

1 John D. Vaughn, State Bar No. 171801
Jeffrey A. Feasby, State Bar No. 208759
2 Christopher W. Rowlett, State Bar No. 257357
PEREZ WILSON VAUGHN & FEASBY
3 750 B Street, Suite 3300
San Diego, California 92101
4 Telephone: 619-702-8044
Facsimile: 619-460-0437
5 E-Mail: vaughn@perezwilson.com

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

11 Attorneys for Defendant and Counterclaimant
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 SOCAL, 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 R (KKx)

Hon. Manuel L. Real

**DECLARATION OF JEFFREY A.
FEASBY IN SUPPORT OF
COUNTERCLAIMANT'S
OPPOSITION TO COUNTER-
DEFENDANTS' MOTION *IN
LIMINE* TO EXCLUDE EVIDENCE
WITHHELD ON GROUNDS OF
PRIVILEGE**

Date: May 15, 2017

Time: 10:00 a.m.

Courtroom: 880

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I, Jeffrey A. Feasby, declare:

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

2. As one of the attorneys for WSC, I am intimately familiar with the discovery that has taken place in this case, including the production of documents by all parties and documents received from third parties pursuant to subpoenas. These documents are maintained in my office.

3. Attached hereto as Exhibit A is a true and correct copy of excerpts from the transcript of the Deposition of Paul Drayna taken on August 22, 2016 in this matter.

4. Attached hereto as Exhibit B is a true and correct copy of excerpts from the transcript of the Deposition of Geoff Wood taken on August 25, 2016 in this matter.

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

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

VIDEOTAPED DEPOSITION OF PAUL S. DRAYNA
600 University Street, Suite 320
Seattle, Washington
Monday, August 22, 2016

REPORTED BY:
CYNTHIA A. KENNEDY, RPR, CCR 3005
JOB No. 2364301

PAGES 1 - 354

1 Q. You don't understand that sentence to mean
2 whether or not Wind -- Windermere is going to continue
3 in business, in light of these posts from Windermere
4 Watch?

5 A. No, that's I -- not at all how I would read
6 that.

7 Q. April 20th, 2013, Windermere still hasn't
8 gotten back to Mr. Deville concerning that last email
9 we just looked at, has it?

10 A. I don't --

11 MR. FEASBY: Object to form.

12 BY MR. ADAMS:

13 Q. You hadn't gotten back to Mr. Deville by
14 April 20th, had you?

15 A. I -- probably not.

16 Q. Who was tasked with getting back to
17 Mr. Deville's email?

18 A. Here we are beginning to get into areas of
19 attorney/client communications between me and my
20 clients.

21 Q. Okay. You were not tasks -- tasked with
22 responding to Mr. Deville's email?

23 A. I was not.

24 Q. And do you have any reason to believe anyone
25 responded before April 20th?

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

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

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

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

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

16 Do you remember that email?

17 A. Not specifically, but --

18 Q. Do you remember generally?

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

21 Q. And were you just ignoring those emails?

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

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

1 A. I don't believe I did.

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

7 Do you see that, the first line?

8 A. I do.

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

11 Do you see that?

12 A. I do.

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

17 Do you see that?

18 A. I do.

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

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

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

1 A. It appears to be possible.

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

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

10 Do you see that?

11 A. I do.

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

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

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

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

23 Do you see that?

24 A. I do.

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

1 directed at you?

2 A. I don't believe I did.

3 Q. Why not?

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

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

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

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

12 A. That is possible.

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

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

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

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

24 Do you see that?

25 A. I do.

1 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 PAUL S. DRAYNA was taken
9 stenographically before me on August 22, 2016, and
thereafter transcribed under my direction;

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

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

22 IN WITNESS WHEREOF, I have hereunto set my
23 hand and 6th day of September, 2016.
24
25

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

EXHIBIT B

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
14 AND RELATED COUNTERCLAIMS)
)

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

20 Seattle Deposition Reporters

21 600 University Street, Suite 320

22 Seattle, Washington

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

Page 1

1 A. No.

2 Q. Okay. Do you recall that Lloyd's of London
3 refused an employer's Practices Liability Insurance
4 Policy for an owner of Windermere -- of Windermere
5 after learning of Windermere Watch?

6 A. I don't recall.

7 Q. Do you recall in March of 2013 Mr. Deville
8 emailing you and asking you to please advise where
9 Windermere was with Windermere Watch?

10 A. I do not.

11 MR. ADAMS: Can you show me Exhibit 27?
12 Thank you.

13 MR. FEASBY: Was that it?

14 MR. ADAMS: Okay. Thank you.

15 BY MR. ADAMS:

16 Q. Mr. Wood, I'm putting what has previously
17 been marked as Exhibit 27 in front of you. This is an
18 email chain with the most recent email in the chain
19 being between Mr. Bennion, Mr. Deville, and yourself
20 on March 29th, 2013.

21 Do you see that?

22 A. I do.

23 Q. Do you recall receiving this email chain?

24 A. I don't.

25 Q. Do you recall that Lloyd's of London had

1 brought up the Windermere Watch issue to a owner of
2 Windermere?

3 A. I do not remember this.

4 Q. Is this something that would have concerned
5 you as the CEO of Windermere, that insurance company
6 is rejecting an insurance policy because of Windermere
7 Watch?

8 A. I don't know why an employment practices
9 insurance company would decline coverage because of
10 Windermere Watch.

11 Q. And that's not the question that I asked
12 you, sir. The question I asked you is, did it concern
13 you, as a CEO of Windermere, that Lloyd's of London
14 had declined such an insurance policy?

15 A. Yes, it would.

16 Q. And if you look at the second email on the
17 middle of the page there, Mr. Deville writes, "Please
18 advise where we are with Windermere Watch."

19 Do you see that?

20 A. I do.

21 Q. Where were you with Windermere Watch at that
22 time?

23 A. I don't recall.

24 Q. Who would know?

25 A. I don't know.

1 Q. Now, Mr. Drayna and you are the only two
2 representatives of Windermere on this email chain,
3 correct?

4 A. Correct.

5 Q. And Mr. Drayna testified that he did not
6 respond to this email.

7 Are you aware of that?

8 A. I'm not.

9 Q. Did you instruct employees of Windermere to
10 not respond to Mr. Deville's emails regarding
11 Windermere Watch?

12 A. No.

13 Q. Is that an instruction that you ever heard
14 from anyone at Windermere?

15 A. No.

16 Q. Why didn't you respond?

17 A. I don't recall.

18 Q. And if you look at the last email on the top
19 of the page, Mr. Bennion states that a client was very
20 concerned if Windermere was on and if they would be
21 closing.

22 Do you see that?

23 A. I don't follow it.

24 Q. And you didn't understand this to be a
25 result of a client finding Windermere Watch on the

1 Do you see that?

2 A. I do.

3 Q. And this is -- this is nearly a month after
4 that last email we just looked at Exhibit 27, correct?

5 A. Where was that?

6 MR. FEASBY: Oh, I'm sorry.

7 THE WITNESS: It's different. Oh, okay.
8 (Reviewing Exhibits 27 and 28.) Yes.

9 BY MR. ADAMS:

10 Q. And in Mr. Deville's April 20th email, he's,
11 again, letting you know that "Windermere Watch has
12 come to bite us in the butt."

13 Do you see that?

14 A. Yes, I do.

15 Q. And then he described a situation in which
16 he lost a \$5 million listing because of Windermere
17 Watch.

18 A. (Reviewing Exhibit 28.)

19 Q. Do you see that?

20 A. (Reviewing Exhibit 28.) I do.

21 Q. And at the end of this email Mr. Deville
22 states, "Please advise what has been done since our
23 phone discussion months ago about Windermere Watch and
24 what the plans are to make this go away."

25 Do you see that?

1 A. I do.

2 Q. Why didn't anyone respond to Mr. Deville
3 between March 29th and April 20th of 2013 regarding
4 Windermere Watch?

5 A. I do not know.

6 Q. Did you respond to Mr. Deville after
7 receiving this email, Exhibit 28?

8 A. I do not recall.

9 Q. Do you know if anyone did?

10 A. I do not know.

11 Q. Who would know?

12 A. I don't know.

13 Q. Let's go to Exhibit 30.

14 MR. FEASBY: Are we done with these,
15 Counsel?

16 MR. ADAMS: Yes, thank you.

17 BY MR. ADAMS:

18 Q. Exhibit 30 is a July 31st email from
19 Mr. Deville to you and others, again, addressing
20 Windermere Watch.

21 Do you recognize this email?

22 A. I do.

23 Q. Okay. And this email of July 31st is more
24 than three months after Mr. Deville's last plea to you
25 that you provide him with an update on what has been

