

EXHIBIT C

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 YORK BAUR
18
19

20 Seattle Deposition Reporters

21 600 University Street, Suite 320

22 Seattle, Washington
23

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

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DEPOSITION OF YORK BAUR

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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 26 Email chain dated March 7, 2013, Subject: Tech fee addendum, B&D0044679-80	pre
EXHIBIT 87 Email chain dated September 26, 2014 - October 14, 2014, Subject: Issues with Windermere.com, B&D0038268-72	pre

1 fees collected by Windermere the franchisor are paid to
2 Windermere Solutions?

3 A. My understanding is 100 percent.

4 Q. And how do you reach that understanding?

5 A. I'm involved in the oversight of the
6 accounting functions of Windermere Solutions.

7 Q. And is Windermere Solutions' only method of
8 income these technology fees that are paid ultimately
9 from the owners and franchisees of the Windermere
10 franchisor system?

11 A. No.

12 Q. What other methods of income does Windermere
13 Solutions receive?

14 A. Many of the same technologies that we make
15 available to Windermere, we also make available to
16 brokerages elsewhere in the country, some of whom are
17 our clients and pay us for that use of that technology.

18 Q. And what technologies are those that you make
19 available to brokerages outside of Windermere?

20 A. The Moxi Engage CRM, the Moxi Present
21 presentation tool, also known as TouchCMA. Agent
22 websites, office websites, brokerage websites, email
23 services, and intranet services, which we call the Moxi
24 Hub, a variety of support services, consulting and
25 custom development services, training. At least those

1 are the major elements.

2 MR. FEASBY: I'm sorry. Can we take a
3 break real quick?

4 MR. ADAMS: We can. Off the record.

5 THE VIDEOGRAPHER: The time is 9:40 a.m.
6 We are now off the record.

7 (Off the record.)

8 THE VIDEOGRAPHER: Time 9:45 a.m. We are
9 now on the record.

10 BY MR. ADAMS:

11 Q. Okay. Mr. Baur, before our break, at which
12 time you spoke with your counsel, we were discussing
13 the services offered by Windermere Solutions to both
14 agents of Windermere franchisor and to outside
15 companies.

16 You're aware of that?

17 A. Correct.

18 Q. And we were discussing that --

19 A. Yes.

20 Q. -- topic?

21 A. Yes.

22 Q. And then I assume that these outside parties
23 pay monies to Windermere Solutions to use this
24 technology provided, correct?

25 A. That's correct.

1 Windermere. Windermere remains our largest revenue
2 client, and, therefore, they have -- and because of the
3 nature of the franchise network as well, it's always
4 evolving, and they have a variety of needs over time
5 that we do our best to meet.

6 Q. What percentage of Windermere Solutions
7 revenue is derived from Windermere? And to be
8 consistent with what I said earlier, what percentage of
9 Windermere Solutions revenue is derived from Windermere
10 franchisor?

11 A. Approximately half. I can't do the math just
12 right here, but approximately half.

13 Q. And then the other half would derive from
14 these outside parties?

15 A. That's right.

16 Q. And what percentage of that revenue is
17 dedicated to research and development?

18 A. I can't answer that. I don't know sitting
19 here.

20 Q. As the CEO of Windermere Solutions, you have
21 no idea how much of the revenue obtained from that
22 company is dedicated towards research and development?

23 MR. FEASBY: Objection. Form.

24 THE WITNESS: A substantial portion is.
25 We don't categorize our financials in that way, and,

1 quite follow that. Can you say that again?

2 BY MR. ADAMS:

3 Q. Sure. I want to know if you -- in providing
4 TouchCMA, do you charge the same whether or not the end
5 user is in the Windermere system or outside the
6 Windermere System?

7 A. No.

8 Q. Do you have different fee structures for
9 those in the Windermere System than you do for those
10 outside of the Windermere System?

11 A. Every client we have has its own structure.

12 Q. Okay. So as we've discussed earlier, you
13 understand you have been designated to testify as a
14 corporate representative on behalf of Windermere
15 franchisor with respect to specific categories,
16 correct?

17 A. Correct.

18 Q. And even though you are not an employee of
19 Windermere franchisor, you believe you are qualified to
20 testify as a corporate representative as to these
21 categories, right?

22 A. I do.

23 Q. And do you understand that you have been
24 designated to testify as to category 22, all efforts
25 undertaken by Windermere to prevent or disrupt

1 Windermere Watch's anti-Windermere marketing campaign?

2 A. I do.

3 Q. What do you understand Windermere Watch to
4 be?

5 A. My understanding is that it's a website
6 operated by and the content for which is generated by a
7 disgruntled former client of a real estate transaction
8 which Windermere was involved.

9 Q. And when you joined Windermere Solutions in
10 September 2012, was Windermere Solutions making any
11 effort to combat this Windermere Watch?

12 A. Yes.

13 Q. What was happening at that time?

14 A. A key piece of what we do for our clients is
15 to advise them on an ongoing basis for the role that
16 technology can play to help them in their business.

17 So to the extent that, excuse me, issues like
18 this come up, we routinely advise clients on what they
19 can do to improve their standing in search results and
20 -- and thereby mitigate competitors and others that
21 they would prefer not show up in those results.

22 Q. And the search results rankings is commonly
23 referred to as SEO?

24 A. Search engine optimization, SEO, is the term
25 that is typically applied, yes.

1 Q. And that means the search results for people
2 who go to Google, Yahoo, and other search engines who
3 type in the word "Windermere," correct?

4 A. That's one example of a keyword that someone
5 might type in, yes.

6 Q. Great. And when you came to Windermere
7 Solutions in September 2012, you understood that
8 Windermere Watch was coming up pretty high in the
9 search results, correct?

10 A. No, it wasn't clear to me when I came to the
11 company.

12 Q. Okay. At some point in time while you were
13 with the company, it did become clear to you though,
14 didn't it?

15 A. It did.

16 Q. And when was that?

17 A. I don't recall the exact timing, but it was
18 in response to a request made to me by Windermere
19 franchisor on behalf of a franchisee in Southern
20 California.

21 Q. At the time you joined Windermere Solutions
22 in September 2012, were any efforts being undertaken,
23 to your knowledge, to support the search engine
24 optimization for the term "Windermere"?

25 A. Yes. That's an ongoing process.

1 it in a geographic specific -- geographically-specific
2 way. We provide advice to Windermere franchisor and
3 its franchisees for what they can do in their specific
4 areas.

5 Q. Are you familiar with Long & Foster?

6 A. I am.

7 Q. Who do you understand that to be?

8 A. Depends on which entity you're referring to.
9 Long & Foster is -- has a holding company that owns
10 real estate, residential real estate brokerage,
11 commercial brokerage, mortgage title insurance, et
12 cetera. But they're a -- commonly known as a large
13 brokerage on the East Coast.

14 Q. And do you do any work with them?

15 A. We do.

16 Q. What do you do for them?

17 A. We supply them two of our products, Moxi
18 Engage CRM and the Moxi Present presentation product.

19 Q. And have you helped them in any way in
20 connection with their search engine optimization?

21 A. No.

22 Q. Okay. When you came on board in September
23 2012, what was, if anything, Windermere Solutions doing
24 with respect to Windermere Watch?

25 A. I wasn't aware of any. It wasn't -- it

1 didn't come to my attention at the time.

2 Q. And after you came on board in September,
3 2012, was there a period of time where it came to your
4 attention that something was being done with respect
5 the Windermere Watch?

6 A. Yes.

7 Q. When?

8 A. As I testified earlier, I don't remember the
9 exact time, but it was when Windermere franchisor
10 approached us for help in combating Windermere Watch
11 specifically in Southern California.

12 Q. And I am entitled to your best estimate of
13 time or dates.

14 Can you give me an estimate as to when that
15 occurred?

16 A. Yeah, I -- if I recall correctly, it would
17 have been the beginning sometime, maybe during the
18 first quarter of 2013.

19 Q. Okay. And who was this that approached you
20 about Windermere Watch?

21 A. Probably Paul Drayna, who is counsel for --
22 for Windermere franchisor.

23 Q. And what did Mr. Drayna tell you?

24 MR. FEASBY: I -- okay. Objection to the
25 extent it calls for the discloser of attorney/client

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

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

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

17 Q. When did you hire Mr. Sundberg?

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

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

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

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

5 A. Yeah.

6 Q. It's merely a guess?

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

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

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

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

16 A. He did.

17 Q. And when did his work start?

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

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

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

25 Q. Okay. Did you discuss the Windermere Watch

1 research phase of that issue as it had occurred
2 historically in many other parts of Windermere, was my
3 understanding.

4 And so I probably, as I testified earlier,
5 would have called some of the others involved to learn
6 more about the issue to help in the research and the
7 recommendations.

8 Q. But you don't recall a single name of anyone
9 else you called?

10 A. I don't -- I don't.

11 Q. Do you recall the name of the franchisor --
12 strike that.

13 Do you know the name of the franchisee who
14 you may have contacted?

15 A. I don't. I'm sorry.

16 Q. And do you recall when you spoke with
17 Mr. Forsberg?

18 A. I want to say perhaps October of 2013.
19 Certainly in the fall sometime.

20 Q. And why do you understand that conversation
21 to come about?

22 A. I think I testified earlier we had -- I had
23 personally hired this expert to generate the report, do
24 the analysis, research, and generate this report, and
25 so the report -- one of the findings in the report.

1 As I testified to earlier, this idea of
2 Legacy Systems that I described, systems do age and
3 there comes a point where, while you can improve them,
4 it's better to rebuild them on the next generation of
5 technology, so that was -- I know it -- I know it for a
6 fact that that was being done through the process. I
7 just can't correlate them to the specific increases.

8 Q. Okay. And so that what you're saying is the
9 fees paid by the agents, at least in part, went to the
10 research and development of new technology for
11 Windermere Solutions to offer, correct?

12 A. That's correct.

13 Q. And at what point in time do Windermere
14 Solutions start offering its technology to companies or
15 agents outside of the Windermere System?

16 A. It was before I started. And if I recall
17 based on the descriptions of it, it was fairly shortly
18 before I started. So probably within the 12 months
19 prior to my arrival. Maybe even less than nine months
20 prior, somewhere in that range.

21 Q. And do you know what regions or region that
22 those offerings were made?

23 A. I wasn't involved, but my understanding of
24 them was that it was made available nationally --
25 nationally outside of, at that time, the exclusivity

1 footprint that Windermere had with Windermere
2 Solutions.

3 Q. And what -- what was that exclusivity foot --
4 footprint at that time?

5 A. I believe it was everywhere that Windermere
6 operated at that particular juncture.

7 Q. So it's your understanding that Windermere
8 Solutions was not permitted to sell or offer technology
9 or technology-related services to agents outside of the
10 Windermere System that were located within their
11 regions where Windermere agents were located?

12 MR. FEASBY: Objection. Form.

13 THE WITNESS: Yeah. I don't -- I
14 wouldn't use the term "permission." I just think it
15 was practice. It was -- Windermere so dominates that
16 its -- its footprint particularly here in the
17 Northwest, that it -- it -- there isn't a lot of
18 opportunity to sell to others. So the richest
19 territories initially were deemed to be outside of
20 where Windermere is.

21 This is before my time though, so I'm
22 just recounting what I recall being told.

23 BY MR. ADAMS:

24 Q. As you sit here today, does Windermere
25 Solutions offer technology or technology-related

1 services to real estate agents or companies outside of
2 the Windermere System that are located within
3 Windermere's footprint?

4 A. Yes.

5 Q. Do they do that in Seattle?

6 A. No.

7 Q. Why not in Seattle?

8 A. As I've testified to a minute ago, it -- we
9 -- we enjoy -- from -- from the point of view of
10 Windermere Solutions, we enjoy a -- a large penetration
11 into the Seattle market because of Windermere's
12 absolute dominance of it. And so it wouldn't make a
13 lot of sense for us to apply our limited sales
14 resources to -- to selling here in -- in the Seattle
15 market when we have a great customer and a lot of
16 revenue from this market already.

17 Q. Okay. And does Windermere Solutions offer
18 its products to non-Windermere agents in California?

19 A. Yes.

20 Q. And when did that begin?

21 A. Shortly after I started with the company, and
22 so this would have been in between the fall of 2012.

23 Q. And was it one particular customer you had --
24 strike that.

25 Was it one particular customer that

1 Windermere Solutions had in California or multiple?

2 A. We initially only offered a single product
3 until very recently, and that product was TouchCMA. We
4 offered it initially through a relationship that we
5 created with the California Association of Realtors,
6 which is the 150 or so, 1,000 agent strong industry
7 organization in all of California.

8 And as such, while we initially sold it to a
9 few-100 agents directly, we rapidly discovered that
10 that was not a fruitful way to go about taking that
11 product to market and began calling on brokerage
12 clients broadly and -- and primarily in Northern
13 California because Windermere at that time had a large
14 Southern California presence, and also in Central
15 California, and our first customers -- our first
16 non-Windermere customers actually came in Northern and
17 Central California for that -- that TouchCMA product
18 only.

19 Q. And was the TouchCMA product also offered to
20 agents in Southern California?

21 A. Beyond this initial trial, no.

22 Q. But as part of this initial trial, they were
23 offered to agents in Southern California, correct?

24 A. Yes.

25 Q. And this initial trial was limited to the

1 relationship with the California Associate --
2 Association of Realtors?

3 A. Yes. Every -- our contractual relationship
4 with the California Association of Realtors made it
5 such that everything we did was in contact with them.

6 Q. And how did Windermere Solutions get the
7 funds to develop TouchCMA?

8 A. It was a combination of the revenues
9 generated from clients, Windermere, and others, and a
10 -- an ongoing -- I testified earlier to Windermere not
11 being -- Windermere Solutions, excuse me, not being
12 profitable.

13 When you run an unprofit -- unprofitable
14 business, you need either debt or equity financing,
15 obviously, to cover that -- that loss.

16 The various Jacobi-controlled entities
17 provided a combination of debt and equity financing to
18 the entity to cover its shortfall, and we, to this day,
19 rely on our investors to fund us so we can continue to
20 grow at a faster rate because we don't have to
21 concentrate on maintaining profitability.

22 Q. Now, in your response, you just referenced
23 revenue from Windermere franchisor and other clients.

24 But isn't it true that prior to the creation
25 of TouchCMA, Windermere Solutions did not have any

1 other clients but those in the Windermere System?

2 A. Yeah. But you -- you asked about the funding
3 of the development of TouchCMA, and it's never done.
4 It's an ongoing investment.

5 And, you know, for example, this year, we
6 made a massive reinvestment in a new presentation
7 capability inside that product, and so that -- the on
8 -- there's no longer the sense of -- and in effect,
9 this is to Windermere's credit, there's never been this
10 idea of build it once and forget it. These products
11 are always in an evolutionary cycle forever until
12 they're sunsetted and replaced by a next generation
13 product, and so that the ongoing development is funded
14 through the combination.

15 But -- but, yes, there were no clients prior
16 to -- to Windermere.

17 Q. So the creation of TouchCMA, prior to its
18 initial rollout in the fall of 2012, was funded by
19 Windermere franchisor and other investments from its --
20 from the investors of Windermere Solutions, correct?

21 A. Correct.

22 Q. And when it was rolled out in the fall of
23 2012, it was rolled out in California, at least in
24 part, correct?

25 A. Correct.

1 Q. And that rollout in California, at least in
2 part, also included agents in Southern California,
3 correct?

4 A. It did.

5 Q. When Windermere Solutions -- strike that.

6 When TouchCMA first rolled out in California,
7 were you alerted of any problems or issues with the use
8 of TouchCMA?

9 A. As I testified earlier, its software and
10 software always has some amount of issues, and -- I
11 mean, to this day we have them -- and I rely
12 principally on my team to manage. We have internal
13 processes for how we prioritize and work on problems
14 that occur. So, yes, I have a general awareness of it.
15 I wouldn't characterize it as unusual though.

16 Q. And at that time, as part of that fall of
17 2012 rollout, were you aware of any nondata issues with
18 TouchCMA?

19 A. As I testified to, I guess, a minute ago,
20 there -- there are ongoing software issues that need to
21 get corrected or enhanced, and there were those at that
22 time. It was also a new product, so that's to be
23 expected.

24 Q. Okay. So you were aware of these nondata
25 issues with TouchCMA, correct?

1 A. Yes.

2 Q. And you expected those issues, right?

3 A. Yeah. And they weren't unique to Southern
4 California, if that's -- I couldn't remember how you
5 asked your question. But they're not unique. They
6 were -- they were broad across the full board.

7 Q. Were there any, to use your term, issues,
8 with TouchCMA that were unique to Southern California?

9 A. Not that I recall, no.

10 Q. What about issues to TouchCMA when it was
11 first rolled out that were unique to the State of
12 California?

13 A. You have to keep in mind that California
14 Association of Realtors is the largest in the country.
15 That's pretty high bar for quality. And they vetted
16 the product before they entered into the contractual
17 relationship with us.

18 So, if anything, we concentrated
19 disproportionately on ensuring that there were no
20 California specific problems.

21 Now, as I testified to earlier, there
22 were individual data problems that followed the
23 processes that I described earlier, but those were
24 regionally specific and dealt with.

25 Q. And did that relationship with the California

1 Association of Realtors for the use of TouchCMA
2 continue past the fall of 2012?

3 A. Yes.

4 Q. And did it continue until today?

5 A. No. It's no longer in play.

6 Q. And when did that end?

7 THE WITNESS: What's the public record on
8 this?

9 MR. FEASBY: I don't know.

10 THE WITNESS: I'm really not comfortable
11 answering that question. We have confidentiality in
12 our agreement with them.

13 BY MR. ADAMS:

14 Q. You have a confidentiality provision in your
15 agreement with --

16 A. California Association of Realtors.

17 Q. -- California Association of Realtors?

18 MR. FEASBY: To the extent that's the
19 case, I -- you know what, just for -- I'm gonna
20 designate Mr. Baur's transcript as confidential for
21 purposes of the protective order issued by the Court,
22 and to the extent if you want to talk about specifics
23 with regard to customers, we can do that under the
24 attorneys' eyes only provision.

25 MR. ADAMS: Okay. Now, Counsel, we'll

1 talk about it off the record.

2 BY MR. ADAMS:

3 Q. But as you testified a moment ago at some
4 point in time, the TouchCMA relationship with the
5 California Association of Realtors ended.

6 A. Yes.

7 Q. And has it resumed?

8 A. No.

9 Q. Does Windermere Solutions continue to offer
10 TouchCMA to real estate agents in Southern California?

11 A. Yes. Windermere and -- and --

12 Q. I'm sorry?

13 A. I'm sorry. Windermere and non-Windermere.

14 Q. And ever since fall of 2012, has Windermere
15 Solutions consistently offered TouchCMA to
16 non-Windermere agents throughout California?

17 A. Yes. The thing that's probably worth
18 pointing out here is that the -- the investment that
19 was -- was not funded by technology fee from the
20 franchisees but rather by investment from our
21 investors, was specific at that time to building that
22 product out and represented more than \$1 million, and
23 so it was incumbent on me, as a CEO, to try to produce
24 a return for that, and that meant selling it broadly
25 within California as an example.

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1:34 P.M.

-oOo-

VIDEOGRAPHER: The time is 1:34 p.m.
It's the beginning of Disk 3, deposition of York Baur.
We are now on the record.

(Whereupon Exhibit 128 was
marked for the record.)

EXAMINATION (Cont'd)

BY MR. ADAMS:

Q. Mr. Baur, I have just slid in front of you a
document I've marked as Exhibit 128. It purports to be
an email from OB Jacobi to Mr. Deville dated July 18th
2012.

Do you see that?

A. I do.

Q. And I realize that the date of this document
is prior to your employment with Windermere Solutions,
but have you seen this document before?

A. No, I don't think so.

Q. Okay. Are you aware of a company by the name
of Sweepre?

A. Yes.

Q. And that I believe, according to this
document, is spelled S-W-E-E-P-R-E.

A. That's right.

1 Q. What is Sweepre?

2 A. Sweepre was an attempt at rebranding of the
3 Windermere Solutions entity as part of the
4 previously-existing market strategy before I was there.

5 Q. And when you say rebranding, to your
6 understanding, was Sweepre going to be some sort of
7 subsidiary entity or a DBA of Windermere Solutions?

8 A. I don't recall. I don't recall the -- the
9 corporate structure that was envisioned there.

10 Q. Do you know if Sweepre was ever actually
11 rolled out?

12 A. I would say it was maybe stillborn would be a
13 word in there. It was -- I recall there might have
14 been a website or at least a URL and some things. But
15 when I came to the company, I felt like that wasn't the
16 appropriate time to rebrand, and so I continued on the
17 course of Windermere Solutions, and we essentially shut
18 that stuff off gradually.

19 Q. Okay. And the point of Sweepre, according to
20 this email from Mr. Jacobi, was to sell the technology
21 offered by Windermere Solutions to noncompeting real
22 estate brokerages outside of the Windermere footprint,
23 right?

24 A. Let me read for a moment, please. (Reviewing
25 Exhibit 128.) Okay. Sorry.

1 Q. Do you have my question in mind?

2 A. No. I'm sorry, could you repeat it?

3 (The reporter read back
4 "Q. Okay. And the point of
5 Sweepre, according to this
6 email from Mr. Jacobi, was to
7 sell the technology offered by
8 Windermere Solutions to
9 noncompeting real estate
10 brokerages outside of the
11 Windermere footprint, right?")

12 A. Yes.

13 Q. And did you understand Sweepre to have any
14 other role?

15 A. There were a number of discussions that --
16 that I was a party to during my interview process in my
17 early time at Windermere Solutions as CEO in which we
18 discussed and debated various corporate structures that
19 would best accommodate what at that time was an
20 emerging future product road map. And so there were
21 many things discussed as to what we might do from an
22 entity perspective, and I don't remember all the
23 details, to be honest.

24 Q. And was another entity created that
25 ultimately replaced Sweepre in the role of selling

1 technology to noncompeting real estate brokerages?

2 A. No. Windermere Solutions, the entity,
3 Windermere Solutions, LLC currently sells to both
4 Windermere and non-Windermere clients.

5 Q. Okay. So Windermere Solutions will sell the
6 technology that we have discussed earlier on in your
7 deposition to Windermere clients and then potentially
8 competing real estate brokerages as well?

9 A. Right. In other words, this -- this was the
10 plan, hence this notice to owners and managers. But
11 when I came on board and there was subsequent
12 discussion, it was deemed that there might be better
13 approaches and subsequently, this was -- that was
14 abandoned.

15 Q. Now, if we read the first sentence of the
16 second paragraph of this email from Mr. Jacobi, it
17 states, "When we created our TouchCMA, we did so
18 knowing that it had the potential to be sold to
19 noncompeting real estate brokerages outside the
20 Windermere footprint," correct? You see that?

21 A. Correct, yes.

22 Q. By this point in time, July 2012, the
23 TouchCMA application was already being sold to real
24 estate agents, correct?

25 A. I believe at that point it was only being

1 sold to Windermere agents, but I was not there so I
2 don't know for sure.

3 Q. Not to the California Realtors Association?

4 A. California Association of Realtors was a
5 contract that I negotiated upon my arrival.

6 Q. Okay. And is it safe to say that the
7 California Association of Realtors has members that
8 are, in fact, competitors with Windermere agents?

9 A. Yes.

10 Q. And that those members that are sold the
11 Windermere Solutions technology are located some within
12 the Southern California area, right?

13 A. Yes. It was a change in strategy, and -- and
14 the -- and a subsequent communication of it that was in
15 -- that is different than and -- and, you know, amends
16 what's here, yes.

17 Q. And so then is it safe to assume that that
18 technology is used by other brokerages to compete with
19 Windermere real estate agents?

20 MR. FEASBY: Objection. Form.

21 THE WITNESS: Only in, I would say, a
22 small minority of cases, because of the relatively
23 small overlap between the Windermere footprint -- but
24 you can't think of it as just broadly as states. You
25 know, it's very specific to certain towns and

1 communities and so forth. So there -- there's a
2 relatively small overlap between the non-Windermere
3 customers in the Windermere footprint that have
4 TouchCMA and the Windermere offices in that same
5 footprint.

6 BY MR. ADAMS:

7 Q. But the TouchCMA has, in fact, been offered
8 to non-Windermere brokerages that operate within the
9 same territory as Windermere brokerages, correct?

10 A. I guess define "territory." Are you saying
11 like, for example, the State of California?

12 Q. Well, is -- let me ask you this. Do you
13 understand a real estate brokerage within the
14 Windermere System to have a particular region or
15 territory in which that brokerage operates?

16 A. Generally -- I don't -- I'm not aware of any
17 defined territories that may exist, but, you know,
18 beyond my knowledge because we only deal with the
19 technical part of it. But in general, it's our
20 observation that real estate is highly localized to
21 where the agents live and where the office is, not
22 entirely. They're free to typically do business where
23 they want, but it's typically highly localized.

24 So, for example, one of our first clients was
25 Paragon in San Francisco, downtown San Francisco, not

1 competitive to Windermere, Lyon Real Estate in
2 Sacramento, noncompetitive to Windermere, because
3 Windermere didn't have offices that had any meaningful
4 amount of business in those two territories. And was
5 there some agent that might have done some transaction?
6 Sure, probably. I don't know. But it wasn't seen as a
7 particularly competitive issue.

8 And -- and you can appreciate, from my point
9 of view, being invested in by the owners of Windermere,
10 I wasn't going out of my way to call first on their
11 direct competitors. So we -- while we didn't have that
12 restriction, we certainly aimed our efforts first at,
13 you know, the noncompeting footprints.

14 Also, excuse me, because in this, as you can
15 read in here, there is -- it's not that easy to sell to
16 a competing brokerage because of the Windermere name.
17 That was one of the ideas behind the name change
18 because they don't necessarily want to use technologies
19 controlled by their competitor. So we deliberately had
20 to call on people that didn't consider Windermere a
21 threat.

22 Q. Now, you used the term a moment ago
23 "noncompeting footprint," and similar terminology is
24 used in Mr. Jacobi's email.

25 What did you understand a footprint to be

1 when you said that?

2 A. Footprint is the core presence of a
3 Windermere office and in some radius surrounding it,
4 and it's hard to define specifically. But basically
5 the localities around where the Windermere offices
6 are.

7 Q. And do you know whether or not TouchCMA was
8 sold within that footprint of -- strike that.

9 Do you know whether or not TouchCMA was sold
10 to competitive brokerages within the footprint of
11 Windermere brokerages?

12 MR. FEASBY: Objection. Form.

13 THE WITNESS: As I testified a minute
14 ago, we -- so, let me -- let me offer a little bit more
15 color, too. We had one salesperson. She today is
16 still our VP of sales, and she and I collaborated quite
17 closely, as is typical in what effectively then was a
18 startup, so I was involved in the deals, and I was
19 giving a lot of direction. And as I testified a minute
20 ago, for -- for her reasons, she wasn't comfortable
21 pitching to competing brokers in the Windermere
22 footprint because it's harder. They don't -- they
23 don't want to take the competitor -- technology from
24 their competitor because they fear for the control of
25 that technology. And I was giving guidance and said

1 call where they aren't -- where Windermere is not
2 initially because we don't want to poke our largest
3 customer.

4 BY MR. ADAMS:

5 Q. And I appreciate that response, but it didn't
6 directly respond to my question.

7 A. I'm sorry. Go ahead.

8 Q. And the question was, now I'll paraphrase
9 here, did Windermere Solutions offer TouchCMA to
10 non-Windermere brokerages within the footprint of
11 Windermere brokerages?

12 MR. FEASBY: Objection. Form.

13 THE WITNESS: So, I -- I guess I'm -- I'm
14 -- my response centered around the word "offer." To me
15 offer means proactively go and call on a brokerage,
16 because that's the only way you could get it. So, to
17 me, to -- that's why my answer is no.

18 In theory, did my salesperson potentially
19 call on some of those? Could have been the case,
20 certainly. But we didn't -- it wasn't our strategy is
21 what I'm saying.

22 BY MR. ADAMS:

23 Q. Was TouchCMA ever sold or used by
24 non-Windermere brokerages within the footprint, as
25 described by you earlier, of other Windermere

1 brokerages?

2 A. It's difficult for me to answer without
3 having the data to look at, you know, various zip codes
4 and where those brokerages are, et cetera. It
5 certainly is possible.

6 In recent years, we now have 40 brokerage
7 clients and 40,000 agents using our technology across
8 the U.S., so it certainly is possible. And I can -- I
9 can think of at least one instance where that's now
10 true, but I'm not sure -- you know, you said "ever."
11 So in recent times, yes, but not initially.

12 Q. Isn't it capable that the transaction with
13 the California Association of Realtors resulted in just
14 that, the use by a competing brokerage of TouchCMA in
15 the footprint of a Windermere brokerage?

16 A. Yeah, I'm certainly not disputing that. It
17 certainly has happened now more recently and could have
18 happened then.

19 Q. Now, I know we testified at some length about
20 this earlier, but TouchCMA's principal role is to
21 provide a market analysis to perspective or current
22 clients, correct?

23 A. No. And it's -- unfortunate the name is
24 misleading, which is, by the way, the product is today
25 called Moxi Present, not TouchCMA.

1 advance of me, hadn't done it.

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

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

13 BY MR. ADAMS:

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

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

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

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

1 exact date.

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

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

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

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

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

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

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

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

7 Q. So you're not --

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

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

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

25 A. Obviously sometime between the first one and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 A. No.

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

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

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

18 A. Yes. I just told you.

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

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

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

1 from the time you engaged his services?

2 MR. FEASBY: Objection. Misstates
3 testimony.

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

7 BY MR. ADAMS:

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

10 A. I do.

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

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

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

24 A. Yes.

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

1 solution plan to combat Windermere Watch?

2 A. I can't recall the details of the -- of those
3 discussions, but it would have been along the lines of
4 the testimony I've given.

5 It's an incredibly frustrating issue for
6 people, and they just want it fixed, but,
7 unfortunately, the reality is, it's very challenging to
8 fix and must be fixed the way that I described.

9 Q. Were you aware that in September -- on
10 September 3rd, 2013, Mr. Deville, again, contacted
11 Windermere franchisor and stated that he and
12 Mr. Bennion were anxious to finally learn what Seattle
13 is doing without about Windermere Watch.

14 Were you aware of that?

15 A. I'm sorry. What was the date on that one?

16 Q. September 3rd, 2013.

17 A. Probably. That would have been in the time I
18 was preparing for the meeting that we talked about,
19 which was just a couple weeks later, so...

20 Q. Now, after that meeting that we've talked
21 about which, at least according to Mr. Schuster's email
22 was on September 17th, 2013, do you recall speaking
23 with -- strike that.

24 Do you recall following up with anyone in
25 Southern California after that meeting?

1 A. Yes. I don't recall the exact time, but I
2 believe the discussion with Mr. Forsberg where we
3 presented the detailed findings on that report was --
4 was thereafter, but I don't recall.

5 Also, I have had ongoing discussions with
6 Mr. Johnson and Mr. Gooding, primarily Mr. Johnson, on
7 various technology items over time. He consults me on
8 certain issues, and I've used him as a sounding board
9 for ideas as well.

10 (Whereupon Exhibit 130 was
11 marked for the record.)

12 Q. Mr. Baur, I'm handing you a document we've
13 identified as Exhibit 130. And this document appears
14 to be a single-page email from you to Mr. Deville and
15 Mr. Drayna dated October 1st, 2013.

16 Do you see that?

17 A. I do.

18 Q. Do you recall if you had any communications
19 with anyone about Windermere Watch between the
20 September 17th meeting and this email?

21 A. I'm sorry. Could you say that one more time?

22 Q. Sure. Do you recall any communications that
23 you had with anyone between that September 17th meeting
24 and this email?

25 A. I don't. But as I just said, I don't

1 remember the timing of the conversation with
2 Mr. Forsberg. It could have been in-between there. I
3 don't remember.

4 Q. Okay. And in this email, the second
5 paragraph, you state that "I was happy to hear from
6 your own SE -- SEO efforts" -- strike that. I
7 misspoke.

8 You state "I was happy to hear of your own
9 SEO efforts to combat Windermere Watch. I wasn't aware
10 that you had already had someone engaged for nine
11 months."

12 So you were happy to know that Mr. Bennion
13 and Mr. Deville were already working on SEO efforts in
14 relation to Windermere Watch, correct?

15 A. I learned that in the September 17th or
16 whatever that exact date is, that meeting. That was
17 news to me at that meeting.

18 Q. And you were happy to learn that news,
19 correct?

20 A. Yes. Because, as I've testified, it has to
21 be done locally. So the fact that they had already
22 been working on it for nine months, to me said they
23 probably had made some kind of progress, and it was
24 helping to raise their visibility. And I believe
25 Mr. Forsberg told me then in a subsequent call or

1 Do you see that?

2 A. I do.

3 Q. What was your plan at that time to help
4 combat Windermere Watch?

5 A. It's what I've already testified to. The
6 plan is to educate the local franchisee and its
7 resources on how to do content generation and placement
8 to -- to raise their -- their search engine visibility.

9 Q. You were aware that Mr. Bennion and
10 Mr. Deville had employed a lady by the name of Julie
11 Springer Holmes to assist with their SEO efforts?

12 A. I don't remember the name, but I suspect
13 that's the resource I'm alluding to here that
14 Mr. Forsberg and maybe Bennion & Deville would have
15 told me in the meeting, yeah.

16 Q. And is it your opinion that as of October
17 1st, 2013, Mr. Sundberg had already completed his
18 report?

19 A. I suspect so. You'll note here that he's now
20 head of marketing, so I subsequently hired Mr. Sundberg
21 as a full-time employees, which he still is. But I --
22 I suspect he completed the report prior to joining, but
23 I don't remember the exact timing.

24 Q. And after you exchanged -- strike that.

25 After you sent this October 1st email to

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

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

5 A. I've testified that --

6 MR. FEASBY: Objection.

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

8 MR. FEASBY: Asked and answered.

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

12 BY MR. ADAMS:

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

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

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

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

23 Q. What makes you presume that they were?

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

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

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

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

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

11 Do you see that?

12 A. I do.

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

16 A. Yes.

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

21 A. Yes, I see that.

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

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

1 Q. Knowing that the report was produced in --
2 generated in October 2013, do you have any new memory
3 as to when the Windermere Watch issue was first
4 communicated to you by Mr. Drayna?

5 MR. FEASBY: Objection. Misstates
6 testimony.

7 THE WITNESS: Yeah, firstly, I'm -- I
8 don't -- I'm not testifying that the report was
9 generated in October. I don't recall when the report
10 was generated. I see that that's when it was emailed
11 to Mr. Forsberg. I just don't recall the date of
12 generation.

13 BY MR. ADAMS:

14 Q. And if you found out it was generated in
15 October, would that change your memory with respect
16 to when Mr. Drayna first told you about Windermere
17 Watch?

18 A. Not necessarily. The two -- there's not some
19 magic date correlation between those two. Mr. Drayna
20 called me at one point. I took a series of steps --
21 steps that ultimately led to that report, and I don't
22 recall the -- the timing of the first call from
23 Mr. Drayna.

24 Q. So it's possible that he contacted you, as
25 you testified earlier, in early second quarter 2013,

1 and it took until October 2013 to generate this report?

2 A. As I said, I don't recall when the report was
3 generated. Let me explain the process by which that
4 happens.

5 There are often drafts generated and phone
6 conversations to review, various things and findings
7 along the way. It's not like the first time the
8 document existed in an email is -- is the first time
9 that the work was done. So that's why I'm saying I
10 don't recall.

11 Mr. Sundberg and I had a number of phone
12 conversations in there, and I just don't recall the
13 timing of those.

14 Q. Do you recall when the first draft of the
15 report was generated?

16 A. No.

17 Q. Do you even recall seeing a draft of the
18 report before it was sent to Mr. Forsberg?

19 A. Yeah. I'm almost positive I would have taken
20 a look at that before it was submitted.

21 Q. And at that point in time, how were
22 communicating with Mr. Sundberg?

23 A. I don't recall. He also came to the office a
24 number of times. We had a series of phone calls. We
25 had emails. I don't recall the exact nature of that.

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CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

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

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

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

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

From: York Baur <york@windermereolutions.com>
Sent: Tuesday, October 01, 2013 8:06 AM
To: Bob Deville
Cc: Paul Drayna (pdrayna@windermere.com)
Subject: great meeting you

Bob,

It was a pleasure to finally meet you in person, and I enjoyed the session we had in San Diego. Your new franchise there seems to be off to a great start – congrats on that

I was also happy to hear of your own SEO efforts to combat windermere-watch, wasn't aware that you had already had someone engaged for 9 months. As you know from talking to Paul, we at Solutions have our own SEO resources and have a plan for helping combat this too. I'd like to suggest that we connect Greg Sundberg (head of marketing) here with your SEO resource so they can compare notes. As you know, this is a fairly complex area, and the more they can benefit from each other's knowledge the better. Please let me know whom I should have Greg contact on your end to get this discussion going

Thx

york

From: Greg Sundberg
Sent: Thursday, October 17, 2013 4:14 PM
To: eforsberg@windermereocal.com
Cc: York Baur
Subject: Seattle Reputation Managment
Attachments: Recommendations for Bennion and Deville.xlsx; Bennion and Deville Reputation Proposal.docx

Hi Eric,

As discussed, we researched the current status of WindermereWatch.com as it relates to Bob Bennion and Bob Deville for searches done in the Seattle area.

A recap of the findings is contained in the word doc along with some recommendations for content and their sites. The excel doc contains a large list of specific changes to make on various sites on the internet.

I think you'll find these docs fairly self explanatory, but we'd be happy to arrange a call and walk you through them.

We'll go ahead and put in the developer requests to make the noted modifications on Windermere.com.

I look forward to seeing WindermereWatch fall to the bottom.

Let me know if you have any questions.

Best,
Greg

Greg Sundberg

Exhibit No.

132

Baur

8-26-16

Cynthia A. Kennedy CSR RPR

WSC019601

EXHIBIT D

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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

AND RELATED COUNTERCLAIMS)

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

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

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20 ALSO PRESENT: JOSEPH DEVILLE
21 ROBERT BENNION - Afternoon
22 session only
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DEPOSITION OF MICHAEL TEATHER

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Mr. Adams	7
Mr. Feasby	None

WITNESS INSTRUCTED NOT TO ANSWER

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1 CERTIFICATE

2
3 STATE OF WASHINGTON)
) ss.
4 COUNTY OF KITSAP)
5

6 I, the undersigned Washington Certified Court
7 Reporter, hereby certify that the foregoing deposition
8 upon oral examination of MICHAEL TEATHER was taken
9 stenographically before me on August 23, 2016, and
10 thereafter transcribed under my direction;

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

18 I further certify that in accordance with CR
19 30(e), the witness was given the opportunity to
20 examine, read, and sign the deposition, within 30
21 days, upon its completion and submission, unless
22 waiver of signature was indicated in the record.

23 IN WITNESS WHEREOF, I have hereunto set my
24 hand and 7th day of September 2016.
25

21 Cynthia A. Kennedy, RPR

22
23
24 NCRA Registered Professional Reporter
25 Washington Certified Court Reporter No. 3005
License expires November 16, 2016

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1:23 P.M.

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

EXAMINATION (Resumed)

BY MR. ADAMS:

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

Do you remember that?

A. Yes, I do recall that.

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

Are you familiar with Windermere Watch?

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

Q. What do you understand Windermere Watch to
be?

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

1 correct?

2 A. No. That's not my attitude --

3 MR. FEASBY: Objection.

4 THE WITNESS: -- at all.

5 Oh, I'm sorry, go ahead.

6 MR. FEASBY: Objection. Form and
7 misstates testimony.

8 THE WITNESS: I reexamine this question
9 to this day. And so I would never think of it as an
10 open-and-shut issue. It is a difficult thing for us,
11 that somebody has a website that says bad things about
12 a company we're very proud of and that I work for as a
13 living, so if I could think of something today to
14 solve the problem, I would do it. And I wouldn't be
15 so cynical as to say, I put it out of my mind.

16 BY MR. ADAMS:

17 Q. What efforts did you take after December 18,
18 2012, to combat Windermere Watch?

19 A. I think we hadn't spoken with the Siriannis
20 yet, or maybe we had. I -- I don't remember the
21 sequence of all the lawyers, so I couldn't tell you
22 with specificity.

23 Q. Can you identify a single thing that you did
24 after December 18th, 2012, to combat Windermere Watch?

25 A. No. But that's not because of a lack of

1 diligence. I can't think of anything else to do. As
2 I sit here in front of you, if you could think of
3 something at the do, I would do it, but I can't.

4 Q. Could anyone, to your knowledge, at
5 Windermere think of something else to do that hadn't
6 already been done with respect to Windermere Watch?

7 MR. FEASBY: Objection. Form.

8 THE WITNESS: We've had meetings that
9 have included most of our executive staff. I've had
10 discussions with many, many of our owners about this
11 issue. We've spoken with a great number of lawyers in
12 both official and unofficial capacities, and I've
13 spoken, not with just the people we've hired
14 professionally in the area of PR, but people who I
15 know informally who have faced these same issues, and
16 no, I can tell you with clear conscience, I can't
17 think of something else to do.

18 BY MR. ADAMS:

19 Q. So you end up having this meeting with
20 Mr. Bennion and Mr. Deville and other representatives
21 of Windermere in February 2013.

22 Do you remember the contents of that
23 meeting?

24 A. No. But if you had something to refresh my
25 recollection, I'm sure I could.

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2 CENTRAL DISTRICT OF CALIFORNIA
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16 VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF:
17 MICHAEL TEATHER
18 VOLUME II
19

20 Seattle Deposition Reporters
21 600 University Street, Suite 320
22 Seattle, Washington
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24 DATE TAKEN: August 24, 2016
25 REPORTED BY: CYNTHIA A. KENNEDY, RPR, CCR 3005

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DEPOSITION OF MICHAEL TEATHER

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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 MICHAEL TEATHER was taken stenographically before me on August 24, 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 7th day of September 2016.

1 work with our franchises with great regularity.

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

8 BY MR. ADAMS:

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

11 MR. FEASBY: Objection. Form.

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

16 BY MR. ADAMS:

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

19 MR. FEASBY: Objection. Form.

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

22 BY MR. ADAMS:

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

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

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

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

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

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

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

1 business? I don't know.

2 BY MR. ADAMS:

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

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

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

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

17 A. No, that is not my testimony.

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

20 MR. FEASBY: Objection.

21 THE WITNESS: I don't know --

22 MR. FEASBY: Form.

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

25 BY MR. ADAMS:

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

4 A. Yes.

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

7 A. Yes.

8 Q. Why?

9 A. Because I had read --

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

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

18 BY MR. ADAMS:

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

21 A. No.

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

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

1 Q. Who knew that you did it?

2 A. It would have been someone on our team,
3 Mr. Drayna, Mr. Wood. Someone. I don't know who.

4 Q. Why are you so sure you knew someone knew
5 that you did it if you don't know who it was?

6 A. Because I know what my practices are, and
7 what to do regarding Windermere Watch had been a
8 hot-button issue inside of our company, so I'm certain
9 that I would not write an email for any purpose
10 without consulting with others.

11 Q. And you're certain that you drafted an email
12 to Mr. Kruger to start the communication with him?

13 A. I believe so.

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

15 A. Not that I recall, no.

16 Q. And what came -- what came of your
17 communication with Mr. Kruger?

18 A. I believe I got a response back that
19 indicated to me that, in fact, this may be
20 Mr. Kruger's email.

21 Q. Isn't it true that you made a phone call to
22 Mr. Kruger and he responded to you and said, you need
23 to send me an email if you want to communicate?

24 MR. FEASBY: Objection.

25 THE WITNESS: No, I do not --

1 MR. FEASBY: -- misstates testimony.
2 THE WITNESS: -- recall that happened.

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

5 THE WITNESS: Oh, I'm sorry.

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

8 BY MR. ADAMS:

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

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

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

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

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

19 BY MR. ADAMS:

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

23 MR. FEASBY: Objection.

24 THE WITNESS: No.

25 MR. FEASBY: Form.

1 BY MR. ADAMS:

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

3 You are aware that Mr. Kruger posts
4 information about Windermere and its agents and
5 franchisees on the Windermere Watch website, correct?

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

7 Q. And you're also aware that Mr. Kruger posted
8 your communications with him on the Windermere Watch
9 website, right?

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

11 Q. Were you concerned that that might happen at
12 the time you contacted him?

13 A. I'm certain that I was careful in the email
14 not to write something offensive or something that I
15 wouldn't -- that I would be ashamed of if it was on
16 the website, yes.

17 Q. And then what came of that communication?

18 A. Nothing.

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

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

23 Q. Did Mr. Kruger seem amenable to
24 communicating with you?

25 A. I don't know that.

1 (Whereupon Exhibit 79 was
2 marked for the record.)

3 Q. Okay. I'm handing you a document that I've
4 identified as Exhibit 79, even though I skipped 78.
5 I'll get back to that.

6 A. Sure.

7 Q. This is a multi-page email produced by
8 Windermere in this litigation.

9 Do you recognize this email?

10 A. (Reviewing exhibit 79). Which -- the chain?

11 Q. Do you recognize this document?

12 A. Yes.

13 Q. Okay. And you recognize this to be a chain
14 of emails between you and Mr. Kruger?

15 A. Yes.

16 Q. And if you go with me to the very last page,
17 Bates numbered WSC 016056, you see an email from
18 Mr. Kruger, correct?

19 A. Yes.

20 Q. Okay. And if we go to the prior page, that
21 email starts with, "Mr. Teather, I will not speak to
22 you on this" -- I'm sorry. Strike that.

23 The email states, "Mr. Teather, I will not
24 speak with you on the phone. Please state your
25 business in an email to" and then provides an email

1 address.

2 Do you see that?

3 A. Yes.

4 Q. Would you like to change your testimony as
5 to how you initially communicated with Mr. Kruger?

6 MR. FEASBY: Objection. Argumentative.

7 THE WITNESS: No, I don't recall talking
8 to Mr. Kruger on the phone.

9 BY MR. ADAMS:

10 Q. Do you believe that you had Mr. Kruger's
11 email before Mr. Kruger sent you this email?

12 A. Did I have Mr. Kruger's email. I obtained
13 Mr. Kruger's email address from the investigation
14 file, so that's how I got his email.

15 Q. Do you have any understanding as to why
16 Mr. Kruger tells you that he will not speak to you on
17 the phone if you contacted him via email?

18 MR. FEASBY: Objection. Form.

19 THE WITNESS: No, I don't.

20 BY MR. ADAMS:

21 Q. Do you have any understanding as to why
22 Mr. Kruger is providing you with his email address if
23 you had already sent him an email?

24 A. No.

25 Q. In response to Mr. Teather's -- I'm sorry.

1 In response to Mr. Kruger's email, you responded,
2 correct?

3 A. Yes.

4 Q. And you offered to meet with him at a
5 location convenient to him?

6 A. Yes.

7 Q. Did he meet with you?

8 A. No.

9 Q. Instead of meeting with you, he asked you to
10 identify the purpose and objective of the meeting and
11 whether or not someone else from Windermere would be
12 attending, correct?

13 A. That is correct.

14 Q. And you told him that the purpose was to
15 discuss Windermere Watch and seek solutions, right?

16 A. Precisely.

17 Q. And that you would be attending by yourself
18 but that you would speak as a representative of
19 Windermere with the authority to speak for the
20 company?

21 A. Yes.

22 Q. Correct?

23 And you believe that's what you were doing,
24 speaking on behalf of the company?

25 A. Yes.

1 Q. And did that meeting occur?
2 A. No, it did not.
3 Q. And in response, Mr. Kruger said, "Please
4 delineate here in precise terms just what Windermere
5 considers a solution to be."
6 A. Correct.
7 Q. Did you do that?
8 A. No, I did not.
9 Q. What were the terms of your proposed
10 solution?
11 A. We never came up with terms for a proposed
12 solution.
13 Q. And you say in your email you want to seek
14 solutions, but did you have any means as to achieving
15 those solutions?
16 MR. FEASBY: Objection. Form.
17 THE WITNESS: We had ideas as to what
18 solutions would be. We tried to build consensus
19 amongst people as to what we should proposed, and I
20 believe Mr. Deville himself said that he didn't think
21 anybody should negotiate anything with Mr. Kruger.
22 In addition, one of the lawyers we were
23 consulting with, I don't remember whom, had some
24 concerns also, that it could make the problem worse to
25 pursue such a meeting further.

1 she stated, and we agreed, she didn't want to be the
2 area rep. She had an opportunity that she preferred
3 with a different company, so we worked together to
4 find a way that we could accommodate her goal.

5 Q. And her departure was six months after you
6 visited Northern California, correct?

7 A. That was my estimate yesterday.

8 Q. And is it your estimate today?

9 A. Yes, I think that's the approximate time
10 frame between our first visit and accomplishing the
11 goal.

12 Q. Okay. Now, are you aware that Mr. Bennion
13 and Mr. Deville's offices provided HR assistance for
14 employee issues faced by franchisees in the region?

15 A. No, I'm not aware of that.

16 Q. You never had any discussions with anyone
17 regarding the human resources support that Mr. Bennion
18 and Mr. Deville were providing to franchisees in the
19 region?

20 A. No, I did not ever have a discussion.

21 Q. If you learn that that type of support was
22 provided, would you find that to be a positive
23 contribution to the Windermere System?

24 A. I would have to know what support was
25 provided and how it helped.

1 Like, for example in today's deposition,
2 you've been consistently critical of technology, so
3 the mere fact that technology existed wasn't
4 beneficial. So I don't know if it was good support.
5 I hope so.

6 Q. As part of any of your discussions with
7 Ms. Pearson, did she threaten to file a lawsuit
8 against Windermere?

9 A. Not that I recall, no.

10 Q. Did Windermere threaten to file a lawsuit
11 against her?

12 A. No. Not that I recall.

13 Q. Did any litigation between the two parties
14 occur, to your knowledge?

15 A. No.

16 Q. Okay. Now, you've also been designated to
17 serve as a corporate representative for category 42;
18 is that correct?

19 A. (Reviewing Exhibit 2.) That is correct.

20 Q. And category 42 states, "Windermere's
21 termination of the Area Representative Agreement was
22 Services SoCal," correct?

23 A. That is correct.

24 Q. Now, I understand that you were involved in
25 the communications leading up to the termination of

EXHIBIT E

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3

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

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ALSO PRESENT: JOSEPH DEVILLE
ROBERT BENNION - 8:49-10:23

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DEPOSITION OF MICHAEL TEATHER

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Mr. Adams	272
Mr. Feasby	None

WITNESS INSTRUCTED NOT TO ANSWER

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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 5 Windermere Real Estate Services Company Area Representation Agreement For the State of California	pre

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 MICHAEL TEATHER was taken stenographically before me on August 24, 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 7th day of September 2016.

1 A. The same that I've already testified to.

2 Q. I recall testimony from you concerning
3 conduct that was taking place in 2012.

4 We looked at an email that you communicated
5 with Mr. Kruger before 2013, so it's not clear to me
6 what efforts you claim in 2013 and what efforts you
7 claim occurred in different times.

8 And I think you understand that this is an
9 important topic because a modification agreement
10 concerning Windermere Watch was entered into on
11 December 18th, 2012.

12 Do you understand that there's a
13 modification agreement that was entered into on
14 December 18th, 2012?

15 A. Yes.

16 Q. And you also know we looked at this
17 yesterday, correct?

18 A. Yes.

19 Q. And so you understand that the 2013 time
20 period is important because Windermere had an
21 obligation to undertake commercially reasonable
22 efforts to combat Windermere Watch after December
23 18th, 2012, right?

24 A. That is correct.

25 Q. What efforts did Windermere undertake to

1 combat Windermere Watch after December 18th, 2012?

2 A. I don't know which of the efforts we took
3 that took ongoing modification. I wasn't involved in
4 further discussions with lawyers, so I don't think
5 that was necessary what the consensus opinion was. It
6 wasn't a legal solution.

7 I assume or -- I guess, I shouldn't assume.
8 I don't know if the Talking Points that we gave to
9 people had to be modified or enhanced in some way.
10 I'm not aware of a marketing campaign we did. So I
11 don't know that I can answer your question as to how
12 the efforts changed in 2013. I think that the efforts
13 that were done in 2012 were the same as 2013.

14 And I don't think we reinterviewed all of
15 the lawyers, but I think what they told us in 2012, I
16 personally didn't know of anything that changed in
17 2013 that would have made that necessary.

18 Q. Okay. You've also been designated as
19 corporate representative to testify as to category 24,
20 correct?

21 A. (Reviewing Exhibit 2.) Yes, that is
22 correct.

23 Q. And category 24 states, "Communications
24 between representatives of Windermere and
25 representatives of Windermere Watch, including, but

1 not limited to, Gary Kruger regarding Windermere
2 Watch's anti-Windermere marketing campaign."

3 Do you see that?

4 A. Yes.

5 Q. Okay. And yesterday you testified about an
6 exchange you had with Mr. Kruger.

7 Do you recall that?

8 A. Yes.

9 Q. And we looked at an email regarding that
10 exchange, correct?

11 A. Yes.

12 Q. Okay. And do you know of any other
13 communications between representatives of Windermere
14 and Mr. Kruger?

15 A. No, I'm not aware of any other
16 communications.

17 Q. Do you know of any other efforts of
18 representatives of Windermere to communicate with
19 Mr. Kruger?

20 A. No. I believe it to be the consensus
21 opinion of all of us that considered that further
22 efforts would have a higher chance of making the
23 problem worse than improving it.

24 Q. Notwithstanding the consensus opinion, did
25 anyone else at Windermere reach out to Mr. Kruger?

1 A. Not that I'm aware of.

2 Q. Did Mr. Kruger attempt to contact anyone at
3 Windermere regarding this Windermere Watch?

4 A. Not that I'm aware of.

5 Q. And you personally did not make any other
6 attempts to communicate with Mr. Kruger outside of
7 that email exchange we saw yesterday?

8 A. Not that I'm aware of, no.

9 Q. Okay. You've also been designated as a
10 corporate representative to testify as to category 37.

11 Do you see that?

12 A. (Review Exhibit 2.) Yes.

13 Q. And category 37 states, "The contributions
14 of the B&D parties to the Windermere System."

15 Do you see that?

16 A. Yes.

17 Q. And do you understand the B&D parties to be
18 Mr. Bennion and Mr. Deville and their entities?

19 A. Yes.

20 Q. Do you believe that Mr. Bennion and
21 Mr. Deville and their entities made any positive
22 contributions to the Windermere System?

23 A. Yes, I do.

24 Q. What are those contributions?

25 A. I believe that a lot of the things they did

EXHIBIT F

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

13 VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF:
14 NOELLE BORTFELD
15

16 DATE TAKEN: August 31, 2016
17 Seattle Deposition Reporters
18 600 University Street, Suite 320
19 Seattle, Washington
20

21 REPORTED BY:
22 CYNTHIA A. KENNEDY, RPR, CCR 3005
23 Job No. 2372235
24

25 Pages 1 - 130

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21 Seattle, WA 98103
22 (206) 890-7573
23 icheadle@mac.com
24

25 ALSO PRESENT: JOSEPH DEVILLE

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DEPOSITION OF NOELLE BORTFELD
EXAMINATION INDEX

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Mr. Adams	7
Mr. Feasby	None

EXHIBIT INDEX

EXHIBITS FOR IDENTIFICATION	PAGE
2 Amended Notice of Deposition of Windermere Real Estate Services Company Pursuant to Federal Rules of Civil Procedure, Rule 30(b)(6)	pre
7 Windermere Real Estate FAQs, WSC1650-1653	pre
10 Phone Scripts, WSC 1634	pre
108 Letter dated February 10, 2010, from Debra Carnes and Shari Campbell to Geoff Wood and Noelle Bortfeld, Re: Mitigating attacks from dissatisfied homebuyers, B7D0000656-658	pre

1 A. After all the materials were communicated.

2 Q. Okay. So shortly after communicating these
3 materials in 2010, the Windermere Watch discussion in
4 the Northwest region died down?

5 A. Mountain West.

6 Q. The Mountain West region died down; is that
7 right?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes.

11 Q. Sorry. I just need an audible response.

12 But even though it's dying down in this one
13 particular region, Windermere Watch continued to be a
14 concern of yours, correct?

15 A. No.

16 Q. Okay. Didn't you continue to have meetings
17 to address Windermere Watch?

18 A. Yes.

19 Q. And you're having these meetings why?

20 A. Because I was requested to attend.

21 Q. Okay. But it wasn't something that you were
22 concerned with or concerned yourself with?

23 MR. FEASBY: Objection. Form.

24 THE WITNESS: I was concerned if an
25 owner or an agent was having an issue. I felt very

1 good typically after the interaction with them after I
2 was able to educate them, get them up to speed because
3 they were appreciative.

4 BY MR. ADAMS:

5 Q. Right. So you appreciate -- you interacted
6 with the agent after the agent raised the Windermere
7 Watch issue with you, correct?

8 A. I rarely interact directly with agents, so
9 it would be more likely an agent was having an issue.
10 We'd go to their owner, the owner then would contact
11 me.

12 Q. So you're very reactive in this process,
13 correct?

14 A. I wouldn't characterize it as reactive.

15 Q. Were you proactive?

16 A. I think hiring a PR firm, crisis management
17 firm was very proactive.

18 Q. And after those three materials were created
19 by JayRay, were there any efforts that you can
20 describe that were taken by Windermere franchisor that
21 were proactive with respect to Windermere Watch?

22 A. I don't know. My responsibility with this
23 Windermere Watch had been completed. Other activities
24 were other people's responsibilities.

25 Q. Okay. And your activities had been

1 completed but for those instances in which you
2 communicated with an owner in an isolated instance?

3 A. Correct.

4 (Whereupon Exhibit 154 was
5 marked for the record.)

6 Q. I'm handing you a document I've marked as
7 Exhibit 154.

8 MR. FEASBY: Thank you.

9 Q. This is a multi-chain email expanding one
10 page. The most recent email on the chain is from you
11 to Shelley Rossi dated April 22nd, 2013.

12 Do you see that?

13 A. Yes.

14 Q. And the topic for this email is the
15 Windermere Watch Meeting, you see that?

16 A. Yes.

17 Q. Why did you have this meeting in April of
18 2013?

19 A. I don't recall.

20 Q. Do you recall any discussions with Geoff
21 regarding Windermere Watch in 2013?

22 A. I don't recall.

23 Q. Did Geoff ask you to undertake any effort
24 with respect to Windermere Watch in 2013?

25 A. I don't recall.

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 NOELLE BORTFELD was taken stenographically before me on August 31, 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 14th day of September 2016.

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

EXHIBIT G

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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

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

JOB No. 2372236A
PAGES 1 - 137

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19 ALSO PRESENT: JOSEPH DEVILLE
20 VIDEOGRAPHER: LUCAS CHEADLE
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DEPOSITION OF MARK OSTER

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Mr. Adams	6
Mr. Feasby	None

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EXHIBITS

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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 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

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 MARK OSTER was taken stenographically before me on August 30, 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 14th day of September 2016.

<%signature%>
Cynthia A. Kennedy, RPR

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

1 Q. And is it your position that Bennion &
2 Deville Fine Homes, Inc. did not pay any fees either
3 directly or indirectly to Windermere franchisor since
4 July 1st, 2014?

5 A. That is correct.

6 Q. Do you know the payment made by Bennion &
7 Deville Fine Homes, Inc. prior to July 1st, 2014, to
8 Windermere?

9 MR. FEASBY: Objection. Form.

10 THE WITNESS: I don't.

11 BY MR. ADAMS:

12 Q. Do you know if it was a June payment?

13 A. I believe that they made payment in June of
14 '14 or for June of '14. It possibly could have been
15 made after that date. But those amounts have been
16 either paid or written off. I don't recall which.

17 Q. And under the contract, the amounts due are
18 due how long -- strike that.

19 Amounts that would be due for a particular
20 month are due when, 15 days after, 30 days after?

21 MR. FEASBY: Objection. Form.

22 THE WITNESS: Amounts are due on the
23 25th of the month following.

24 BY MR. ADAMS:

25 Q. Okay. So for the July month, this amount

1 that you've identified here in the top of Exhibit 139,
2 as an amount that would have been due payable from the
3 franchisee entity to Windermere franchisor either
4 directly or indirectly as of the 25th of August,
5 correct?

6 A. That's when the payment was due, correct.

7 Q. And you're stating today that that payment
8 was not made?

9 A. I am based on that data we're looking at.

10 Q. Do you know if any payments were made by the
11 franchisee entity for the Coachella Valley area to
12 Windermere franchisor after August 25th, 2014?

13 A. I don't believe so.

14 Q. Okay. The data that you have states that no
15 such payments were made?

16 A. The data that I have in front of us states
17 that these are the balances due. I can't recall if
18 there were payments made after that date that have
19 been applied to prior invoices that have been cleared
20 and are not listed on this document.

21 Q. Fair enough. But if a payment was made, it
22 would not have been applied to anything after this
23 July 1st, 2014, date, correct?

24 A. That's correct.

25 Q. And the total amount that you have owing

EXHIBIT H

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BENNION & DEVILLE FINE HOMES,)
INC., a California)
corporation, BENNION & DEVILLE)
FINE HOMES SOCAL, INC., a) Case No.
California corporation,) 5:15-CV-01921 R
WINDERMERE SERVICES SOUTHERN) (KKx)
CALIFORNIA, INC., a California)
corporation,)
)
Plaintiffs,)

vs.

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

AND RELATED COUNTERCLAIMS.

DEPOSITION OF ERIC FORSBERG
Irvine, California
Friday, July 29, 2016

Reported by:
Shari Stellhorn
CSR No. 2807
Job No. 2330921A

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BENNION & DEVILLE FINE HOMES,)
INC., a California)
corporation, BENNION & DEVILLE)
FINE HOMES SOCAL, INC., a) Case No.
California corporation,) 5:15-CV-01921 R
WINDERMERE SERVICES SOUTHERN) (KKx)
CALIFORNIA, INC., a California)
corporation,)
)
Plaintiff,)
vs.
WINDERMERE REAL ESTATE
SERVICES COMPANY, a Washington
corporation; and DOES 1-10,
Defendants.

Deposition of ERIC FORSBERG, taken on behalf of
Defendant and Cross-Complainant, at 4 Park Plaza,
Suite 1230, Irvine, California, beginning at
9:15 a.m. and ending at 11:50 a.m. on Friday,
July 29, 2016, before Shari Stellhorn, Certified
Shorthand Reporter No. 2807.

1 APPEARANCES:

2 For Plaintiffs:

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4 BY: KEVIN A. ADAMS, ESQ.

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5 949.252.9377

kadams@mulcahyllp.com

6 For Defendant and Cross-Complainant:

7 PEREZ WILSON VAUGHN & FEASBY

8 BY: JEFFREY A. FEASBY, ESQ.

CHRISTOPHER ROWLETT, ESQ.

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San Diego, CA 92101

10 619.702.8044

feasby@perezwilson.com

11 rowlett@perezwilson.com

12 Also Present:

13 Patrick Robinson

Joseph R. Deville

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WITNESS

EXAMINATION

ERIC FORSBERG

BY MR. FEASBY

5

EXHIBITS

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Exhibit 78

E-Mail with Attachments

91

1 talked about?

2 A Uh-huh.

3 MR. ADAMS: Yes?

4 THE WITNESS: Yes. Sorry.

5 BY MR. FEASBY:

6 Q And when did that -- when did you become
7 aware of that Windermere Watch website?

8 A I was first made aware of the website
9 because right after I was hired it was explained to
10 me that, you know what, there is this website out
11 there, we have this script that we provide to people
12 for how to -- how an agent can combat the negative
13 affects of the website. I read the website. At the
14 time it seemed to be focused on, obviously,
15 Windermere but in the greater Seattle area.

16 In 2011 it started to specifically list Bob
17 Deville and Bob Bennion and that jumped
18 significantly during that time frame. I could see
19 the traffic going in and out of our website, the
20 increases, so I knew something had changed, and it
21 was the Windermere Watch was suddenly using Bob
22 Bennion and Bob Deville repetitively all over their
23 website, and then as we got into the next year it
24 started to get worse in that Windermere Watch
25 started to list all of our agents, and they broke it

1 down by office, so each office had what the
2 Windermere Watch author called a report, and it
3 basically listed all the DRE numbers or the Cal BRE
4 numbers of all of the agents and all of their names,
5 and that's when I started getting lots and lots of
6 feedback from our own agents and from the other
7 owners in Southern California, because suddenly a
8 search for a realtor in Southern California would
9 show Windermere Watch.

10 Q When it first -- the Windermere Watch first
11 moved down to Southern California and it started
12 including Mr. Deville and Mr. Bennion, were you
13 asked to do something about it at that time?

14 A Almost immediately, I believe, yes.

15 Q And who asked you to do that?

16 A Mr. Deville and Mr. Bennion.

17 Q What did they ask you to do?

18 A Initially they asked for recommendations on
19 how to combat it.

20 Q And after that did they ask you to do
21 anything else?

22 A Repeatedly they asked me to make it my top
23 priority, which is to get Windermere Watch off of
24 search results that are negatively affecting our
25 business and the business of other Southern

1 only Bennion & Deville agents but agents of the
2 other owners in the area?

3 A Those complaints tended to flow to me
4 through the owners.

5 Q Through Mr. Deville and Mr. Bennion?

6 A The other -- the other --

7 Q I understand.

8 A So if you had an owner in Brea, the Brea
9 owner would tell, "My agents are upset," and it
10 tended to be that their clients were upset.

11 I can think of multiple occasions where
12 that's how the complaint became registered, because
13 a client would search for their own home when
14 they're buying it and they would find Windermere
15 Watch and they would vocalize their frustration to
16 the agent, and the agent would share that either
17 directly with me or through their managing broker
18 through their other owner within Southern
19 California.

20 Q The materials that you saw when you first
21 began working for Bennion & Deville related to
22 Windermere Watch, do you know whether those
23 materials were provided to the other owners in
24 Southern California?

25 A I think that they were. I recall seeing a

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 Certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set
6 forth; that any witnesses in the foregoing
7 proceedings, prior to testifying, were
8 administered an oath; that a record of the
9 proceedings was made by me using machine
10 shorthand which was thereafter transcribed
11 under my direction; that the foregoing
12 transcript is a true record of the
13 testimony given.

14 Further, that if the foregoing pertains to
15 the original transcript of a deposition in
16 a Federal Case, before completion of the
17 proceedings, review of the transcript []
18 was [] was not requested. I further
19 certify I am neither financially
20 interested in the action nor a relative or
21 employee of any attorney or any party to
22 this action.

23 IN WITNESS WHEREOF, I have this date

24 Subscribed my name.

25 Dated: August 5, 2016



SHARI STELLHORN

CSR No. 2807

1 talked about?

2 A Uh-huh.

3 MR. ADAMS: Yes?

4 THE WITNESS: Yes. Sorry.

5 BY MR. FEASBY:

6 Q And when did that -- when did you become
7 aware of that Windermere Watch website?

8 A I was first made aware of the website
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10 me that, you know what, there is this website out
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12 for how to -- how an agent can combat the negative
13 affects of the website. I read the website. At the
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18 significantly during that time frame. I could see
19 the traffic going in and out of our website, the
20 increases, so I knew something had changed, and it
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22 Bennion and Bob Deville repetitively all over their
23 website, and then as we got into the next year it
24 started to get worse in that Windermere Watch
25 started to list all of our agents, and they broke it

1 down by office, so each office had what the
2 Windermere Watch author called a report, and it
3 basically listed all the DRE numbers or the Cal BRE
4 numbers of all of the agents and all of their names,
5 and that's when I started getting lots and lots of
6 feedback from our own agents and from the other
7 owners in Southern California, because suddenly a
8 search for a realtor in Southern California would
9 show Windermere Watch.

10 Q When it first -- the Windermere Watch first
11 moved down to Southern California and it started
12 including Mr. Deville and Mr. Bennion, were you
13 asked to do something about it at that time?

14 A Almost immediately, I believe, yes.

15 Q And who asked you to do that?

16 A Mr. Deville and Mr. Bennion.

17 Q What did they ask you to do?

18 A Initially they asked for recommendations on
19 how to combat it.

20 Q And after that did they ask you to do
21 anything else?

22 A Repeatedly they asked me to make it my top
23 priority, which is to get Windermere Watch off of
24 search results that are negatively affecting our
25 business and the business of other Southern

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 Certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set
6 forth; that any witnesses in the foregoing
7 proceedings, prior to testifying, were
8 administered an oath; that a record of the
9 proceedings was made by me using machine
10 shorthand which was thereafter transcribed
11 under my direction; that the foregoing
12 transcript is a true record of the
13 testimony given.

14 Further, that if the foregoing pertains to
15 the original transcript of a deposition in
16 a Federal Case, before completion of the
17 proceedings, review of the transcript []
18 was [] was not requested. I further
19 certify I am neither financially
20 interested in the action nor a relative or
21 employee of any attorney or any party to
22 this action.

23 IN WITNESS WHEREOF, I have this date

24 Subscribed my name.

25 Dated: August 5, 2016



SHARI STELLHORN

CSR No. 2807

EXHIBIT I

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BENNION & DEVILLE FINE HOMES,)
INC., a California)
corporation, BENNION & DEVILLE)
FINE HOMES SOCAL, INC., a) Case No.
California corporation,) 5:15-CV-01921 R
WINDERMERE SERVICES SOUTHERN) (KKx)
CALIFORNIA, INC., a California)
corporation,)
)
Plaintiffs,)
vs.
WINDERMERE REAL ESTATE
SERVICES COMPANY, a Washington
corporation; and DOES 1-10,
Defendant.

DEPOSITION OF JOSEPH R. DEVILLE
Irvine, California
Wednesday, July 27, 2016
Volume II

Reported by:
Shari Stellhorn
CSR No. 2807
Job No. 2330918A
PAGES 259 - 426

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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

Deposition of JOSEPH R. DEVILLE, Volume II, taken
on behalf of Defendant and Cross-Complainant, at
4 Park Plaza, Suite 1230, Irvine, California,
beginning at 9:08 a.m. and ending at 2:42 p.m. on
Wednesday, July 27, 2016, before Shari Stellhorn,
Certified Shorthand Reporter No. 2807.

1 APPEARANCES:

2 For Plaintiffs:

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6 For Defendants:

7 PEREZ WILSON VAUGHN & FEASBY

8 BY: JEFFREY A. FEASBY, ESQ.

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10 feasby@perezwilson.com

rowlett@perezwilson.com

11 Video Operator: Joann Yager

12 Also Present: Mike Teather

Bob Bennion

1 (Recess.)

2 VIDEO OPERATOR: Back on the record. The
3 time is 1:21 p.m.

4 THE WITNESS: I'd like to correct a
5 statement that I made. 01:21:19

6 BY MR. FEASBY:

7 Q Okay. Just for the record, we're returning
8 from lunch and you had lunch with your attorney and
9 Mr. Bennion; is that correct?

10 A Correct. 01:21:28

11 Q And after that lunch you now seek to
12 clarify some testimony you gave?

13 A Correct.

14 Q And what testimony is that?

15 A Can I see Mr. Teather's letter? 01:21:36

16 Q I believe it's Exhibit 57. It's the
17 attachment to the e-mail there. Is that what you're
18 referring to?

19 A Yes.

20 Q Okay. 01:21:54

21 A My business partner brought it to my
22 attention and I heard the last -- I think it was
23 your last question to Paragraph 2 where, "It is my
24 understanding that Windermere Service Company
25 agreement to the loan extension and \$85,280 fee 01:22:21

1 credit resolves all current issues." And that, "As
2 of this date, the letter, WSC, is not in breach of
3 obligations, contractual or otherwise, owed to your
4 clients. Barring any material change in
5 Mr. Kruger's activities, we have agreed that there 01:22:43
6 is nothing further that Windermere Services Company
7 can or should be doing with regard to Windermere
8 Watch at this time. And that your clients will bear
9 the expense of any ongoing SEO efforts on their part
10 without taking further credits or offsets from 01:22:59
11 amounts they owe WSC. We agree that ongoing SEO
12 expenses will be more than offset. The substantial
13 discounts in both franchise and technology fees
14 granted your clients."
15 Q Yes. 01:23:20
16 A I disagree with that and that is a no.
17 Q No to all of that?
18 A That paragraph, yes.
19 Q And did you receive a copy of this letter
20 from Mr. Sunderland? 01:23:31
21 A Not that I recall. I -- I -- I think I did
22 get this, but this was never discussed prior to --
23 prior to the \$85,200 discount. My recollection is,
24 when my -- we discussed the 64,000 but there was a
25 lot -- a long delay with them getting back with us 01:24:12

1 so of course we were still continuing our efforts to
2 squash Windermere Watch, and at the date that they
3 were ready to kind of summarize things, I gave them
4 that 85,000 and Mike Teather said, fine. But as far
5 as this document, I -- I think I remember seeing it, 01:24:35
6 but I didn't sign it and we never agreed to this and
7 we never even discussed that last paragraph, so
8 that's -- no, I didn't hear your question right.
9 The yes before were am I reading the document and
10 that's what they said. That was my yeses but no to 01:25:00
11 that paragraph.

12 Q Okay. So you don't agree with
13 Mr. Teather's statement in that paragraph?

14 A My what?

15 Q You do not agree with Mr. Teather's 01:25:08
16 statement in that paragraph?

17 A Absolutely not, not absolving and no
18 further obligations, no, I do not.

19 Q And that's different than your testimony
20 before lunch when you indicated that that was the 01:25:18
21 parties agreement; correct?

22 A Yes, when I heard the question incorrectly.

23 Q And let me ask you this: After June of
24 2014, did any of Mr. Kruger's activities materially
25 change in terms of his Windermere Watch campaign? 01:25:33

1 A No. Just active as usual.

2 Q Okay. You indicated that you thought you
3 had received a copy of this letter from
4 Mr. Sunderland?

5 A I really don't recall. 01:26:56

6 Q And attached the amendment to the
7 promissory note at the back; do you see that?

8 A Yes.

9 Q Do you remember receiving that from
10 Mr. Sunderland? 01:27:09

11 A No. I get so many documents.

12 Q But after this June 3rd date of
13 Mr. Teather's letter attaching the Promissory Note,
14 you did sign this amended Promissory Note; correct?

15 A I don't remember signing this note. 01:27:28

16 Q Well, if you look at Exhibit 58, I believe
17 it's right there on the top, so if you look at this,
18 this is in fact a different version of the amendment
19 to the Promissory Note; do you see that?

20 A Yes. 01:27:55

21 Q And this one that was signed is more
22 detailed?

23 A The signed copy.

24 Q Correct?

25 A Yes. 01:28:06

1 Q And it was signed as October 3rd, 2014, at
2 the bottom there?

3 A Yes.

4 Q Which is several months after the June 3rd
5 letter; correct?

01:28:15

6 A Yes.

7 MR. ADAMS: Counsel, I'd like to make a
8 clarification on the record. You represented on the
9 record that my client had signed this version as
10 attached to the letter, but you're showing us --

01:28:24

11 THE WITNESS: May 23rd.

12 MR. ADAMS: -- you're showing us a
13 difference document now so, if my client had signed
14 that, would you please produce that to us?

15 MR. FEASBY: The one I was thinking about
16 is this one here.

01:28:33

17 MR. ADAMS: Thank you. Okay. So they had
18 not signed that one to your knowledge?

19 MR. FEASBY: That's correct, I don't know
20 that they have.

01:28:42

21 MR. ADAMS: Okay. Thank you.

22 BY MR. FEASBY:

23 Q This is the amendment to the promissory --
24 signed one that I've seen.

25 A I mean this just looks like a CYA kind of

01:28:48

1 after the fact from Mike Teather. As far as us
2 releasing all obligations to Windermere and that was
3 never discussed with us.

4 Q And that's --

5 A And Bob Bennion my business partner brought 01:29:04
6 that to my attention at lunch.

7 Q And do you have an independent recollection
8 now having discussed that were Mr. Bennion, of the
9 fact that that was not discussed before?

10 A I'm sorry. When? 01:29:17

11 Q As you sit here today, do you have an
12 independent recollection of the circumstances
13 surrounding this letter or is it just what
14 Mr. Bennion told you today?

15 A No. I have a recollection and never would 01:29:28
16 have agreed to this.

17 Q And Mr. Teather is a former attorney;
18 correct?

19 A If you want to say so, yes.

20 Q Did you know that he was a practicing 01:29:46
21 lawyer?

22 A Well, he always told me he used to be.
23 He's been a lot of things.

24 Q And lawyers write letter to -- write
25 letters like this to confirm points; correct? 01:29:55

1 I, the undersigned, a Certified Shorthand
Reporter of the State of California, do hereby
2 Certify:

3 That the foregoing proceedings were taken
before me at the time and place herein set
4 forth; that any witnesses in the foregoing
proceedings, prior to testifying, were
5 administered an oath; that a record of the
proceedings was made by me using machine
6 shorthand which was thereafter transcribed
under my direction; that the foregoing
7 transcript is a true record of the
testimony given.

8 Further, that if the foregoing pertains to
the original transcript of a deposition in
9 a Federal Case, before completion of the
proceedings, review of the transcript []
10 was [] was not requested. I further
certify I am neither financially
11 interested in the action nor a relative or
employee of any attorney or any party to
this action.

12
13 IN WITNESS WHEREOF, I have this date
Subscribed my name.

14 Dated: August 9, 2016

15
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17 

18
19 SHARI STELLHORN

20 CSR No. 2807
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EXHIBIT I

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

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF:
MICHAEL FANNING

DATE TAKEN: August 31, 2016
Seattle Deposition Reporters
600 University Street, Suite 320
Seattle, Washington

REPORTED BY:
CYNTHIA A. KENNEDY, RPR, CCR 3005
Job No. 2372235A

Pages 1 - 110

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ALSO PRESENT: JOSEPH DEVILLE
ROBERT BENNION - partial day

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DEPOSITION OF MICHAEL FANNING

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EXAMINATION BY	PAGE
Mr. Adams	6
Mr. Feasby	None

WITNESS INSTRUCTED NOT TO ANSWER

PAGE	LINE
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1 A. That would be Steven and Carol Curtis.

2 Q. Okay. And Carol Patterson Curtis, as
3 reflected in this Exhibit 148, is the originator of
4 the original email that was forwarded to you, correct?

5 A. Yes. And I do know Carol Patterson Curtis.
6 I did not know she had a middle name of Patterson. I
7 do know Carol Curtis. She is Steve Curtis' wife.

8 Q. Okay. And is Ms. Curtis still in the
9 Windermere System?

10 A. Yes, they are.

11 Q. And in this email, Ms. Curtis is expressing
12 concern over Windermere Watch, right?

13 A. She is, yes.

14 Q. What did you understand Windermere Watch to
15 be at this time in 2012?

16 A. It was a site that was grabbing all kinds of
17 court cases and talking about the negative side of --
18 saying that Windermere wasn't a trustworthy company.

19 Q. Are you aware that the site also grabbed the
20 names and real estate numbers of agents in the
21 California region?

22 A. Yes.

23 Q. And the office contact information for
24 Windermere offices in California, right?

25 A. Yes. That's what he does.

1 Q. And you're aware that -- that he -- the
2 owner of the Windermere Watch site does this?

3 A. I'm aware of it because if you look at the
4 site, you can see what he does.

5 Q. Okay. And if you see Ms. Patterson's email
6 the second paragraph, she says "As a largely unknown
7 in our marketplace, we don't want the public's first
8 impression to be that of Windermere Watch.
9 Accordingly, we very much appreciate whatever you can
10 do from your end to mitigate the damage being caused."

11 Do you see that?

12 A. I do see that.

13 Q. Did you do anything in response to this
14 email?

15 A. I know that we had conversations with them
16 about who -- what Windermere Watch was, and what they
17 could be prepared for, and that's -- it's -- we were
18 doing everything we can to try to figure out how to
19 deal with him.

20 Q. And Mr. Curtis, who I think you've
21 identified as Carol Patterson Curtis' husband --

22 A. Wife -- oh, Steve Curtis, yes.

23 Q. Okay -- later expressed to you concern that
24 the first thing that needs to happen is to get
25 Windermere Watch off page one internet search results

1 permanently because when people Google Windermere
2 franchises, Windermere Watch is the first item to
3 appear.

4 Do you recall that discussion?

5 A. Yes.

6 Q. And did you make any effort to get
7 Windermere Watch off of page one of the search
8 results?

9 A. That's not my area of expertise. That
10 information is shared higher up than me, and then
11 that's where they went to work on trying to figure
12 things out. But that's not any conversations that I'm
13 involved with.

14 My job as an area rep is to take those
15 concerns and pass those concerns on to the right
16 people that are dealing with them.

17 Q. Okay. So it's not the job of an area rep to
18 take action to lower Windermere Watch's SEO listings,
19 correct?

20 MR. FEASBY: Objection. Form.

21 THE WITNESS: It's -- I said it's not my
22 job. That's not -- that's not something that I have
23 expertise in to go figure out how to do that, and so
24 that's where that information, an email such as this,
25 is -- we would communicate back and acknowledge what

1 the challenges were, and then pass it on to the
2 appropriate people to deal with it.

3 Q. Right. And that's what you did as the area
4 rep for Northern California, correct?

5 A. Yes.

6 Q. You passed this information on to the
7 appropriate people.

8 A. Yes.

9 Q. And the appropriate people were who?

10 A. Jill and Geoff.

11 Q. And you informed Jill and Geoff of
12 Mr. Curtis' concerns that Windermere needed to take
13 action to permanently remove Windermere Watch off of
14 the first page of the search results, correct?

15 MR. FEASBY: Objection. Form.

16 THE WITNESS: If -- if that's what his
17 email says, yeah, that's what he was asking.

18 BY MR. ADAMS:

19 Q. Let's take a look.

20 (Whereupon Exhibit 149 was
21 marked for the record.)

22 Before we address this document, explain to
23 me what you understood your role to be as the area
24 representative for Northern California.

25 A. I'm sorry, can you ask that question again?

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 MICHAEL FANNING was taken stenographically before me on August 31, 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 14th day of September 2016.

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

From: Noelle Bortfeld
Sent: Wednesday, April 11, 2012 3:07 PM
To: Michael Fanning
Subject: FW: Windermere Watch
Attachments: image003.gif; image002.png

From: Walnut Creek [walnutcreek@windermere.com]
Sent: Wednesday, April 11, 2012 1:04 PM
To: Noelle Bortfeld
Subject: Windermere Watch

Steve and I appreciate your taking another look at this issue that just will not go away. We all appreciate the choice to take the high road and understand how difficult it is to challenge anyone's right to free speech. Still, where is the line between mere vitriol and slander or libel? At what point can one be compelled to "cease and desist"?

As a largely "unknown" in our marketplace we don't want the public's first impression to be that of Windermere Watch. Accordingly, we very much appreciate whatever you can do from your end to mitigate the damage being caused.

Thanks,

Carol

Carol Patterson Curtis | Agent Services

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Walnut Creek CA 94596
P: 925.256.1600 x 101
F: 925.256.3100
E: walnutcreek@windermere.com

[cid:image002.png@01CD17E3.B06D71B0]

[cid:image003.gif@01CD17E1.BFE21E40]

Exhibit No.

148

Fanning
8-31-16

Cynthia A. Kennedy, CSR, RPR

WSC014649