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12 Windermere Real Estate Services Company

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

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

20 Plaintiffs,

21 v.

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

24 Defendant.

25
26 AND RELATED COUNTERCLAIMS
27
28

Case No. 5:15-CV-01921-JCG

Hon. Jay C. Gandhi

**DECLARATION OF JEFFREY A.
FEASBY IN SUPPORT OF
COUNTERCLAIMANT'S REPLY
IN SUPPORT OF ITS MOTION *IN*
LIMINE TO EXCLUDE GARY
KRUGER FROM TESTIFYING AT
TRIAL**

Date: August 7, 2017

Time: 10:00 a.m.

Courtroom: 880

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.

11 3. On August 26, 2016, York Baur was deposed by counsel for Plaintiffs
12 and Counter-Defendants Bennion & Deville Fine Homes, Inc., Bennion & Deville
13 Fine Homes SoCal, Inc., Windermere Services Southern California, Inc., Robert
14 Bennion and Joseph Deville (collectively “Counter-Defendants”). Mr. Baur was
15 produced for deposition by WSC pursuant to a Rule 30(b)(6) deposition notice
16 served on WSC by Counter-Defendants. Mr. Baur was identified by WSC as a
17 witness with knowledge relating to, *inter alia*, WSC’s efforts to combat the negative
18 effects of Windermere Watch.

19 4. At this time, WSC does not intend to call Cass Herring or Kendra Vita
20 as witnesses at trial in this matter.

21 5. Attached hereto as Exhibit A is a true and correct copy of excerpts from
22 the transcript of the Deposition of Robert Bennion taken on July 27 and 28, 2016 in
23 this matter.

24 ///

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1 6. Attached hereto as Exhibit B is a true and correct copy of excerpts from
2 the transcript of the Deposition of Joseph Deville taken on July 26 and 27, 2016 in
3 this matter.

4 I declare under penalty of perjury under the laws of the State California that
5 the foregoing is true and correct, and that this declaration was executed on July 24,
6 2017.

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/s/ Jeffrey A. Feasby
Jeffrey A. Feasby

EXHIBIT A

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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 ROBERT L. BENNION
Irvine, California
Thursday, July 28, 2016
Volume II

Reported by:
Shari Stellhorn
CSR No. 2807
Job No. 2330920A
PAGES 93 - 227

1 their frustration to Seattle, sometimes they would
2 go directly to Seattle, bypass us with their
3 frustration, so it was an ongoing battle.

4 Q Did you make any suggestions to Windermere
5 Seattle on how might -- and I'm talking again the 10:09:02
6 2003 to 2011 time frame -- do you recall making any
7 suggestions to them on how to deal with Mr. Kruger
8 and try to get him to stop?

9 A We would have meetings and sessions to all
10 mutually try and come up with ideas and it was 10:09:22
11 frustrating for Bob and I because we felt they were
12 the ones that -- Windermere was their name, they
13 should protect the brand and the name but we were
14 happy to sit with them and try to come up with some
15 ideas because it would help the team as a whole, but 10:09:37
16 we did talk about, you know, engaging a proper P.R.
17 firm to do an ad campaign or a positive ad campaign,
18 some type of written letter or blanket statement
19 that we could pass on to the owners. We talked

20 about payment to Mr. Kruger, the option to do that. 10:10:02

21 We talked about -- we felt it was very important

22 that they hire an outside neutral party, somebody

23 that did not work for Windermere, to go and try and

24 approach this guy. We strongly felt somebody within

25 Windermere trying to approach him would just inflame 10:10:24

1 him. We talked about whether it made sense to file
2 a lawsuit against Mr. Kruger or not.

3 Q And, in fact, at one point in time
4 Windermere Seattle did engage a P.R. firm to address
5 Mr. Kruger's efforts; correct? 10:10:49

6 A They -- I don't know if it's a P.R. firm.
7 They hired somebody to write bullet points. I
8 received this as an agent in Seattle. It was given
9 us to pass on. It was really more of a Q and A. If
10 you are asked this question, here's your answer. It 10:11:03
11 wasn't -- it wasn't in my opinion a proper P.R.
12 press release statement, something proper to use,
13 but it was a tool an agent could use in a Q and A
14 type situation with a client.

15 Q And did you think that was helpful? 10:11:20

16 A I think it was the only option, the tool we
17 had at that point. I think -- I think for me, no, I
18 think for agents that were less polished, it helped
19 give them some words to say. It probably did help
20 some agents that did not speak as well or understand 10:11:38
21 the problem as well.

22 Q With regard to the payment to Mr. Kruger,
23 you mentioned it a little bit but why was it
24 important to you that a third party was retained to
25 do that? 10:11:53

1 A He was obviously very inflamed by looking
2 at the postcards and the website. It didn't take a
3 rocket scientist to figure out he was very angry at
4 Windermere or anybody associated with Windermere.

5 Q And so you didn't have a feeling one way or 10:12:04
6 the other, you thought it would be better if a third
7 party was retained by Windermere to approach him?

8 A I think commonsense, it was imperative and
9 very clear that it should be an outside source to
10 approach him. 10:12:20

11 Q And what was your concern if it was someone
12 inside Windermere that would -- that was to approach
13 him?

14 A It would just inflame him to do more.

15 Q And you weren't concerned about that if it 10:12:30
16 was a third party I behalf of Windermere approaching
17 him?

18 A I think the chances would be greatly
19 diminished.

20 Q And what did you guys discuss regarding a 10:12:39
21 possible lawsuit against Mr. Kruger?

22 A Whether it made sense to do it.

23 Q And was there a decision that was made one
24 way or the other in terms of whether or not it made
25 sense? 10:12:53

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 []
was [] was not requested. I further
10 certify I am neither financially
interested in the action nor a relative or
11 employee of any attorney or any party to
this action.

12 IN WITNESS WHEREOF, I have this date

13 Subscribed my name.

14 Dated: August 9, 2016

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18 SHARI STELLHORN

19 CSR No. 2807
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EXHIBIT B

1 tell us that they had actually filed a lawsuit, as
2 much pressure as they were getting from all the
3 other owners, and why they would keep that quiet.

4 Q Do you remember having discussions during
5 this time with any representatives from Windermere 10:04:02
6 about approaching Mr. Kruger and trying to reach a
7 settlement with him?

8 A In the meeting we did.

9 Q And what was discussed in that regard?

10 A Possibly sending an attorney to talk to him 10:04:11
11 and I guess basically see what it would take to make
12 him go away.

13 Q And you were against that idea, weren't
14 you?

15 A Not at all. 10:04:28

16 Q You --

17 A Not at all. I suggested they get a
18 third-party attorney, someone not affiliated with
19 Windermere, because that would just aggravate him
20 and give him cause to say, yeah, Windermere 10:04:40

21 attorneys are approaching me. He'd put that all
22 over is front page. Doesn't take a rocket scientist
23 to figure that out. I said get a third-party
24 attorney. And what do they do? They send Mike
25 Teather over there which is about the worst thing 10:04:53

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1 they could have done.

2 Q And how did you know that they sent Mike
3 Teather over there?

4 A I forgot how I found it out. Ask him if he
5 did. 10:05:04

6 Q Someone told you that that happened?

7 A Yes.

8 Q Would it surprise you to learn that
9 Mr. Teather reached out to him prior to your meeting
10 to discuss this modification agreement? 10:05:11

11 A Nothing would surprise me with Mr. Teather.

12 Q So it's possible that this instance that
13 you're talking about of Mr. Teather going and
14 reaching out to Mr. Kruger, in fact, happened prior
15 to that meeting and not after? 10:05:27

16 MR. ADAMS: Objection as to form.

17 THE WITNESS: I don't know.

18 BY MR. FEASBY:

19 Q It's possible?

20 MR. ADAMS: Objection as to form. 10:05:34

21 THE WITNESS: I don't know.

22 BY MR. FEASBY:

23 Q Is it possible?

24 MR. ADAMS: Objection as to form, asked and
25 answered.

1 put a question and answer out to the agents, that if
2 you are asked this, this is your response but that's
3 kind of after the fact. I mean, the buyers and
4 sellers and the clients have already been hit with
5 the stuff. 10:55:05

6 Q So what was your thought then in 2012 about
7 what a P.R. firm could do differently in order to
8 help --

9 THE REPORTER: Wait, wait, wait.

10 BY MR. FEASBY:

11 Q Let me finish.

12 In order to curtail Mr. Kruger's
13 activities?

14 A That's why I suggested a P.R. firm. Come
15 up with some ideas. 10:55:23

16 Q You didn't have any specific ideas that you
17 suggested at that time?

18 A I think maybe a mailing campaign, a hotline
19 that an agent would be able to -- if their client
20 questioned them about it, call this hotline, you 10:55:55
21 know, be creative, but that's what a P.R. firm is
22 for.

23 Q And any other activities that you suggested
24 would be commercially -- reasonable --

25 A Not that -- 10:56:09

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1 Q -- that would be commercially reasonable
2 for them to take?
3 A Pay him off. John Jacobi, in that meeting
4 said, "I'll just go pay him a monthly amount," and I
5 said, "Wait before you do that. Before you throw 10:56:24
6 money at him, let's see what he really wants, and
7 send a third party to engage this guy, not anyone
8 from Windermere."

9 Q Anything else you suggested?

10 A Not that I recall at this time. 10:56:44

11 (Exhibit 52 was marked for identification
12 by the court reporter.)

13 BY MR. FEASBY:

14 Q Mark this as Exhibit 52. Do you -- do you
15 recognize this document, Mr. Deville? 10:58:24

16 A Yes.

17 Q What is this document?

18 A Letter that was sent to Geoff and Jill Wood
19 and OB Jacobi.

20 Q And this was sent by you and Mr. Bennion? 10:58:39

21 A Correct.

22 Q And why did you send this letter?

23 A Frustration.

24 Q Frustration with what?

25 A No follow through on our agreed contract 10:58:49

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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

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19 SHARI STELLHORN

20 CSR No. 2807