Technology Fees	\$21,025	\$0	\$21,025
SOCAL TOTAL	\$106,025	\$85,000	\$191,025
TOTAL FEES TO BE WAIVED	\$863,560	\$287,500	\$1,151,060

## AMOUNTS TO BE PAID BY 12/31/12\*

CV Ongoing Franchise Fees	\$39,375	\$39,375	\$78,750
CV Technology Fees	\$53,775	\$0	\$53,775
CV TOTAL	\$93,150	\$39,375	\$132,525
SoCal Ongoing Franchise Fees	\$17,500	\$17,500	\$35,000
SoCal Technology Fees	\$13,550	\$0	\$13,550
SOCAL TOTAL	\$31,050	\$17,500	\$48,550
TOTAL DUE BY 12/31	\$124,200	\$56,875	\$181,075

\* These figures do not include fees for November 2012, which have not yet been reported, but which are also due in full no later than 12/31/12.



Agreement to Modify Windermere Real Estate License Agreements

enter into this Agreement or as to its meaning or effect, which are not contained herein. It is the Parties' intent that any ambiguity or conflicting term between this Agreement and any other document or other agreement between the Parties shall be construed such that the terms within this Agreement supersede, control and take priority over any such conflicting term.

17. Warranty of Authority. Each individual executing this document on behalf of any Party represents that he/she has been authorized by said Party to execute this document and does so execute this document on behalf of said Party.


18. Amendment. This Agreement may only be modified if the modification is in writing and is signed by the Party against whom enforcement is sought.

Party Signatures:


Dated: \_\_\_\_\_, 2012

Geoffrey P. Wood, CEO  
Windermere Real Estate Services Company


Dated: 12-20, 2012

  
Joseph R. Deville, President  
Bennion & Deville Fine Homes, Inc., dba  
Windermere Real Estate Coachella Valley and/or  
Windermere Real Estate SoCal; and Bennion &  
Deville Fine Homes SoCal Inc., dba Windermere  
Real Estate SoCal

Dated: 12-20, 2012

  
Robert L. Bennion, Officer  
Bennion & Deville Fine Homes, Inc., dba  
Windermere Real Estate Coachella Valley and/or  
Windermere Real Estate SoCal; and Bennion &  
Deville Fine Homes SoCal Inc., dba Windermere  
Real Estate SoCal

Dated: 12-20, 2012

  
Joseph R. Deville, President  
Windermere Services Southern California, Inc.

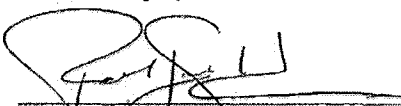
Agreement to Modify Windermere Real Estate License Agreements

Approved for Form:

Dated: \_\_\_\_\_, 2012

Paul S. Drayna, WSBA#26636  
General Counsel for Windermere Real Estate  
Services Company

Dated: 21 December, 2012



Robert J. Sunderland, Esq.  
Sunderland McCutchan, LLP  
Counsel for Bennion & Deville Fines Homes, Inc.,  
dba Windermere Real Estate Coachella Valley  
and/or Windermere Real Estate SoCal; and Bennion  
& Deville Fine Homes SoCal Inc., dba Windermere  
Real Estate SoCal

---

**From:** Bob Bennion <bbennion@windermere.com>  
**Sent:** Friday, March 29, 2013 10:04 AM  
**To:** Bob Deville  
**Cc:** Paul Drayna; Geoff Wood; bbennion@windermersocal.com; attny-Robert Sunderland (rsunderland@sunmclaw.com)  
**Subject:** Re: Windermere - EPLI

Yes this site was circulated among my Seattle clients and one very good client called to give me the heads up and thought I should know about it and was very concerned if Windermere was on and if we were going to be closing. Argh!

Sent from my iPhone

On Mar 29, 2013, at 8:54 AM, Bob Deville <bdeville@windermersocal.com> wrote:

See below

Please advise where we are with WRE Watch.

It has also cost us two listings on the coast (used by Sotheby's) and Bob B has had two clients in Seattle contact him directly about it.

I know we had one phone conversation a couple of months back but to date have had nothing else communicated on this issue.

Bob Deville

Bob Deville  
Broker/Owner  
Windermere Real Estate Southern California  
A Division of Bennion & Deville Fine Homes, Inc.

---

**From:** Troy McFadin  
**Sent:** Friday, March 29, 2013 8:32 AM  
**To:** Robert Sunderland; Bob Deville  
**Subject:** FW: Windermere - EPLI

Thought I would pass this on to you guys for review. I was able to get more clarification in a phone call with this broker. Apparently Lloyds of London had provided a fairly competitive quote for the EPLI insurance then pulled their quote after they found the Windermere Watch blog on the internet. I tried to get feedback directly from Lloyds but they didn't want anything to do with formal documentation, nor will they consider working with Windermere for any insurance purposes because of Windermere Watch.

**Troy McFadin** / Human Resource Director

Windermere Real Estate Southern California  
A Division of Bennion & Deville Fine Homes, Inc.

71-691 HWY 111 / Rancho Mirage, CA 92270  
Ofc 760-770-6801 / Mbl 760-898-3859  
Fax 760-770-6951  
[www.windermersocal.com](http://www.windermersocal.com)

Exhibit No.

27

DRAYNA

8-22-16

Cynthia A. Kennedy, CSR, RPR

B&D0044615

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this message is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

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**From:** Brad Butlin [mailto:brad@a-ains.com]  
**Sent:** Thursday, March 28, 2013 8:03 AM  
**To:** Troy McFadin  
**Subject:** Windermere - EPLI

Hi Troy,

I am working with a wholesaler to get Employer's Practices Liability Insurance quotes for your office.

During the process, the wholesaler mentioned that one of his markets ran across some information on the internet regarding Windermere and as result were hesitant to offer a quote.

THANKS!

*Brad Butlin*

AUSTIN & AUSTIN INSURANCE SERVICES INC  
BROKER  
CORP LICENSE # OC10853  
PH: 800.987.1475 F: 925.416.1693 E-FAx: 925.226.7543  
5890 STONERIDGE DRIVE #209 | PLEASANTON CA 94588  
VISIT US ON THE WEB AT [HTTP://WWW.A-AINS.COM/](http://www.a-ains.com/)  
[BRAD@A-AINS.COM](mailto:BRAD@A-AINS.COM)  
<image001.jpg>  
*SERVING THE REAL ESTATE COMMUNITY SINCE 1988*  
*E & O - WORKERS COMP - GENERAL LIABILITY*

---

**From:** Bob Deville  
**Sent:** Saturday, April 20, 2013 9:12 AM  
**To:** 'Paul Drayna'; Geoff Wood; 'bbennion@windermereocal.com'; attny-Robert Sunderland (rsunderland@sunmclaw.com)  
**Subject:** WRE Watch

Once again the WRE Watch has come to bite us in the butt.

I was in a listing presentation with an agent last week for a property in excess of \$5,000,000 with one of our agents and the seller Googled my name and Bob B name

Guess what popped up – WRE Watch.

Feel like we were set up in front of our agent but regardless the fact remains it is still directly affecting our business - we did not get the listing and I think I am going to lose the agent to Sotheby's.

Please advise has been done since our phone discussion months ago about WRE Watch and what the plans to make this go away.

Bob D

Bob Deville  
Broker/Owner  
Windermere Real Estate Southern California  
A Division of Bennion & Deville Fine Homes, Inc.

Exhibit No.

28  
DRAYNA

8-22-16

Cynthia A. Kennedy, CSR, RPR

B&D0044612

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**From:** Bob Deville  
**Sent:** Wednesday, June 12, 2013 9:49 AM  
**To:** attny-Robert Sunderland  
**Subject:** Fwd: WRE Watch

FYI

Begin forwarded message:

**From:** Bob Bennion <[bbennion@windermere.com](mailto:bbennion@windermere.com)>  
**Date:** June 12, 2013, 9:43:55 AM PDT  
**To:** 'Bob Deville' <[bdeville@windermereocal.com](mailto:bdeville@windermereocal.com)>, 'Paul Drayna' <[pdrayna@windermere.com](mailto:pdrayna@windermere.com)>, <[bbennion@windermereocal.com](mailto:bbennion@windermereocal.com)>  
**Subject:** RE: WRE Watch

Yes Paul I really need an update. This was extremely uncomfortable and I was really grilled on this. I have sent several emails in the past with no response which I find equally disheartening. Thank you. Bob

---

**From:** Bob Deville [<mailto:bdeville@windermereocal.com>]  
**Sent:** Wednesday, June 12, 2013 8:48 AM  
**To:** Paul Drayna ([pdrayna@windermere.com](mailto:pdrayna@windermere.com)); [bbennion@windermereocal.com](mailto:bbennion@windermereocal.com)  
**Subject:** WRE Watch

Paul,  
Please let me know what is being done about the WRE Watch. It has now been months since we have discussed this problem and it is still affecting our business both in So CA as well as Seattle. Bob B was on a listing appt in the Highlands and was grilled up and down about WRE Watch. It is definitely being used against us by other real estate companies by subtly bringing it up on listing presentations. I met with a possible WRE Owner in So Cal last week and he kept bring this issue up to me as well. Have now heard he is doing a Sotheby's franchise.  
Bob D

Bob Deville  
Broker/Owner  
Windermere Real Estate Southern California  
A Division of Bennion & Deville Fine Homes, Inc.

Exhibit No.

29

DRAYNA

8-22-16

Cynthia A. Kennedy, CSR, RPR

B&D0034865

Nicole Lucas

---

**From:** Bob Deville  
**Sent:** Wednesday, July 31, 2013 11:35 AM  
**To:** 'Geoff Wood'; Paul Drayna (pdrayna@windermere.com)  
**Cc:** 'bbennion@windermereocal.com'; attny-Robert Sunderland (rsunderland@sunmclaw.com)  
**Subject:** FW: VoiceMail\_1375217617536.3gp  
**Attachments:** VoiceMail\_1375217617536.3gp; ATT00001.txt

Geoff and Paul,

We continue to get bombarded with the same negative campaign against Windermere in the Desert, at the Coast and in our San Diego markets.

addressing this issue needs to be made a priority. There has been nothing forthcoming from Seattle on this matter and I respectfully mention again we feel this is a responsibility of the Franchisor to protect its brand and the brand we are selling.

I was on another conference call yesterday with our new San Diego owners Brian Gooding and Rich Johnson concerning this matter. They say it is directly affecting their recruiting ability and as a result of this negative campaign from Windermere Watch it has prevented them from getting agents. I am experiencing the same problem in Orange County as well as the desert. I do not know if it is because of our size, more visible in the type of advertising and marketing we do or the personal success of Bennion & Deville in Southern CA and Seattle but it is coming at us from many sides. These guys are attaching Bennion & Deville's association with Windermere directly as well.

The postcard campaign is hitting our San Diego Windermere clients again and other real estate companies are using it every way possible to retain their agents that may be thinking about joining Windermere. They are also using Windermere Watch as a way retain sellers that want to transfer listings to Windermere.

Attached is a recent phone conversation from an Owner using Windermere Watch against us and he is not the only owner or company doing taking this approach.

The information on line on the Windermere web site that we have as a comeback is not enough to overcome this continuing problem.

Bob Deville

Broker/Owner

Windermere Real Estate Southern California A Division of Bennion & Deville Fine Homes, Inc.

-----Original Message-----

From: rrj2020@gmail.com [mailto:rrj2020@gmail.com]

Sent: Tuesday, July 30, 2013 3:47 PM

To: Bob Deville

Subject: VoiceMail\_1375217617536.3gp

Bob;

Here is the voicemail message.

Rich

Exhibit No.  
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DRAYNA  
8-22-16  
 Cynthia A. Kennedy, CSR, RPR

**From:** Bob Deville  
**Sent:** Saturday, August 10, 2013 3:13 PM  
**To:** 'Rich Johnson'  
**Cc:** Paul Drayna (pdrayna@windermere.com); attny-Robert Sunderland (rsunderland@sunmclaw.com); 'Geoff Wood'; 'bbennion@windermereocal.com'  
**Subject:** RE: Windermere Watch

Hello Rich,

I am forwarding your email to our Seattle Windermere attorney. I have requested information on what being done to combat this issue as I am having the same problem in the desert and coastal offices.

I have not heard back from Paul Drayna yet but will ask once again for an update and what approach Windermere Seattle is taking on this.

Paul could you please forward any information that you may have on responding and addressing this matter to Rich Johnson and copy me on what you send to him.

Thank You,  
 Bob deville

Bob Deville  
 Broker/Owner  
 Windermere Real Estate Southern California  
 A Division of Bennion & Deville Fine Homes, Inc.

**From:** rrj2020@gmail.com [mailto:rrj2020@gmail.com] **On Behalf Of** Rich Johnson  
**Sent:** Saturday, August 10, 2013 2:02 PM  
**To:** Bob Deville  
**Cc:** Brian Gooding  
**Subject:** Windermere Watch

Bob;

Another postcard has been sent to a seller of ours. The listing agent just came on board about a week ago from another company. This agent was not a former RL agent. We are not sure if we need to address this issue with our agents en mass or deal with these incidents one on one.

*In reading this guy's site, he states at the top of a page, "Windermere is the most poorly managed, unethical and predatory real estate company in America. Ethical agents are growing more and more reluctant to show Windermere listings these days, and potentially expose their clients to such catastrophic jeopardy."*

Seems like much of this statement is libelous and the parent company should be able to do something about it. Sending postcards to listings causing doubts and suspicion about our franchise is clearly very detrimental to our recruiting efforts. The fact these cards are sent without return addresses is clearly beyond the bounds of 1st amendment rights.

We had discussed getting some verbiage from the attorney's that talks to Windermere

**Exhibit No.**

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DRAYNA

8-22-16

Cynthia A. Kennedy, CSR RPR



Watch that we can use in our conversations here but have not seen anything yet. Does it exist and if so can we get it soon?

This is becoming very concerning to us and we wish that some action be taken and the matter of the postcards addressed in some way. Maybe we can talk before our company meeting on Tuesday morning to discuss and strategize.

Best Regards;

**Rich Johnson**

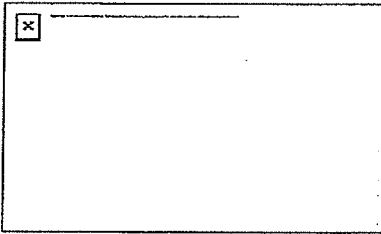
Owner.Broker


CA BRE# 01050097

858.609.6610 .O

858.412.7870 .C

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



My profiles: 

" "The only place where success comes before work is in the dictionary." - Donald Kendall "

**Rich Johnson**

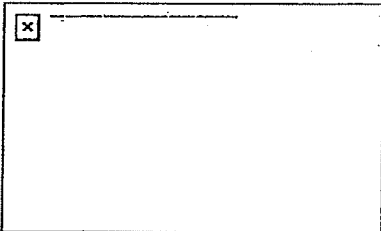
Owner.Broker


CA BRE# 01050097

858.609.6610 .O

858.412.7870 .C

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



My profiles: 

" "Strive not to be a success, but rather to be of value." - Albert Einstein "

---

**From:** Paul Drayna  
**Sent:** Monday, January 27, 2014 11:32 AM  
**To:** Pestotnik, Tim  
**Subject:** Defamation lawyer

Hi Tim. We are once again interested in exploring our options concerning our friend Mr. Kruger, and [windermerewatch.com](http://windermerewatch.com). We are interested in consulting more formally with somebody who practices in the area of defamation / first amendment law. Any suggestions?

---

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

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