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10

11 Attorneys for Defendant and Counterclaimant
Windermere Real Estate Services Company

12

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

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

19 Plaintiffs,

20 v.

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

23 Defendant.

24

25

26

27 **AND RELATED COUNTERCLAIMS**

28

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

Hon. Manuel L. Real

**DECLARATION OF JEFFREY A.
FEASBY IN SUPPORT OF
WINDERMERE REAL ESTATE
SERVICES COMPANY'S
APPLICATIONS FOR RIGHT TO
ATTACH ORDERS AND ORDERS
FOR ISSUANCE OF WRITS OF
ATTACHMENT**

Date: December 19, 2016

Time: 10:00 a.m.

Courtroom: 8

1 I, Jeffrey A. Feasby, declare:

2 1. I am an attorney at law, duly licensed to practice law in the State of
3 California, and am one of the attorneys for defendant Windermere Real Estate
4 Services Company (“WSC”) in the above-captioned matter. I have personal
5 knowledge of the facts set forth in this declaration, and if called upon to testify
6 thereto, would do so competently.

7 2. As one of the attorneys for WSC, I am intimately familiar with the
8 discovery that has taken place in this case, including the production of documents by
9 all parties and documents received from third parties pursuant to subpoenas. These
10 documents are maintained in my office. In addition, I am familiar with the time that
11 my firm has devoted to this matter, as well as the amount of fees that have billed to
12 WSC over the course of this litigations. I am also the one at my firm who receives
13 all invoices from third party vendors for the costs incurred by WSC in this matter.

14 3. As of September 30, 2016, WSC had incurred and been billed for
15 \$405,860.52 in attorneys’ fees for this matter. WSC incurred additional attorneys’
16 fees in October, 2016, but those amounts have not yet been billed. WSC will
17 continue to incur attorneys’ fees as the parties prepare for trial and through trial.

18 4. In addition, as of September 30, 2016, WSC had incurred \$17,055.75
19 in court reporter and videographer fees for the depositions that have been taken in
20 this case. WSC has incurred additional amounts that it is not seeking as a part of its
21 applications for the right to attach orders, but that it will seek to recover when it
22 prevails at trial. WSC will likely incur additional costs between now and the
23 completion of the trial, which amounts it will seek to recover at the appropriate time.

24 5. Attached hereto as Exhibit A are true and correct copies of relevant
25 pages from the transcript of the deposition of plaintiff’s representative Patrick
26 Robinson. I tool Mr. Robinson’s deposition on July 29, 2016.

27 ///

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EXHIBIT A

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APPEARANCES:

For Plaintiffs:

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For Defendant and Cross-Complainant:

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CHRISTOPHER ROWLETT, ESQ.

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San Diego, CA 92101

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rowlett@perezwilson.com

Also Present:

Eric Forsberg

Joseph R. Deville

1 moved to California?

2 A I was working for Metro Cities Mortgage in
3 California.

4 Q Where is that located?

5 A I believe they're based out of Sherman
6 Oaks.

7 Q And where was the office where you were
8 working?

9 A In Palm Springs.

10 Q At the time you moved in 2003, did you have
11 any background in real estate?

12 A I did not.

13 Q Did you have any background in mortgages?

14 A I did not.

15 Q After you worked with Metro Cities
16 Mortgage, where did you go to work next?

17 A I worked for Windermere in Palm Springs.

18 Q And were you working for Mr. Deville?

19 A Yes.

20 Q Do you know who your employer was at that
21 time?

22 A It was Bennion & Deville Fine Homes and
23 Windermere Services Southern California.

24 Q When did you go to work for Mr. Deville in
25 Palm Springs?

1 A It was 2007, April.

2 Q When you began working there, what was your
3 job?

4 A I was -- my title was Director of Services.
5 I worked in the Accounting Department.

6 Q What were your job duties as Director of
7 Services?

8 A As Director of Services I would collect the
9 monthly statistical reports from the franchise
10 owners in Southern California and compile them into
11 a fees collected spreadsheet for Seattle, and I
12 would also collect franchise fees. I would also do
13 bookkeeping for some of our entities including some
14 payroll, and I would figure out commission
15 breakdowns on sales.

16 Q Anything else generally?

17 A Bookkeeping.

18 Q And you mentioned commission breakdown on
19 sales. Are you talking about the breakdown in terms
20 of the percentage that would go to the agent versus
21 to the broker?

22 A Correct.

23 Q And in terms of your job duties -- let me
24 ask you this.

25 When you began working with Mr. Deville,

1 commissions, it's gross net commissions.

2 Q And go ahead and look at page -- or excuse
3 me -- Exhibit 66. Do you recognize this document?

4 A Yes.

5 Q What is this document?

6 A This is the Windermere statement of
7 outstanding fees.

8 Q And this was a document that's prepared by
9 Windermere in Seattle?

10 A Yes.

11 Q And then would they send these statements
12 to you?

13 A Yes.

14 Q Would you receive statements for all the
15 franchises in Southern California?

16 A Generally, yes, I would.

17 Q And were you required to do anything with
18 those statements?

19 A I either -- I needed to look over them and
20 either send them out to the owners or I would
21 indicate back to the person in Seattle to okay to
22 send them out. I would reconcile with my numbers
23 and look them over.

24 Q So you would take these, compare them to
25 the numbers that you had from your spreadsheet and

1 confirm that they were accurate?

2 A Yes.

3 Q And which statements would you send out
4 versus the statements that were sent out by Seattle?
5 Does that make sense?

6 A It would be this one. Rarely did I send
7 this out; I let them send it out. They ran it by me
8 to look it over and okay it to send out.

9 Q So the statements to the franchisees would
10 typically then come from Seattle; is that correct?

11 A Yes.

12 Q On rare occasions you would forward them
13 out?

14 A Yes.

15 Q Is that true also of the statements that
16 were going to Bennion & Deville Fine Homes?

17 A I believe so. That's what these -- yes, I
18 believe so.

19 Q And to be clear, would you reconcile the
20 statements that were generated for all of the
21 franchisees in Southern California?

22 A Yes.

23 Q And this statement here has got a date at
24 the top Wednesday, September 30th, 2015, and the
25 first -- on the first page underneath says

1 Windermere Real Estate SoCal; do you see that?

2 A Yes.

3 Q And is that Bennion & Deville Fine Homes
4 SoCal, is that the franchise?

5 A Yes.

6 Q And if you look at the statement it's got
7 office name there on the left; do you see that?

8 A I do.

9 Q And the offices listed here if you go down
10 are Carlsbad, La Mesa Village and Laguna Niguel; do
11 you see that?

12 A Yes.

13 Q And for each of these it looks like the
14 balance started accruing in July of 2014; do you see
15 that?

16 A Yes.

17 Q And it continues on a monthly basis through
18 August 1st of 2015; do you see that?

19 A Yes.

20 Q Is it your recollection that
21 Bennion & Deville Fine Homes SoCal had not been
22 paying its franchise fees throughout this period of
23 time?

24 A Yes.

25 Q And if you look then on page that's Bates

1 stamp 57045, this looks like a statement that's got
2 listed there, Windermere Real Estates Coachella
3 Valley, Inc. Is that Bennion & Deville Fine Homes?

4 A Yes.

5 Q That's the franchise?

6 A Yes.

7 Q And it lists here a number of office names
8 Cathedral City, Indian Wells Main; correct?

9 A Yes.

10 Q Indio, La Quinta, Palm Springs, Portola and
11 it goes on from there. Do you recognize this as the
12 offices that were open by Bennion & Deville Fine
13 Homes at that time?

14 A Yes.

15 Q And this statement also reflects or appears
16 to reflect the balance beginning to accrue as of
17 July 2014; do you see that?

18 A Yes.

19 Q And at least Cathedral City runs through
20 June of 2015; do you see that there?

21 A Yes.

22 Q Do you know whether that office closed
23 after June of 2015?

24 A Yes, it did.

25 Q And then Indian Wells is the next one and

INSTRUCTIONS FOR READING/CORRECTING YOUR DEPOSITION

To assist you in making corrections to your deposition testimony, please follow the directions below. If additional pages are necessary, please furnish them and attach the pages to the back of the errata sheet.

This is the final version of your deposition transcript.

Please read it carefully. If you find any errors or changes you wish to make, insert the corrections on the errata sheet beside the page and line numbers.

If you are in possession of the original transcript, do NOT make any changes directly on the transcript.

Do NOT change any of the questions.

After completing your review, please sign the last page of the errata sheet, above the designated "Signature" line.

ERRATA SHEET

Page Line

25 20

Change: No to Yes.

Reason: Satellite offices did not pay franchise fees.

Change: _____

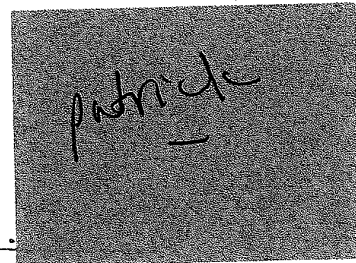
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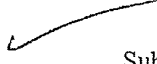
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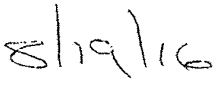
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_____ Subject to the above changes, I certify that the transcript is true and correct.

_____ No changes have been made. I certify that the transcript is true and correct.



Signature

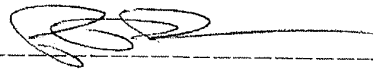


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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on Aug 19, 2016, at Rancho Mirage, California.



SIGNATURE OF WITNESS

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

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

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

IN WITNESS WHEREOF, I have this date
Subscribed my name.
Dated: August 5, 2016



SHARI STELLHORN
CSR No. 2807

EXHIBIT B

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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,)
)
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

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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,)
)
)
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.

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APPEARANCES:

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BY: KEVIN A. ADAMS, ESQ.

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Irvine, CA 92614

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For Defendants:

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BY: JEFFREY A. FEASBY, ESQ.

CHRISTOPHER ROWLETT, ESQ.

750 B Street, Suite 3300

San Diego, CA 92101

619.702.8044

feasby@perezwilson.com

rowlett@perezwilson.com

Video Operator: Joann Yager

Also Present: Mike Teather

Bob Bennion

1 BY MR. FEASBY:

2 Q Mark this as Exhibit 57. This is an e-mail
3 from Paul Drayna to Robert Sunderland; do you see
4 that there?

5 A Yes. 11:48:51

6 Q Have you seen this e-mail before?

7 A No.

8 Q If you turn the page it's attaching a
9 document attached, it's a June 3rd, 2014, letter and
10 then if you go back two more pages, it's an 11:49:07
11 amendment to a Promissory Note.

12 Have you seen the June 3rd letter before?

13 A I don't recall.

14 Q Do you recognize the amendment to the
15 Promissory Note? 11:49:30

16 A Well, my name is typed but I don't have
17 anything signed.

18 Q I'm just asking if you recognize it as you
19 look at it. Does that look familiar at all?

20 A Yes. 11:49:43

21 Q Okay. Going back to the June 3rd letter,
22 again, this is a letter from Mr. Teather to your
23 attorney Robert Sunderland; correct?

24 A Yes.

25 Q And it says at the top, "I am writing to 11:49:55

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1 summarize the status of our recent discussions"; do

2 you see that?

3 A Yes.

4 Q Under No. 1, "balloon payment on 2009

5 loan"; do you see that?

11:50:07

6 A Yes.

7 Q And under this it says -- I'm going down

8 the paragraph. "Your clients have requested a

9 36-month extension of this loan fully amortizing the

10 remaining balance over the period. Enclosed with

11:50:25

11 this letter is a document to formally amend the note

12 accordingly. Please have your client sign and

13 return this document as soon as possible"; do you

14 see that?

15 A Yes.

11:50:34

16 Q Do you recall reaching an agreement with

17 Windermere at or about this time to extend repayment

18 of the 2009 loan?

19 A Yes.

20 Q And that was an accom- -- accommodation

11:50:45

21 that they made to you; correct?

22 A Yes, but we had this discussion whenever

23 they would make a loan, they would put four or five

24 years on it with a balloon and then tell us and then

25 we'll look at it and reamortize.

11:50:58

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1 Q And to be clear, the initial lender was
2 CARMED, LLC, which was an affiliated company that
3 was owned by the principals at Windermere; correct?

4 A I assume so, yes.

5 Q And then it was transferred -- do you 11:51:14
6 remember the loan being transfer at some point to
7 another entity --

8 A No, I don't. I'm sorry.

9 Q To another entity, JFF, LLC.?

10 A No, but I'm not questioning who has the 11:51:22
11 loan.

12 Q No. 2 heading there it says Windermere
13 Watch, and it references a series of communications
14 between the parties on this issue?

15 A Yes. 11:51:34

16 Q And the claims made that Windermere had
17 breached the 2012 agreement to make commercially
18 reasonable efforts to address the ongoing activities
19 of Mr. Kruger and Windermere Watch; do you see that?

20 A Yes. 11:51:48

21 Q And it notes the initial -- the demand that
22 was made by Mr. Sunderland for reimbursement that we
23 saw in the other letter, the \$64,000?

24 A Yes.

25 Q And then talks about the fact that that 11:51:57

1 amount had been increased to a total amount of
2 \$85,200?

3 A Yes.

4 Q And Windermere agreed to apply that as a
5 credit to past due franchise fees owed; correct? 11:52:13

6 A Yes.

7 Q Yes?

8 A Yes.

9 Q And then the next paragraph there starting
10 at the bottom of page -- of the first page, it says, 11:52:26
11 "It is my understanding that WSC's agreement to the
12 loan extension and the \$85,200" --

13 A Where are we?

14 Q The next paragraph starting at the bottom
15 of the first page. So I'm not sure which page 11:52:40
16 you're on.

17 MR. FEASBY: I'm sorry, the first page of
18 the letter, WSC 1821, the paragraph starting at the
19 bottom.

20 THE WITNESS: Okay. 11:52:51

21 MR. ADAMS: Thank you.

22 BY MR. FEASBY:

23 Q "It is my understanding that WSC's
24 agreement to the loan extension and the \$85,280 fee
25 credit resolves all current issues and that as of 11:52:59

Page 373

1 the date of this letter, WSC is not in breach of any
2 obligations contractual or otherwise owed to your
3 clients"; do you see that there?

4 A Yes.

5 Q And at that time was it the agreement of 11:53:11
6 the parties?

7 A Yes.

8 Q It says, "Barring any material change in
9 Mr. Kruger's activities, we have agreed that there
10 is nothing further that WSC can or should be doing 11:53:22
11 with regard to Windermere Watch at this time and
12 that your clients will bear the expense of any SEO
13 efforts on their part without taking future credits
14 or offsets from amounts they owe WSC."

15 Do you see that? 11:53:39

16 A Yes.

17 Q And was that the parties agreement at that
18 time?

19 A Yes.

20 Q And then it also goes on to says, "We 11:53:42
21 agreed that ongoing SEO expenses will be more than
22 offset by the substantial discounts in both
23 franchise and technology fees granted to your
24 clients."

25 Was that your understanding at that time? 11:53:52

1 A Yes.

2 Q And then the last item there, "Reporting of
3 branches and satellites, this discuss, as you
4 mentioned, Mr. Teather reviewing that issue and that
5 the issue had been clarified. It says, "Thank you 11:54:11
6 again for helping us to clarify this issue"; do you
7 see that?

8 A Yes.

9 Q And then at the bottom it says, "If this
10 letter does not accurately summarize the status of 11:54:23
11 the issues above or if you believe there are any
12 material issues I have omitted, please let me know."

13 Do you see that?

14 A Yes.

15 Q And Mr. Sunderland never said any letter in 11:54:32
16 response to this letter that you're aware of
17 contesting any of the issues that Mr. Teather set
18 forth herein?

19 A Not that I'm aware of.

20 Q And then -- if we look at -- 11:54:46
21 (Exhibit 58 was marked for identification
22 by the court reporter.)

23 BY MR. FEASBY:

24 Q I'm going to mark this next one as
25 Exhibit 58. This is the signed amendment to the 11:55:21

1 A Yes.

2 Q And then the last item there, "Reporting of
3 branches and satellites, this discuss, as you
4 mentioned, Mr. Teather reviewing that issue and that
5 the issue had been clarified. It says, "Thank you 11:54:11
6 again for helping us to clarify this issue"; do you
7 see that?

8 A Yes.

9 Q And then at the bottom it says, "If this
10 letter does not accurately summarize the status of 11:54:23
11 the issues above or if you believe there are any
12 material issues I have omitted, please let me know."

13 Do you see that?

14 A Yes.

15 Q And Mr. Sunderland never said any letter in 11:54:32
16 response to this letter that you're aware of
17 contesting any of the issues that Mr. Teather set
18 forth herein?

19 A Not that I'm aware of.

20 Q And then -- if we look at -- 11:54:46
21 (Exhibit 58 was marked for identification
22 by the court reporter.)

23 BY MR. FEASBY:

24 Q I'm going to mark this next one as
25 Exhibit 58. This is the signed amendment to the 11:55:21

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

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INSTRUCTIONS FOR READING/CORRECTING YOUR DEPOSITION

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ERRATA SHEET

Page	Line	Change:	Reason:
<u>359</u>	<u>21</u>	Change: <u>Yes to No: All ^{or temporary} satellite locations.</u>	Reason: <u>I misheard the question.</u>
<u>374</u>	<u>7</u>	Change: <u>Yes to No</u>	Reason: <u>Corrected later in transcript.</u>
<u>374</u>	<u>16</u>	Change: <u>Yes to No</u>	Reason: <u>Corrected later in transcript.</u>
<u>375</u>	<u>1</u>	Change: <u>Yes to No.</u>	Reason: <u>" "</u>

Page	Line	Change:
<u>384</u>	<u>20</u>	<u>"didn't" to "wouldn't"</u>
_____	_____	Reason: <u>improper tense.</u>
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✓ Subject to the above changes, I certify that the transcript is true and correct.

_____ No changes have been made. I certify that the transcript is true and correct.

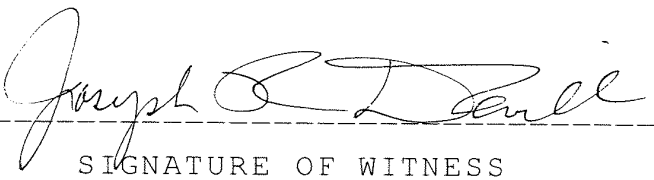
Joseph Q Deville
Signature

8-25-16
Date

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 8-25-16, 2016, at Seattle, WA.



SIGNATURE OF WITNESS

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 9, 2016



SHARI STELLHORN

CSR No. 2807