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JAMS

SOUTHERN CALIFORNIA - ORANGE

DALE SWANSON, an individual, )  
 )  
 Claimant, )  
 )  
 vs. ) No. 1200055127  
 )  
 ROBERT TOPOR, an individual; )  
 KATHERINE TOPOR, an )  
 individual, )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

DEPOSITION OF DALE SWANSON

MONDAY, JUNE 17, 2019, 9:07 A.M.

CORONA, CALIFORNIA

Reported by Christine Rybicki, CSR No. 13481  
 CLS Job No. 104969

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DALE SWANSON, an individual,	)	
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	)	
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KATHERINE TOPOR, an	)	
individual,	)	
	)	
Respondents.	)	
_____	)	

DEPOSITION OF DALE SWANSON, taken at 4740  
Green River Road, Suite 203, Corona, California, on  
Monday, June 17, 2019, at 9:07 a.m., before Christine  
Rybicki, Certified Shorthand Reporter, in and for the  
State of California.

1 APPEARANCES:

2

3 For Claimant:

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14

Also Present:

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16 KATHERINE TOPOR  
17 ROBERT TOPOR

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INFORMATION REQUESTED

(None)

QUESTIONS NOT ANSWERED

(None)

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1 MONDAY, JUNE 17, 2019, 9:07 A.M.

2 CORONA, CALIFORNIA

3  
4 DALE SWANSON,

5 having been first duly sworn, testifies as follows:

6

7 EXAMINATION

8 BY MR. DEESE:

9 Q All right. Good morning, Mr. Swanson.

10 My name is Paul Deese. I represent the

11 Topor's in this arbitration, and I'm going to be

12 taking your deposition this morning.

13 Can we start by having you state and spell  
14 your name for the record?

15 A My name is Dale Swanson; D-A-L-E,  
16 S-W-A-N-S-O-N.

17 Q Okay. Mr. Swanson, I'm going to hand you a  
18 document that we're going to pre-mark as Deposition  
19 Exhibit Number 1.

20 (Respondents' Exhibit 1 was marked  
21 for identification by the court  
22 reporter and is attached hereto.)

23 BY MR. DEESE:

24 Q Do you recognize this document?

25 A Yes.



1 Q Okay. How do you recognize it? Where have  
2 you seen it before?

3 A It was sent to me by my attorney.

4 Q Okay. And did you bring any documents with  
5 you in connection with this deposition or arbitration  
6 generally?

7 A No.

8 Q Okay. All right. I'm going to start out by  
9 walking through the process a little bit, giving some  
10 guidelines for how we're going to proceed.

11 Have you ever been deposed before,  
12 Mr. Swanson?

13 A No.

14 Q Okay. Do you understand that you're under  
15 oath here?

16 A Yes.

17 Q Okay. Do you understand that you're -- in  
18 taking an oath, you're promising that everything you  
19 say is gonna be truthful and honest to the best of  
20 your recollection?

21 A Yes.

22 Q All right. Do you further understand that  
23 the testimony, even though given in this informal  
24 setting in a conference room, has the same force and  
25 effect as if it were being given in a court of law?

1 A Yes.

2 Q And you also understand that my questions  
3 and your answers are being taken down by our court  
4 reporter here?

5 A Yes.

6 Q All right. To that end, as a courtesy to  
7 her and as a courtesy to you, I'm going to ask a  
8 question, I'm gonna let you fully answer before I  
9 step back in.

10 I'd ask that you do the same. If we're  
11 talking over each other, it makes it very hard for  
12 her to take down everything that we're saying and  
13 creates a muddled record.

14 Is that fair?

15 A Understood.

16 Q All right. Do you also understand that  
17 you'll be given an opportunity to read this  
18 deposition transcript and make any changes to the  
19 form of your answer?

20 A Yes.

21 Q Okay. Now, just as a couple ground rules,  
22 I'm gonna ask you questions and your attorney's gonna  
23 have an opportunity to object.

24 Now, unless he instructs you not to answer,  
25 he's placing the objection on the record for the

1 purposes of -- well, for the record and for the  
2 arbitrator to decide later, but you still need to  
3 respond to the question unless he specifically  
4 instructs you otherwise. At which point, if  
5 necessary him, and I will have a discussion about  
6 that.

7 All right? Do you understand that?

8 A Yes.

9 Q Okay. If I ever ask you a question that you  
10 don't understand, feel free to just ask me to  
11 rephrase it or ask a different way. I want your best  
12 testimony here and not an answer that is based on a  
13 question you don't understand.

14 All right?

15 A Yes.

16 Q All right. Also, this is a more informal  
17 setting. So if at any point you need to take a  
18 break, get a drink of water, you know, get some fresh  
19 air, whatever it is, just let me or your attorney  
20 know and we'll be happy to step outside.

21 Unless you ask for one, I usually try to  
22 take breaks about every hour and a half. So about  
23 the hour and a half mark we'll probably take one any  
24 way just to get us all some fresh air and stretch our  
25 legs.

1           Is that all right?

2           A     Okay.

3           Q     All right.  Now, like I said earlier, I do  
4 want your best testimony here.  So I don't want you  
5 to try to guess at any answers.

6           If you don't know the answer to a question,  
7 it's totally fine to say "I don't know" or "I don't  
8 remember" and I'll try to either clarify the question  
9 or explore the area a little more to see exactly what  
10 you do remember.

11           Okay?

12           A     Okay.

13           Q     All right.  Now, like I discussed a little  
14 bit before, we have a court reporter here taking down  
15 the transcript of our questions and answers, which  
16 means it requires verbal responses.

17           And so far you've been doing a great job of  
18 that.  So if you can try to avoid nodding, or  
19 grunting, or using, you know, "mm-hmm" type answers  
20 instead answering with affirmative responses, that  
21 will help make her job easier and make the record a  
22 lot clearer.

23           All right?

24           A     Okay.

25           Q     Now, the nature of these proceedings, it's

1 unlikely that we'll get into too much of this, but  
2 it's possible that I may get into some sensitive  
3 matters.

4 Not doing this to embarrass you. I'm just  
5 trying to determine -- to bring out the best evidence  
6 here and to, you know, fully explore the issues that  
7 are here.

8 So I just want to let you know we might get  
9 into some subject areas that, you know, you may feel  
10 uncomfortable with. And I'm not trying to do  
11 anything to embarrass you, just following where the  
12 testimony takes us.

13 Okay?

14 A Okay.

15 Q Now, to that end, I am entitled to your best  
16 testimony which means I need to determine whether  
17 there's any reason why you can't give your best  
18 testimony to me here this morning.

19 So I'm gonna ask you just a few questions to  
20 make sure that you're able to give the best testimony  
21 you can at this deposition this morning.

22 So before we proceed, are you presently  
23 taking any medications that would affect your memory  
24 or your ability to understand the questions that I'm  
25 asking?

1 A No.

2 Q Okay. Have you had any alcohol this  
3 morning?

4 A No.

5 Q Okay. Have you recently suffered any type  
6 of traumatic injury that might affect your memory or  
7 your ability to understand questions?

8 A No.

9 Q Okay. All right. Well, then unless you  
10 have any questions for me about the process, we'll  
11 just get going.

12 A Okay.

13 Q All right. Let's start with, what's the  
14 highest level of education you've obtained?

15 A I have a master of arts.

16 Q Okay. And what's your master?

17 A It's a master of arts in communication and  
18 creative writing from the University of  
19 San Francisco.

20 Q Okay. And what did you get your bachelors  
21 degree in?

22 A Bachelor of arts in communication in film  
23 and video from Columbia.

24 Q All right. It sounds like you started your  
25 career exploring a creative path; is that right?

1 A (Nods head.)

2 Q And what brought you to real estate?

3 A I was working for the University of  
4 California in San Francisco first in the University  
5 of California Medical Center in their office of  
6 design and construction as a financial administrative  
7 assistant.

8 And then I went over to the campus side and  
9 worked for University of California San Francisco in  
10 a teaching hospital as a financial analyst class  
11 for -- in their information technology services.

12 And made a decision to relocate to the  
13 desert where we've been visiting for seven years and  
14 was interested in real estate and decided to get into  
15 it at that point.

16 Q Okay. And about what timeframe is this that  
17 we're talking about?

18 A 2005.

19 Q Okay. So in 2005 when you decided to get  
20 into real estate, what was the first thing you did to  
21 dip your toe into the water?

22 A I got my license.

23 Q Okay. That would be your broker's license?

24 A Agent's license.

25 Q Agent's license?

1 A Yes.

2 Q Okay. And do you know your number off the  
3 top of your head?

4 A 01725962.

5 Q Okay. And so once you got your license did  
6 you start working with the company or did you go out  
7 on your own?

8 A You have to get your license through a  
9 company as an agent.

10 Q Okay.

11 A So I did that.

12 Q All right. What company was that?

13 A Tarbell.

14 Q Tarbell.

15 And how long did you work with Tarbell?

16 A Not long. I made a decision because I was a  
17 new agent in a new area, I wanted to be with a bigger  
18 company. And so I went to Coldwell Banker in the  
19 spring of 2006.

20 Q Okay. Cole Banker you said?

21 A Coldwell.

22 Q Cobalt?

23 A Coldwell Banker.

24 Q Coldwell. Coldwell, I see.

25 All right. And how long were you with



1 Coldwell?

2 A Just under four years.

3 Q Okay. So that would put you around 2010?

4 A Yes.

5 Q All right. And then from Coldwell where'd  
6 you go?

7 A I went to Bennion Deville which was the  
8 Windemere franchisee in that area at the time.

9 Q Okay. And how long were you with them?

10 A A little over five and a half years.

11 Q Okay. And then from there did you --

12 A Berkshire Hathaway.

13 Q Berkshire Hathaway?

14 A Mm-hmm.

15 Q And how long were you with Berkshire  
16 Hathaway?

17 A I'll be with Berkshire Hathaway four years  
18 this coming August.

19 Q Okay. So you're still currently working  
20 with Berkshire Hathaway?

21 A That's correct.

22 Q Okay. So you've been an agent for about 15  
23 years now, 14, 15 years?

24 A Coming into my 15th year.

25 Q Okay. Just ballpark estimate; how many real

1 estate transactions do you think you've been apart of  
2 in those 15 years?

3 A About 90.

4 Q Okay. Is there any distribution for you  
5 whether you're representing the buyer or the seller?  
6 Like you represent the buyer more often than seller,  
7 something like that?

8 A Most of my transactions have been with  
9 buyers. All that I've had and do have now, repeat  
10 clients who are -- I'm handling their listing.

11 Q Okay. Now, in gathering clients, do you --  
12 are you responsible for going out and finding your  
13 own clients or is that something that the company  
14 provides for you?

15 A No, generally I'm responsible for it.

16 Q Okay. And how do you go about getting new  
17 clients?

18 A I have tried a number of things, but what  
19 they call desk calls, or walk-ins, or open houses, or  
20 simply networking, referrals, things like that.

21 Q Okay. And how do you know the Topor's?

22 A Bob Topor walked into the Coldwell Banker  
23 office in Palm Springs on September 24th, 2009.

24 Q You remember that date specifically?

25 A Mm-hmm.

1 Q And how's that that you remember that date?

2 A I remember him. Just had a look on his face  
3 like a man on a mission.

4 Q Okay. And what was that mission when he  
5 came in to see you at Coldwell Banker that day?

6 A Well, he was looking for real estate.

7 Q Okay. What kind of real estate?

8 A He was looking for houses. I think that was  
9 about as specific -- probably houses on a golf  
10 course, can use a little of that. He came that  
11 evolved specifically over time. Homes that were on a  
12 golf course.

13 Q Mm-hmm. And why was he looking for houses  
14 on golf courses?

15 A Initially my understanding was he was  
16 looking for something for him and his wife,  
17 Katherine, as a desert getaway.

18 Q Okay. And when he first came in, did you  
19 help him find a home?

20 A Well, we started looking.

21 Q That lead to a transaction where they  
22 purchased that home?

23 A Not that day.

24 Q That month?

25 A No. Actually, we looked at a lot of

1 properties until the end of 2010 and made the first  
2 offer on December 30th and 31st of 2010.

3 Q Okay. Now, stepping back just to clarify.  
4 What region are you working in generally? Like  
5 what's your home market?

6 A The desert cities and Coachella Valley.

7 Q Okay. What county is that in?

8 A Riverside.

9 Q Okay. And do you do any work in other  
10 counties?

11 A Not generally. I don't work that market. I  
12 don't live in that market. So I had been asked to  
13 write some offers on behalf of the Topor's in Orange  
14 County and wrote a flurry of those on properties that  
15 were near where their primary home is.

16 Q Okay. Besides the Topor's, do you have any  
17 clients that operate in Orange County?

18 A No.

19 Q Now, when you have a new client and you're  
20 looking for properties for them, how do you go about  
21 finding those properties to bring to their attention?

22 A There's a number of different ways. If  
23 there's something I know about, I take them to it or  
24 send it to them. I'll ask them if they want me to  
25 set up a search, you know, to send them properties by

1 e-mail.

2           And sometimes they do, sometimes they don't.  
3 They'll ask me questions. We'll make arrangements to  
4 meet and go see properties in some cases, but it  
5 varies from client to client.

6           Q     Okay. Now, when you said set up a search,  
7 what does that mean?

8           A     There are a number of search engines fuelled  
9 by the Multiple Listing Service that go out through  
10 brokerages. You put in their criteria which can be  
11 altered, then look for homes that generally fit what  
12 they believe they're looking for.

13          Q     Okay. Now, the Multiple Listing Service or  
14 MLS, right?

15          A     Mm-hmm.

16          Q     When you're on that, does it bring all these  
17 different search engines together in one place or it  
18 just gives you access to the different --

19          A     The MLS is the basis for these. If you see  
20 something on Zillow, most of the content there is  
21 coming from the local boards, it's coming from the  
22 National Association of Realtors, the state  
23 association of realtors, the local boards that make  
24 up the state association, they -- those listings when  
25 they're entered, get into sites like Zillow, Trulia,

1 Redfin.

2 Q Okay. And how does a new property end up on  
3 MLS?

4 A Because if a listing agent has a listing  
5 agreement, enters that in California you're obligated  
6 to put it in there within 48 hours unless you have a  
7 signed exclusion.

8 Q Okay. Walk me through that process a little  
9 bit. So what would happen from a broker's  
10 perspective if they have a new client looking to sell  
11 a property?

12 A They have a new client looking to sell a  
13 property? If there's a client who's contacted us  
14 about selling a property, one of their agents -- from  
15 a broker's perspective, only their agents would meet  
16 with that client look at the property, enter an  
17 agreement on listing terms.

18 Q Okay. And then within 48 hours it would be  
19 required to put it on the MLS?

20 A And usually a signed agreement has to be put  
21 into place because there are things that have to be  
22 done. They may want the property staged,  
23 professional photography taken.

24 Q Okay.

25 A So.

1 Q And then you mentioned something about  
2 unless there was an exclusivity agreement. What does  
3 that mean?

4 A No --

5 Q I think --

6 A -- exclusion.

7 Q An exclusion.

8 A There's a form called the SCLI which is the  
9 seller exclusion of the listing from the Internet and  
10 SCLM which is a seller exclusion of the listing from  
11 the MLS.

12 So if somebody wants to enter an agreement,  
13 say they want to sell their, like they need to get  
14 the garage cleaned out, the house cleaned, they want  
15 to have it staged, want to have photographs made,  
16 they may enter into that agreement and then ask for  
17 it to be kept off the market, for example, until the  
18 15th of the month so that they can get those things  
19 done prior to having it go public.

20 Q Okay. Is there ever any situation where a  
21 property might not go on the MLS if the seller  
22 already has a buyer, an interested buyer?

23 A Theoretically I'm taking a new listing on a  
24 property where the seller to whom I sold the house  
25 doesn't want the property marketed on the MLS through

1 the summer. So that won't go active on the MLS, and  
2 therefore, it won't go out to Trulia, Redfin, Zillow,  
3 all of those till October.

4 Q So that seller could have a buyer approach  
5 them, say they mentioned that they were selling their  
6 home and someone was interested in buying it?

7 A Then that would have to be discussed. I had  
8 one in Palm Springs in the spring, you know. If we  
9 have -- and it's not my contract, that Berkshire  
10 Hathaway has a listing agreement representation  
11 agreement for a buyer -- I'm sorry, for a seller,  
12 then something would be added into the contract or  
13 into the agreement like an amendment that would  
14 indicate that specific individual if they wanted that  
15 to be excluded from the scope of the agreement, the  
16 listing agreement.

17 So, for example, if somebody -- I had a  
18 client in Palm Springs that knew some people who said  
19 they were interested. That didn't materialize, but  
20 when we wrote the listing agreement for him, that  
21 party was cited specifically.

22 Q Okay. So you -- when you said, you know,  
23 for a client you might do a search of the MLS, how  
24 does that work? Does a client give you a certain  
25 criteria of what they're looking for in a property?



1           A       Mm-hmm. I mean, I do my own search. The  
2       MLS is an auto-generated. You set up the criteria.  
3       You can change the criteria. You can add criteria to  
4       it or remove criteria from it, but it's kind of a  
5       garbage in, garbage out situation.

6                    If you're looking for properties that aren't  
7       in an HOA 'cause you don't want to pay homeowner's  
8       dues as an example, you put a zero figure in there.

9                    And the system that they're using in Palm  
10       Springs now that some agents aren't putting the  
11       homeowner's association dues, so if information has  
12       been entered incorrectly by the listing agent.

13                   Properties will come up that you may know  
14       specifically are part of an HOA that have a monthly  
15       fee.

16                   So you have to go in there and look at them  
17       and weed them look for things that might be missed  
18       and things that are included that don't apply.

19           Q       Okay. What's your personal process when,  
20       say, you have a new client looking to buy a property  
21       in terms of determining what the client's criteria is  
22       for the home they're looking to purchase?

23           A       Simply talk to the client.

24           Q       Okay. Do you have like a list of questions  
25       that you go through with them, or is it more just

1 experience, you just kind of know what kind of  
2 questions to ask?

3 A Part of it is experience. Part of it is the  
4 individual. Every client is different. Every client  
5 has different wants or needs, reasons for taking  
6 action.

7 Q Okay. So you don't have like a standard  
8 form that you have --

9 A It changes. No.

10 Q Yeah.

11 A There are standard forms you can use, but,  
12 you know, a lot of those are specific to markets that  
13 are different than ours. There are a lot of  
14 secondary or out-of-area owners in that market.

15 So if somebody were selling homes in places  
16 like Indianapolis or Milwaukee, but they're looking  
17 to have their -- get to work or get the kids into the  
18 best school, then their criteria is going to be  
19 vastly different from somebody who's looking for a  
20 second home they're going to retire into in Palm  
21 Springs.

22 Q Is that -- would you say that's the majority  
23 of people looking to purchase in your field?

24 A Yeah, out there.

25 Q Second retirement home type thing or

1 vacation property?

2 A Or they are retiring down there, you know,  
3 they're in the process of retiring now. But  
4 generally, not always.

5 I mean, there are primary owner-occupant  
6 residents that live and work in Palm Springs that  
7 have school-age children.

8 But still the majority of them are older  
9 demographic, empty nesters, childless couples, people  
10 who are buying secondary property.

11 Q Since a great deal of these people are  
12 looking to retire in the Palm Springs area, would it  
13 be fair to say that most of them are probably not  
14 from that area initially?

15 A Yeah, most of them.

16 Q Okay. So how do these people usually end up  
17 getting contact with you?

18 A I meet them at an open house. They call  
19 into the Berkshire Hathaway office. They contact me  
20 by e-mail or telephone directly.

21 Q Mm-hmm.

22 A Generally, that's how it works. Or they've  
23 been referred. I mean, one I closed in April from a  
24 couple from Alaska with college-age daughters, that  
25 was a referral from a longtime friend.

1 Q Okay. And then in these situations like  
2 let's say with a client in Alaska, how would you --  
3 what's your main form of communication with the  
4 client?

5 A Telephone.

6 Q Okay. A lot of telephone calls, properties  
7 you're looking at?

8 A I'll use telephone, text and e-mail. But,  
9 you know, if it's something that needs to be  
10 clarified, or date stamped, or time stamped, you  
11 know, I'll e-mail it, but I used all those forms.

12 Q Okay.

13 A Telephone is more immediate and more  
14 personal.

15 Q Mm-hmm. Now, you said that some clients  
16 you'll send out the search results by e-mail, right?

17 A Yeah.

18 Q Okay. And what does that look like? What  
19 do you send over?

20 A Well, what usually happens is immediately  
21 they'll get a series -- if you set up a search in the  
22 EL 60 results, they'll get an e-mail that have 60  
23 listings or a link that has a portal where they can  
24 see all those.

25 From that point on as long as the search

1 remains active, then properties come up that match  
2 their criteria. They'll get an auto-generated e-mail  
3 about it --

4 Q Okay.

5 A -- every time something comes on the market,  
6 comes back on the market that fits that criteria.

7 Q Now, I know I can like go on Redfin and look  
8 up properties and stuff like that. Can anyone get on  
9 the MLS website?

10 A Yeah, there's a public face to the MLS.

11 Q Okay.

12 A Doesn't have all the -- if it's coming from  
13 an agent, usually it has to come from an agent, but  
14 there is a public version of the MLS.

15 Q Okay. And what does the agent version of  
16 the MLS have that, say, the public-facing version?

17 A Showing instructions for one thing, whether  
18 it's alarmed, alarm codes, gate codes, whether it's  
19 owner-occupied, whether it's being excluded from the  
20 market for a certain period because of residents,  
21 tenants and residents, private contact numbers for  
22 owners.

23 Q Okay. Now, we've been using the term  
24 "agent" and "broker." To you, what do those two  
25 terms mean? What does "agent" mean?

1           A     An agent, a licensed sales agent in  
2 California has to be affiliated with a brokerage.  
3 It's possible for them to go and get a broker's  
4 license and then still be associated with brokers.

5                     My title would be broker associate. But in  
6 California then under the law of corporations, a  
7 broker can set up their own operation independently.

8                     They can -- you know, for example, the first  
9 transaction I ever did with the Topor's, that owner  
10 had gotten her broker's license and heard that  
11 property had been handled through I think four prior  
12 listings with established agents with large  
13 corporations.

14                    And ultimately she was in a short sale  
15 situation. She got her license to represent the  
16 house herself as the broker.

17           Q     Okay. So you have an agent's license, but  
18 not a broker's license; is that correct?

19           A     Right.

20           Q     Okay. So you operate under Berkshire  
21 Hathaway's brokerage license?

22           A     I operate under the Berkshire Hathaway  
23 franchise that's in the Coachella Valley that's owned  
24 by the company called the Americana Group of Las  
25 Vegas now.

1 Q You ever thought about getting your broker's  
2 license?

3 A Mm-hmm.

4 Q Any plans on doing so?

5 A Not immediately. I have to say at Coldwell  
6 Banker for whatever reason, I'm not sure it was good  
7 advice early on, I was advised by the managing broker  
8 in that office you don't want to get a broker's  
9 license, so. But...

10 Q Did he say why?

11 A I think he just felt the additional expense,  
12 liability involved, but we have to be covered by  
13 errors and omissions insurance any way. So yeah, I  
14 considered it.

15 Q Okay. Now, between a broker and an agent,  
16 are there different duties that each owe to a client?

17 A No.

18 Q Okay. So the duties are the same whether --

19 A The fiduciary duties and ethical duties to a  
20 client are the same.

21 Q Okay. All right. So let's go through a  
22 hypothetical situation. Just kind of walk me through  
23 the process.

24 You have a buyer. You're representing a  
25 buyer. You find a property that they want. What's

1 the first thing that you do?

2 A Well, the first question obviously is if  
3 they want to make an offer, you know, and what offer  
4 that is; is it gonna be a finance offer, is it gonna  
5 be a cash offer, how quickly would they like to  
6 close, the terms of the offer are basically the  
7 questions.

8 And then, you know, if, in fact, they want  
9 to go forward with a written offer and I have the  
10 terms, I write it for them, verify that the terms  
11 are, you know, the terms that they want. And get  
12 their signature on it, submit it, present it to the  
13 other party, the listing agent.

14 Q Okay. And then if the listing agent accepts  
15 the offer or the -- you know, the seller --

16 A Yeah. I mean, that's an important  
17 distinguish to make. Realtors aren't parties to  
18 transactions. We can't interfere with those, but the  
19 listing agent then takes the offer, presents it to  
20 the seller.

21 Q Mm-hmm. Then if the seller accepts the  
22 offer, what usually happens next?

23 A We open escrow with one escrow company,  
24 whoever -- you know, whatever's indicated on the  
25 contract or agreed to. And then there's a three-day



1 period in which the buyer has to get their earnest  
2 money deposited into escrow.

3 Q Okay. And is there a purchase sale  
4 agreement type thing that's entered into at some  
5 point?

6 A It's the RPA, the purchase agreement that  
7 was executed by both parties, and then that gets put  
8 into escrow instructions by the escrow officer --

9 Q Okay.

10 A -- escrow company.

11 Q Now, in these situations where you're  
12 representing the buyer, do you usually generate the  
13 purchase sale agreement?

14 A Are you talking about the purchase  
15 agreement, the RPA?

16 Q The RPA.

17 A Yeah. If you're representing a buyer,  
18 generally, yes.

19 Q Okay. So it's not the seller as broker or  
20 agent?

21 A Unless somebody goes -- buyer goes to a  
22 listing agent, says I want to write it up and they're  
23 comfortable with having that listing agent double on  
24 the deal, which is legal in California.

25 Q Are there other documents that go along with

1 the RPA when you're generating that document?

2 A Yeah. There's a package that goes out,  
3 standard agency disclosure. I usually include what  
4 is called the SPSA, statewide buyer and seller  
5 agreement which is -- now it's 12 pages, it was 10  
6 pages. Basically it's informational to the client,  
7 what their rights and responsibilities are.

8 Q Okay. And what -- is there a certain entity  
9 that produces these documents that you can access and  
10 generate?

11 A Yeah. They come -- as a realtor member, you  
12 can be a licensed sales agent in California without  
13 being a member of the National Association of  
14 Realtors.

15 So the term "real estate agent" or "realtor"  
16 gets used interchangeably, but realtors are actually  
17 a member of the National Association of Realtors and  
18 the state association of realtors.

19 And CAR in California, the California  
20 Association of Realtors has a company contracted with  
21 called ZipLogix that provides those document forms,  
22 the state templates for all these online to its  
23 members.

24 Q Okay. And then do you have to have a  
25 membership or something like that to access those

1 forms?

2 A Yes. Mm-hmm.

3 Q Okay. Is that a membership that only agents  
4 or brokers can have, or can anyone pay for a  
5 membership, do you know?

6 A You have to be an agent or a member --

7 Q Okay.

8 A -- or broker.

9 Q Mm-hmm. All right. All right. So once you  
10 have the RPA signed and earnest money deposit down,  
11 what happens next in the buying process?

12 A There are -- there's standard documents that  
13 have to be signed off, whether a buyer -- since I'm  
14 representing the buyer, if they're getting an  
15 inspection, for example.

16 So they go through the process of hiring or  
17 waiving, you know, there's buyer's inspection waiver  
18 form, but there are a series of forms for each of  
19 those steps, CAR standard forms.

20 Q Well, why don't you walk me through what are  
21 those various documents.

22 A There's a buyer's inspection waiver and/or  
23 the receipt for reports that indicates that they've  
24 received -- if they are getting an inspection, that  
25 indicates their receipt of the buyer's required

1 naturals -- natural hazard disclosure, whatever  
2 reports they're entitled to including homeowner's  
3 association, docs, requests for repair.

4 If a buyer is requesting any repairs based  
5 on the inspection, you have to get those forms  
6 executed. It's the process of having or waiving  
7 whatever inspections they have.

8 You know, if it's a cash transaction and the  
9 offer is being made with a quick closing and they're  
10 not asking for inspections, then just have to get an  
11 inspection waiver.

12 Q Okay.

13 A You know, but that's written into the RPA to  
14 begin with.

15 Q Mm-hmm. Is there any type of like mandatory  
16 disclosure form for the seller to fill out?

17 A Yes. So there's a couple of them. There's  
18 a transfer disclosure statement, and then there's a  
19 seller property client questionnaire.

20 Q Okay. And do you as the buyer's broker  
21 usually provide those or is that something you rely  
22 on the --

23 A That has to come from the seller side.

24 Q Okay.

25 A Has to become completed by the seller and

1 the seller is supposed to provide it. The seller is  
2 also obligated to, for example, provide the natural  
3 and hazard disclosure report which usually contains  
4 things like issues with earthquake zones,  
5 liquefaction, noise, contaminated sites, tax  
6 information.

7 Q Mm-hmm. Would that be like Megan's Law  
8 disclosures and stuff like that as well?

9 A Yeah.

10 Q Okay.

11 A Usually about a 35-page report.

12 Q And that's all coming from the seller?

13 A Yes.

14 Q All right. And then in terms of the escrow  
15 instructions, do you have any responsibilities there  
16 or is that -- you leave that up to the --

17 A That's handled by escrow.

18 Q That's handled by escrow?

19 A Yeah. My responsibility is to look at them,  
20 proof them, and if there's any errors, to catch them  
21 and have them corrected.

22 Q Okay. So you monitor what --

23 A Yeah.

24 Q -- what escrow's doing?

25 A But escrow solicits the signatures on those.

1 So I'm just basically looking at it from the outside  
2 and making sure it is, in fact, what was agreed to on  
3 the RPA.

4 Q And then in terms of, you know, before the  
5 buyer closes, you know, what kind of discussions do  
6 you usually have with your client?

7 A That would vary from the client, you know,  
8 what experience we're having with the seller, whether  
9 or not they're getting financing, or what the status  
10 of their loan is, whether or not they had  
11 inspections, what the results of those inspections.  
12 So it's gonna vary from buyer to buyer.

13 Q Okay. Now, in terms of all these documents  
14 that you're providing to your clients, what do you do  
15 to instruct them about what the document is and  
16 what's required of them?

17 A Well, I ask them if they have any questions,  
18 what are their questions. And sometimes they'll  
19 bring those questions to me before -- you know, I  
20 have to ask, you know, if they don't understand  
21 anything, what am I signing, you know, they'll ask me  
22 what is this, what does this mean?

23 Q Mm-hmm.

24 A And I'll explain what the document is for.

25 Q Okay. So you send them the documents and

1 you just ask them to look it over and if they have  
2 any questions --

3 A Yeah. I mean, a lot of brokers,  
4 particularly large brokers like Berkshire Hathaway  
5 have their own in-house forms as well.

6 Berkshire Hathaway has its own version of a  
7 local area disclosure that talks about things like --  
8 things specific to the desert; heat, wind, earthquake  
9 zones.

10 They have -- every brokerage has an  
11 affiliated business arrangement disclosure. Every  
12 major brokerage has its own -- they have a preferred  
13 vendor relationship with this escrow company or that  
14 title company.

15 Whether or not that those parties are  
16 actually being used in the transaction, you know,  
17 they will disclose if they have a business  
18 relationship with them.

19 Q Okay. And then in terms of signing the  
20 document, do you have a preferred method of how you  
21 have your clients sign?

22 A I prefer to have them digitally sign, but,  
23 you know, I kind of put that forward that every  
24 client isn't comfortable using digital signature.  
25 And there are a couple of vendors for that. The

1 biggest one is DocuSign.

2 Q Is that the one you usually use if your  
3 clients are --

4 A Yeah, I usually -- the California  
5 Association also has an a line of ZipLogix. They  
6 have Digital Ink which is another version of the same  
7 sort of thing.

8 A transaction management system is being  
9 used by a lot of companies including Berkshire  
10 Hathaway that's called SkySlope. It has its own  
11 version called Digi-Sign, but they're all digital  
12 signing methods.

13 It's, I think, become the standard in the  
14 industry now, but, you know, it wasn't that long ago  
15 that it was not. And some people are not comfortable  
16 doing it, don't understand the software or the  
17 process, aren't -- don't see themselves as being  
18 computer friendly.

19 Q Mm-hmm. Okay. Now, when you -- do you ever  
20 have a client come in to do a wet signature with you  
21 in office?

22 A Yeah, sometimes.

23 Q Mm-hmm. Just --

24 A It's pretty rare anymore, but yeah, I have.  
25 I've had clients who have said they're having trouble



1 with their e-mail for whatever reason and they'll  
2 come in and wet sign docs.

3 Q But most even if they're not using the  
4 DocuSign, do they just e-mail you back a scanned copy  
5 or something like that?

6 A Well, obviously if they're coming into the  
7 office and wet signing, I can make a copy right  
8 there.

9 Q I mean the ones who aren't coming into the  
10 office for a wet sign, if they're not doing a  
11 DocuSign?

12 A I've had clients that I've sent them as  
13 attachments to PDF, attachments to e-mail. They  
14 print them out.

15 They'll sign them and scan or -- I try to  
16 discourage them from faxing them because they become  
17 illegible, but -- and then once they sign them, scan  
18 them back, attach them to another e-mail and return  
19 as PDF's.

20 Q Okay. All right. So getting back to your  
21 relationship with the Topor's. You said you first  
22 met Mr. Topor in 2010?

23 A 2009.

24 Q 2009?

25 A September 2009.

1 Q Okay.

2 A Was me personally.

3 Q But you didn't close the first deal until  
4 December 2010?

5 A We didn't close the first deal until the end  
6 of July of 2011 on a house that an offer was made on  
7 Tax Day of 2011, but we looked at a number of  
8 different houses in a number of different areas.

9 And, you know, this is how it generally  
10 works with buyers, you know. Particularly if they  
11 don't own out here or they're not from the area in  
12 the desert, look at different things.

13 And it comes clearer to them even what their  
14 criteria; is this house gonna be big enough, do I  
15 want to live in this area.

16 I recall maybe one of the first excursions I  
17 made with Bob probably in the fall of 2009, it may  
18 have been right about that time, we went up and  
19 looked at a golf course community to the northwest of  
20 Desert Hot Springs only because there was an idea  
21 about a price point and there were homes at Mission  
22 Lakes in that price point.

23 But the location and the size of those homes  
24 in that area, you know, you had to kind of go through  
25 a rather rugged looking desert area, you know, with

1 wind farms to get to it.

2 And so that wasn't ideal. So the houses  
3 themselves on the golf course was okay, wasn't what  
4 he was looking for. So we looked at places like  
5 Mountain View and La Citrus and a number of gated  
6 golf course community developments in Palm Desert,  
7 Rancho Mirage, Indio, at one point Indian Springs and  
8 La Quinta.

9 Q Do you know where Mr. Topor's normal  
10 residence is?

11 A In Orange. Mm-hmm. In Rocking Horse Ridge  
12 in Orange.

13 Q So would he drive out from Orange to meet  
14 you to view these properties?

15 A Mm-hmm.

16 Q And when you had a property you wanted to  
17 show him, how did you usually let him know?

18 A Well, we'd discuss it on the phone. We  
19 talked on the phone a lot. We talked -- we  
20 corresponded by e-mail.

21 And usually -- not sure if always, but  
22 usually would send an itinerary; I've got six homes  
23 for us to look at or eight homes, and here are the  
24 ones I think we should see.

25 Q Mm-hmm. Would you send him MLS listings by

1 e-mail?

2 A Well, yeah, an e-mail would go out in  
3 addition to the auto-generated e-mail, you know. If  
4 I would see something that's like look at what's back  
5 on the market or what about this, you know, something  
6 that I felt I should call out.

7 And Bob would do the same, you know. He  
8 would see something. And e-mails on the market or  
9 back on the market. You know, Bob would say a guy  
10 must be smoking something in reference to the asking  
11 price.

12 Q So with respect to the auto-generated  
13 e-mails, I think you said before just once the  
14 criteria was in, it would just keep repopulating --

15 A Yeah. And then if something fell out of  
16 escrow, came back on the market, or something new  
17 came on the market that I felt was worth taking a  
18 closer look at, I'd say hey, what about this, send a  
19 separate e-mail.

20 Q And is that a function that the MLS listing  
21 site provides or the auto e-mail?

22 A The MLS has as it's in there are a number of  
23 different platforms providers for the MLS in Palm  
24 Springs which is affiliated with a board called  
25 Central Los Angeles and West side. The platform host

1 is a company called the MLS.com.

2 In Palm Desert the Palm Desert Regional  
3 Association of Realtors is a company out of Boston  
4 called Rapiendi (phonetic).

5 But yeah, they all have, you know, the  
6 capability of an agent or broker to go in and set up  
7 criteria for their clients and set up their client's  
8 contact information in there.

9 So that if the client wants, you can also  
10 schedule. You know, if they only want to be -- if  
11 they don't want to be receiving e-mail immediately  
12 all the time, you can set it up so that they get them  
13 at 5:30 in the morning or --

14 Q Once a week, something like that?

15 A Once a week, you know, on Wednesdays or  
16 things like that.

17 Q Okay. And when you were searching for this  
18 first property for Bob, did you set up any type of  
19 auto-populated e-mail for him?

20 A They were already running. In fact, for a  
21 long time I had two going. After it became clear  
22 that they liked Rancho La Quinta in particular.

23 You know, we were looking at, as I said, a  
24 number of different communities. And at one point --  
25 may have been after we closed that short sale, the

1 first one at Rancho La Quinta, and then it became  
2 more evident later that they were interested in  
3 buying more than one house in the desert.

4 Then I had two search engines running; one  
5 specific to Rancho La Quinta and properties on the  
6 market within there, and another generally for that  
7 type of home that size in a, you know, planned unit  
8 development, gated golf community.

9 So, you know, whether that would be in  
10 Rancho Mirage, or Palm Desert, or wherever. So I had  
11 two running concurrently for a period.

12 Q Okay. And what was it about that Rancho La  
13 Quinta properties that you believe was most  
14 interesting to Bob?

15 A Well, to Bob, what I always found is Bob  
16 almost made a beeline straight through the house. He  
17 didn't really look much at the house. What he was  
18 looking at was the view.

19 Q Mm-hmm.

20 A I don't think that was the case with  
21 Katherine, but Bob would just -- you know, he'd go  
22 out to the back and he wanted to see what the view  
23 was from over the pool from the back.

24 Q Mm-hmm.

25 A So that became his kind of defining

1 criteria. I mean, we looked at a lot of nice houses  
2 and a lot of them had striking views, but that became  
3 the most immediate criteria between one nice recent  
4 constructed 3,000 square foot developer's luxury home  
5 in a gated golf course community versus another what  
6 was the view when you were out in the backyard.

7 Q And is that something that's included in the  
8 listing so you can kind of target your search that  
9 way?

10 A You can't. Theoretically there is criteria  
11 you can check when you put in a listing and say it  
12 has a mountain view, it has a fairway, view it has a  
13 greenbelt view, that sort of thing.

14 Agents don't always do that. When they do  
15 they're not always correct, you know. You really can  
16 only -- you have to experience the property in  
17 person, you know.

18 There's a ton of information. It's almost  
19 too much information on the MLS, but you don't know  
20 until you walk the property what the properties like.

21 Q Before you take a client to a property, do  
22 you ever utilize like Google Maps to try to get a  
23 sense of the surrounding area?

24 A No, that doesn't give me any sense of it.

25 Q Even doing the 3-D view and adjusting the

1 angle and all that?

2 A Yeah. Again, as far as taking clients out  
3 in the Coachella Valley, I'm familiar with the areas  
4 myself. And sometimes a client will ask me about a  
5 property and they're out of area so they don't know.

6 And I'll say yeah, that's a nice house, but  
7 there's a power station on the other side of the  
8 wall, so.

9 Q Just based on your personal experience in  
10 the area, you kind of get a sense -- you start to  
11 know where --

12 A Yeah. I can, you know, tell them that --  
13 I'll say, you know, try looking at that in aerial  
14 view and they'll go "Oh, what is that?"

15 Q All right. Now, so after this first  
16 property that closed in July of 2011, did you keep  
17 working with Bob?

18 A Yes.

19 Q When was the next time he came to you for  
20 your services?

21 A The only questions -- I remember having an  
22 e-mail with Bob because it wasn't evident at the  
23 outset that Bob and Katherine were going to by more  
24 than one house out there.

25 And I think the idea was that they were



1 going to use it as their, you know, vacation home.

2 And that was my understanding until, you know,

3 perhaps they would retire into it.

4 But then it became -- the subject came up  
5 using it as a vacation rental which became a hot and  
6 trendy idea.

7 And then there was some mention of the  
8 possibility of renting it out while they were not in  
9 residence.

10 And then it turned up, that particular  
11 house, as a listing as a vacation rental. And Bob  
12 had come to me with a question about something and I  
13 did say "I thought you were working with" -- can't  
14 remember his name now, John something with Coldwell  
15 Banker, John Nelson maybe.

16 And he said only, you know, for the rental  
17 side of -- you know, to list them as vacation rental  
18 properties, said okay. So whatever the question was  
19 I answered it, responded to it.

20 And, you know, then there was -- of course  
21 Bob was finding properties in Orange County near to  
22 where he lives. These were condos and town homes in  
23 developments that were nearby where their primary  
24 residence was.

25 So I, you know, said "Well, I'll be happy to

1 write the offer for you. Obviously I don't, you  
2 know, live and work over there." But I wrote a  
3 flurry of offers.

4 And because we were generating them so  
5 quickly, I made -- I pushed to have them or asked to  
6 have them digitally signed, which they did. I think  
7 that was really about the only time that they did  
8 DocuSign or Digital Ink because we were sending out  
9 like a couple dozen, I think, offers on condos that  
10 were in Orange.

11 But in that market at that price point on  
12 those type of properties, it was always a lot of --  
13 there were a number of competing offers.

14 But he came back to me and said they weren't  
15 comfortable doing it that way. So we went back to,  
16 you know, my sending the docs over and they would  
17 sign and scan and send them back as PDF attachments.

18 Q So you said they were asking for help with a  
19 flurry of listings you said in Orange?

20 A Yeah. And then shortly thereafter neighbors  
21 in the community where they live were under water.  
22 They were in default on their house. And these were  
23 people that Bob and Katherine had lived where they  
24 live for nearly 30 years even at that point.

25 And their son and daughter-in-law were

1 interested in buying this house, this neighbor's  
2 house, so.

3 And because I'd handled a prior short sale  
4 transaction for them at Rancho La Quinta, approached  
5 me again about, you know, working with these  
6 neighbors and their son and daughter-in-law on doing  
7 a short sale transaction to sell the house to Jason  
8 and Katherine (phonetic) their son and  
9 daughter-in-law. And that was in May of 2012.

10 Q Okay. And did you help them get that house?

11 A Yeah, it -- eventually we got approval  
12 and -- from the lender. I'm trying to remember who  
13 the lender was on that. It might have been -- I  
14 believe that was Wells, but any way, it closed in  
15 December. So it was about seven or eight months.

16 Q December of 2012?

17 A Yeah.

18 Q Okay. Now, when you say "short sale," what  
19 do you mean by that?

20 A Well, short sale is where an owner owes more  
21 on the home than the current market value of the  
22 home. Bob was interested in those because you could  
23 make an offer that was -- you know, to a motivated  
24 group seller.

25 And if you could get bank approval on that

1 offer, you might get a steep discount versus the  
2 standard market price of that house.

3 Q From your perspective as the agent, is there  
4 a different process for you when you're dealing with  
5 a short sale as opposed to --

6 A It's a more arduous process. It's a longer  
7 process. There is no one specific process. The  
8 banks became better, which isn't saying much, but  
9 about handling short sales eventually because they  
10 realized eventually when the market was at its worst  
11 in the last crash that it was going to be -- it was  
12 in their best interest to approve a short sale rather  
13 than to foreclose on a property.

14 There were going to be many more additional  
15 costs for, you know, Wells or B of A or whoever to  
16 foreclose on all these houses. There's asset  
17 management who has to hire field services, and then  
18 they're responsible for all the living encumbrances  
19 on these properties.

20 So, you know, short sales became a  
21 phenomenon and -- but there -- for a long time there  
22 was no specific process. And you had one division of  
23 a bank in one part of the country and another  
24 division in another part of the country.

25 And there used to be a phenomenon at the

1     outset of this that, you know, somebody would make an  
2     offer on a short sale house where, you know, the  
3     owner owed much more than the current market value.

4             The offer was accepted, it went to the  
5     lender for approval, and the loan division, the  
6     lending division was in St. Paul and the REO or real  
7     estate owned division was in Austin, Texas.

8             And in the meantime, the clock was ticking  
9     and these people on all sides had been waiting for a  
10    year. And all of a sudden a house was no longer  
11    theirs, it had been foreclosed.

12            So it took them awhile to get their act  
13    together about it. But the first house we did  
14    together was a short sale. I think, as I said, the  
15    offer was made on April 15th. It finally closed on  
16    July 29th. And that was relatively quick, so.

17            Q     Okay. So the first house was a short sale?

18            A     Mm-hmm.

19            Q     Okay. And do you happen to remember the  
20    address of that property?

21            A     49440 Mission Drive West.

22            Q     That's impressive.

23            A     What?

24            Q     I said that's impressive that you recall the  
25    address.

1 All right. And then you mentioned John  
2 Nelson I think you thought his name was? Who is that  
3 again?

4 A I'm surprised that I'm having difficulty  
5 remembering. He was a partner, but I think it was  
6 John Nelson and his partner whose name I'm forgetting  
7 now, they were at Coldwell Banker at the time. I  
8 think they subsequently went to Bennion Deville.

9 Q Okay. And what context did Bob bring John  
10 Nelson to your attention?

11 A Well, he didn't bring to my attention. Bob  
12 had asked me a question and what I'd seen was that  
13 the house that we had -- you know, that I had handled  
14 for them prior July had come on the market as being  
15 offered as a vacation rental property, short-term  
16 rental, and it was being handled by that agent, so.  
17 And for awhile he was the Topor's listing agent on  
18 their rental properties.

19 Q Okay. Do you do any rental work?

20 A No.

21 Q Just purchase and sale?

22 A I place people as tenants in long-term  
23 rental situations, but I don't handle any property  
24 management or vacation rentals.

25 Q Okay.

1           A     You know, I have people that are looking for  
2 that sort of thing. There are many property  
3 management companies out there to refer them to  
4 those.

5           Q     Now, prior to helping their son purchase his  
6 home, you know, in the same neighborhood as where  
7 they currently live, you said you were helping them  
8 get some offers out on some properties I believe you  
9 said, also in the Orange County area?

10          A     Yeah. There were a number of offers that  
11 went out in quick succession in a gated condo or town  
12 home communities that were nearby in Orange.

13          Q     In Orange?

14          A     Mm-hmm.

15          Q     Did they close on any of those properties?

16          A     No, not that I'm aware of. Not with me.

17          Q     Okay. And then following helping get their  
18 son into his home, where'd your relationship with Bob  
19 go from there?

20          A     It continued pretty much as it always had,  
21 you known, conversing on a regular basis,  
22 corresponding on a regular basis.

23                   And then by that point it had been become --  
24 not only had it become evident, it had been  
25 articulated they were looking for more than one house

1 for the same purpose, use it as a vacation rental  
2 property.

3           There was one I found, had a search running  
4 also on something called Realty Track which is a site  
5 that sends to me listings that are in default or that  
6 are foreclosed, not only just what's on the market,  
7 but if there's been an NOD or a notice of default  
8 filed on a property.

9           And, you know, if those would come up, I'd  
10 mention that. I'd look at the history and talk it  
11 over with Bob, made an approach a couple times.

12           The first one was also in Rancho La Quinta  
13 to the owner on title there, tried to contact him by  
14 phone, sent him a letter, did finally reach him.  
15 Generally sellers who are in default are not -- they  
16 can be -- at best they can be defensive.

17           He wasn't interested, the seller, at that  
18 time. And then nine months later I think the house  
19 showed up listed with the agent who had sold it to  
20 him as a short sale.

21           And I said look at this, this is 78758 Via  
22 Carmel that was on the market that we talked about,  
23 you know, in September. So this was in June 2013,  
24 and made an offer at that point.

25           Q     Okay. And did that -- did the Topor's



1 eventually close on that property?

2 A Yes.

3 Q Okay. So at this point, you know, you said  
4 it had been established that they were looking for  
5 multiple vacation rental properties?

6 A They were looking for more than one, yeah.

7 Q Did you have any conversations about how  
8 many they were interested in, whether it was a  
9 perpetual thing, they were just looking for one more?

10 A We just -- it was an ongoing search and an  
11 ongoing discussion, you know, find one that looked  
12 particularly good, and then make an offer on it.

13 With the houses out there at that price  
14 point it wasn't a situation of writing multiple --  
15 usually I don't recall ever writing simultaneous  
16 offers, but it was different than the condos or town  
17 homes that were in Orange at a lower price point, but  
18 out there in the desert in La Quinta, you know.

19 We had an ongoing, you know, telephone  
20 conversation, e-mail correspondence, search engines  
21 going looking for that type of home, that type of  
22 property and periodically would get together and go  
23 look at some, you know.

24 And, you know, if there were one that  
25 looked -- sometimes even without going out and seeing

1 them, you know, like this looks good, let's write it  
2 up, so.

3 Q So your understanding of the relationship  
4 was you were just gonna be perpetually on the lookout  
5 and keep bringing these properties to their attention  
6 as you found them?

7 A Yeah, and that became evident as the working  
8 relationship went on.

9 Q So after the 2013 property did you help them  
10 purchase any properties after that?

11 A Mm-hmm. Yes.

12 Q What was the next one?

13 A Well, the next one we closed on was -- what  
14 was that? It was 50185 Grand Traverse in La Quinta  
15 Fairways. And La Quinta Fairways is the next  
16 development south from Rancho La Quinta.

17 La Quinta Fairways is on the north side of  
18 50th. La Quinta Fairways is on the south side of  
19 50th in La Quinta.

20 Q Okay.

21 A But that was something we'd started, again,  
22 a couple years earlier that it was -- that came up in  
23 a search for me as a defaulted property in May of  
24 2012.

25 I don't know if they were the original

1 owners, but longtime owners who were in assisted  
2 care. And then a default showed up on the property.  
3 Then the property showed up listed with an agent.

4 I made an appointment, went out and saw it.  
5 And then Bob and I met and went out and saw it. And  
6 then I -- actually, it was strange to me because for  
7 some reason I received a direct call from the heir,  
8 the daughter of the owners and had a conversation  
9 with her that I didn't initiate.

10 And the house was pulled off the market.  
11 And the following year it sold at trustee sale. And  
12 then it surfaced again in the late summer of 2014.

13 And I said look what's back, but yeah, we  
14 had made -- we had actually -- I had written an offer  
15 that didn't get executed because the house was pulled  
16 off the market.

17 Q This was in 2012?

18 A In 2012. And then it went -- was sold to a  
19 private investor in 2013. 2013 or early 2014, but by  
20 September it was back on the market. The investor,  
21 what he had done, whatever things he had done to the  
22 property.

23 Q When you say -- what do you mean by what are  
24 things he'd done to the property?

25 A Well, he, -- you know, putting in new

1 cabinets and counters and flooring, cosmetic work.

2 Q Improvements?

3 A Improvements that he'd made.

4 Q Okay.

5 A We went and looked at it together. I went  
6 and met Bob out there one night and looked at it and  
7 ultimately wrote an offer.

8 Q Okay. And this was in 2014?

9 A Yeah, September 2014.

10 Q Okay. And when did they close on that  
11 property?

12 A In September 2014. That was -- I believe  
13 that was about a 17-day transaction all together.

14 Q That's pretty quick.

15 A Yeah.

16 Q Yeah. And then what was the -- did you help  
17 them purchase any properties after that?

18 A Yes.

19 Q What was the next property?

20 A 48185 Via Solana in Rancho La Quinta.

21 Q And then how'd you find that property?

22 A Well, again, we were always looking and I  
23 had search engine running, not just for, you know,  
24 gated golf course homes generally, but Rancho La  
25 Quinta specifically 'cause they liked Rancho La

1 Quinta, by then owned two houses in there.

2 Q Mm-hmm.

3 A And that house also popped up on memory. So  
4 it was on Realty Track as a defaulted situation. And  
5 I looked up -- agents through their membership on the  
6 MLS can look at the title reference.

7 There's an imbedded link to the seller's  
8 parcel number, click it, open it up, get that  
9 information and show in that case that that owner had  
10 been in and out of default repeatedly.

11 So I made an approach to her, likewise, by  
12 phone and by letter. Probably, in fact, I think it  
13 was November of 2013, in mid November of 2013 and she  
14 was, you know, again, not receptive.

15 But the property was then foreclosed by a  
16 lender who were handling it as their own brokers,  
17 Sunwest, and it resurfaced as a listing in the summer  
18 of 2015.

19 Q Okay. And at that point did you bring the  
20 property to Bob's attention?

21 A Well, we had already discussed it and  
22 discussed, you know -- I don't think we looked at  
23 that house. We looked at a house very near to it and  
24 it may have been next door.

25 And again, you know, Bob's main focus was

1 the view. The other homes that they bought were  
2 larger models, but it had a spectacular view across  
3 the fairway.

4 And on the other side of the fairway was  
5 Washington Street which is a very busy six-lane  
6 divided artery.

7 So I think that was -- you know, that was  
8 their main misgiving about it. It surfaced again and  
9 we started making offers with investors or lenders on  
10 short sales. They don't use a counteroffer form.

11 They will come back, talk to you, correspond  
12 with you and say your offer has to be rewritten at X.  
13 So we might make an offer of X and they would say no,  
14 the offer needs to be X, Y.

15 And it would be up to us to rewrite it  
16 because they weren't going to generate anything -- a  
17 counteroffer form that says, you know, we'll take X,  
18 Y.

19 So a number of offers were written on that.  
20 But again, that was something that showed up as a  
21 default in 2013 that I sent to Bob and finally closed  
22 on that in the fall of 2015.

23 Q Okay. Now, with these properties since the  
24 Topor's were looking at them for vacation rental  
25 purposes, was there any interest in searching for

1 homes that were pre-furnished or where furnishings  
2 would come with it? Was that part of the criteria?

3 A They weren't. I seem to recall the  
4 comment -- I mean, they would do things to the homes  
5 and improve them, you know, replacing countertops or  
6 flooring or things like that. My recollection is  
7 that Katherine enjoyed furnishing them, or at least  
8 that's what I was told.

9 Q All right. And then after the 2015 property  
10 did you help them purchase any properties after that?

11 A I was writing offers and wrote many more  
12 offers than the ones, you know, that we actually  
13 closed together probably at a 10 to 1 ratio.

14 Then I think the last offer that I wrote for  
15 them was in August of 2016, but that didn't -- the  
16 difference between the asking price and the offer  
17 price was too low. We didn't get a response to that.

18 Q So when you send out an offer, is that a  
19 form that's generated, a CAR form?

20 A Yeah, the RPA, Residential Purchase  
21 Agreement.

22 Q Mm-hmm.

23 A And it comes with other addenda like the  
24 agency disclosure or the stipulated buyer and seller  
25 and the market condition advisory. Those are forms

1 that are part of the package.

2 Q And so whenever you make an offer, you have  
3 to send those documents over to the Topor's to sign  
4 first?

5 A Right.

6 Q Now, are you familiar with the property  
7 located at 49360 Mission Drive West in La Quinta,  
8 California 92253?

9 A Yeah, it's up the street from the first  
10 house that we did together in Rancho La Quinta.

11 Q Okay. And besides the proximity of the  
12 location, how are you familiar with that property in  
13 connection with this lawsuit?

14 A Well, it was part of -- it was property that  
15 came up, had been on the market. The criteria was  
16 sent to them. There was some discussion. Again,  
17 felt the price was unrealistically high.

18 And then the property was pulled off the  
19 market, and then -- for a number of years. And what,  
20 you know, I discovered was that it was being used as  
21 a rental. It had been a long-term rental for a  
22 couple years.

23 Q So what -- when you were first looking at  
24 the market, what timeframe was that? When you were  
25 first looking at that property, what was the



1 timeframe of that before it got pulled off the  
2 market?

3 A 2011, 2012.

4 Q Okay. So very early in your relationship  
5 with the Topor's?

6 A No. I'd had a relationship with them since  
7 2009, so.

8 Q All right. And then it got pulled off the  
9 market and you later discovered that it was being  
10 used as a --

11 A Well, I discovered it was being used as a  
12 rental property. I actually may have discovered that  
13 when Bob called me to tell me that he had written an  
14 offer with another agent on it.

15 Q Tell me about that phone call.

16 A I received a call in mid December and he  
17 told me that, you know, he had approached a Rancho La  
18 Quinta agent about a house up the street, this was  
19 the house, and they had written an offer.

20 And he was -- as I was told, they would only  
21 look at his offer if it were written through one of  
22 their in-house agents, Rancho La Quinta developer's  
23 larger partners, whatever they are, have their own  
24 in-house brokerage. And that they would only  
25 consider his offer if it were written with one of

1 their in-house agents from their brokerage.

2 And also, curiously, that only -- because he  
3 was considering, apparently, selling the house across  
4 the street at La Quinta Fairways, which I was unaware  
5 of, but then he said and if they were allowed to list  
6 that house in La Quinta Fairways, so.

7 Q During the time that you were working with  
8 the Topor's, did you ever help them sell any  
9 properties?

10 A No.

11 Q Were you aware of them selling any  
12 properties during that time period?

13 A They were not selling any properties at that  
14 time.

15 Q Okay. Now, you primarily work as a buyer's  
16 agent, right?

17 A Most of my business is with buyers.

18 Q Okay.

19 A I'd say that's probably about two-thirds to  
20 three-quarters.

21 Q Okay. But you do represent sellers  
22 sometimes?

23 A Yeah.

24 Q And then what was your standard commission  
25 with the Topor's during your relationship with them?

1 Did you have a standard commission?

2 A Well, buyers don't pay commission.  
3 Commissions are paid per the seller, per the terms of  
4 the agreement they have with whoever's representing  
5 the property.

6 And in the case of the banks, they would  
7 dictate what the -- you know, what the commission  
8 rate would be, you know.

9 For example, if they were approving a short  
10 sale, then it was usually 3 percent which is standard  
11 in California.

12 I don't -- you know, sometimes you'll see 2  
13 and a half on each side, but my recollection of the  
14 deals we did together were 3 percent.

15 Q Okay. And that's something you'd negotiate  
16 with the bank on the short sales?

17 A It wasn't even a point of negotiation. They  
18 would tell us.

19 Q They'd tell you what you're getting?

20 A Yeah.

21 Q Yeah. Okay. So when Bob called you about  
22 the Mission Drive property that he was listing with  
23 one of their internal agents, did he mention that  
24 agent's name?

25 A It wasn't that it was listing. It was that

1 he either approached them or they approached him and  
2 I believe he approached them about the house, but it  
3 wasn't on the market active at the time.

4 He was just telling me that an offer had  
5 been written on the house, and that the only way they  
6 would consider his offer, as he said, was if it were  
7 written through one of their own agents with their  
8 own brokerage, and that that agent would be listing  
9 this other house for him that he intended to sell.

10 So obviously some discussion went on between  
11 them, but that's the point at which I was notified.  
12 There's nothing for me to say. I wasn't a party to  
13 it.

14 Q Okay. So you weren't -- as you said, the  
15 property wasn't actually on the market yet when you  
16 got the phone call from Bob?

17 A Not at that point. It surfaced on the  
18 market as a perfunctory matter. After the offer  
19 accepted two days later Bob called to tell me after  
20 much negotiation said they were relentless, that  
21 they'd accepted his offer.

22 So he called me to tell me that there had  
23 been some discussion, and that an offer had been  
24 written and it had to be written through them, and  
25 that they had to be -- he had to agree to let them

1 list this other property, and that it was under  
2 consideration.

3 Two days later he called me back to say, you  
4 know, they'd reached an agreement. And then at that  
5 point the listing surfaced. And then as soon as it  
6 surfaced, it was put in as pending or under contract.

7 Q Okay.

8 MR. DEESE: We're about the hour and a half  
9 mark, so let's take a quick break.

10 Go off the record.

11 (Recess.)

12 MR. DEESE: Go back on the record.

13 BY MR. DEESE:

14 Q All right. Mr. Swanson, I'll just remind  
15 you, we're back on the record. You're still under  
16 oath.

17 So do you have any questions for me before  
18 we proceed?

19 A No.

20 Q Okay. All right. So you said except for  
21 limited circumstances, the Topor's preferred to sign  
22 and scan the documents back to you, right?

23 A That's what they told me.

24 Q Okay. At least most of the documents you  
25 received back from them were scanned, wet signatures,

1 right?

2 A Yeah. The earliest ones that were wet  
3 signed and returned were returned by fax. I asked if  
4 they could scan them and attach them to e-mail  
5 instead just basically because they were clearer.

6 Q Mm-hmm.

7 A The resolution was better. They were more  
8 legible.

9 Q Okay. And from that point on were they sent  
10 to you over e-mail instead of fax?

11 A Yeah.

12 Q Okay. I'm gonna hand you what will be  
13 premarked as Deposition Exhibit Number 2.

14 (Respondents' Exhibit 2 was marked  
15 for identification by the court  
16 reporter and is attached hereto.)

17 BY MR. DEESE:

18 Q Do you recognize that document?

19 A Yes.

20 Q How do you recognize that document?

21 A It's a Buyer's Representation Agreement,  
22 Exclusive.

23 Q What is a Buyer's Representation Agreement,  
24 Exclusive?

25 A It -- it's an agreement, and there were a

1 number of different types of Buyer Representation  
2 Agreements, but the BRE means that we're entering  
3 into an agreement to work together with me  
4 representing them as buyers so that, for example, if  
5 somebody -- if an agent takes clients out, shows them  
6 the property, shows them information about a  
7 property, answers their questions about a property,  
8 maybe even writes an offer for them and then it  
9 doesn't transpire, a seller says to their listing  
10 agent "What about that couple that came through in  
11 April?" And "Why don't you -- you think they're  
12 still interested?"

13           And so meanwhile, the couple has come back.  
14 They decided they're still interested and they get  
15 into a conversation.

16           And thinking perhaps that they would save  
17 money if they wrote the offer with the listing agent,  
18 decide to write an offer on a house that a buyer's  
19 agent had introduced them to, answered questions  
20 about taking action on their behalf, so forth.

21           If that's the case, then the Buyer's  
22 Representation Agreement which many brokers will  
23 encourage their agents to enter into, particularly if  
24 it's gonna be a long-term relationship and their  
25 agent is gonna be showing a client many homes over

1 time before an offer is written, a transaction is  
2 closed, they will ask you to get a Buyer  
3 Representation Agreement in place.

4 Q Okay. So in the hypothetical you just gave  
5 there, it sounds like there might be situations where  
6 the BRE is entered into for a particular property; is  
7 that the --

8 A Sometimes. In fact, I have some BRE's that  
9 were written not generally for Orange County because  
10 I don't live and work in Orange County and I don't  
11 intimately know that market.

12 But when I was acting on the Topor's -- at  
13 the Topor's request to write many offers on condos  
14 and town homes in Orange, I would write those  
15 specific to the property in question rather than in  
16 Riverside County where I would just say generally  
17 single-family detached, attached town home or  
18 condominium within Riverside County and put in an  
19 arbitrary price bracket on it.

20 Q Okay. And then -- so when you say "an  
21 arbitrary price bracket," what do you mean by that?

22 A A lot of them I just wrote like for \$1 up to  
23 2 million or something like that knowing the price  
24 point we'd been looking at generally, but just so  
25 that if they were looking at a house in Riverside



1 County, we had a Buyer's Representation Agreement, my  
2 exclusive with them as my clients for the purpose of  
3 purchasing homes in Riverside County.

4 Q Okay. Now, would it be fair to say that one  
5 of the purposes of BRE is to prevent seller's agents  
6 from back-dooring a sale and excluding a buyer's  
7 broker?

8 A It's the only assurance that the brokerage  
9 or their agent has. You know, as I said earlier,  
10 commissions are paid by the sellers per the terms of  
11 their listing agreement with their broker.

12 And some people believe mistakenly or  
13 otherwise that, you know, if they go and use the one  
14 agent, that that agent may discount their commission  
15 as if it were that agent's decision to do so and  
16 thereby, save on the purchase price.

17 I don't know why the belief persists on the  
18 buyers in North America that somebody's gonna turn  
19 around and give them 20, 40 or \$50,000 for the  
20 purpose of buying their house, but there is that  
21 belief and some agents will do that.

22 There are discount brokerages who offer to  
23 list, for example, at 4 percent, 2 and 2, but it  
24 becomes difficult for another agent representing  
25 clients to show those properties or get cooperation

1 from that agent because that agent doesn't intend to  
2 make 2 percent on that property. That agent intends  
3 to make 4 percent on that property.

4 So we're encouraged to enter into buyer  
5 broker agreements, particularly if it looks like it's  
6 gonna be a long-term relationship involving some time  
7 and possibly more than one property.

8 Q And so for these buyer brokerage -- Buyer  
9 Representation Agreements or BRE's, they wouldn't  
10 exclude the buyer from using another agent to sell a  
11 property, right?

12 A No, and that was never my plan with this  
13 case. I didn't have an exclusive representation  
14 agreement with them as a listing agent. I would have  
15 a listing agreement with them if I were listing it  
16 for them.

17 We never got into that discussion. That  
18 wasn't a scenario, you know, in the time of our  
19 relationship.

20 But if they had come to me and said for  
21 example, "We'd like you to list 50185 Grand  
22 Traverse," then I would have a listing agreement on  
23 behalf of Berkshire Hathaway with them that would  
24 spell out the terms of our relationship there. But  
25 that wasn't -- these are specific to representing

1 them as buyers.

2 Q Okay. So is it your practice or is it the  
3 practice of Berkshire Hathaway generally to enter  
4 into these BRE's?

5 A Nobody can force somebody to enter into one  
6 of these. Berkshire Hathaway can't force its agents  
7 to do it or Coldwell Banker or Bennion and Deville.

8 Nobody can force anybody to do it. And I  
9 have had it put forward, you know, two other clients  
10 who for whatever reason said they weren't comfortable  
11 signing them.

12 Q Let me ask the question a different way:

13 Does Berkshire Hathaway recommend to its  
14 agents that they use these BRE's?

15 A Yeah, and so does Bennion Deville and so  
16 does Coldwell Banker.

17 Q So it's pretty common within the industry?

18 A Yeah, it's ideal. If you can get them, it  
19 defines the relationship, formalizes the relationship  
20 and establishes trust on both sides, you know, that  
21 we'll be working together in this capacity.

22 Q And so is it your general practice to offer  
23 these BRE's to your clients?

24 A Yes.

25 Q Okay. Now, looking at this document

1 specifically. This was before you were at Berkshire  
2 Hathaway, correct?

3 A Yeah. I was with Bennion Deville which was  
4 at the time a Windemere franchise.

5 Q Okay. And do you recall in what context you  
6 sent this document over to the Topor's?

7 A I don't understand in what context.  
8 Probably we were writing offers or starting to write  
9 a flurry of offers, more than one offer and so to  
10 have it in place. But if it was specific to, you  
11 know, a transaction on a specific property, that I  
12 don't recall.

13 Q Okay. Would it be common for you to send  
14 this over with the offer package?

15 A Yeah.

16 Q Okay. Now, looking at this document. If  
17 you flip to what's marked as Swanson 05, it's the  
18 last page of this document.

19 A (Witness complies.)

20 Q You see where it says "Real Estate Broker"  
21 about halfway down the page in the signature block?

22 A Where my signature is?

23 Q Is that your signature?

24 A Yes.

25 Q Okay. All right. And I'm gonna hand you

1 what will be marked as Deposition Exhibit Number 3.

2 (Respondents' Exhibit 3 was marked  
3 for identification by the court  
4 reporter and is attached hereto.)

5 BY MR. DEESE:

6 Q Actually, I'm sorry, before I hand you that.  
7 What was the date range for this document that you've  
8 got in front of you right here?

9 A February 1st of 2011 through January 31st of  
10 2012.

11 Q Is it common for these BRE agreements to  
12 last a year?

13 A Yes.

14 Q Okay. You ever do any that are longer than  
15 a year?

16 A No, I don't. They can be written for any  
17 length of time, but it's common practice to write  
18 them for a year.

19 Q Okay. Do you recognize this document?

20 A Yes.

21 Q How do you recognize this document?

22 A It's another BRE Exclusive written between  
23 myself with the Topor's as my buyer clients.

24 Q And what's the date range on this one?

25 A June 1st, 2011, to May 31st, 2012.

1 Q And that covers a significant period of time  
2 that's also covered by the document we just looked  
3 at, right?

4 A Yeah. There's a number of overlap. As I  
5 said, I wrote I think 51 offers for the Topor's over  
6 the course of our relationship.

7 Q Okay. So each time you sent them an  
8 offer --

9 A Not always. And if I had just written one  
10 that included it, and then two days later, you know,  
11 we were writing another one, then I had a signed  
12 executed Buyer Representation Agreement, Exclusive.

13 I didn't always as long as we had one in  
14 place that covered the period, but there is some  
15 overlap between Buyer Representation Agreements that  
16 were sent. I had it on an ongoing basis from the  
17 onset of our relationship.

18 Q Now, from your perspective in terms of  
19 sending out these BRE's with overlapping time  
20 periods, is it -- in your mind, is it tying it to  
21 each offer that goes out so that you have, you know,  
22 exclusivity on that property for a period of time?

23 A They weren't written specific to a property.  
24 If you look on page 2, you'll see as the terminology  
25 that was used repeatedly; any residential

1 single-family detached, attached town home or  
2 condominium, one to four units located within  
3 Riverside County, California. That was the scope of  
4 these agreements.

5 Q So let me ask the question a little  
6 differently.

7 You testified that if, you know, you made an  
8 offer on, say, February 1st, you wouldn't need to  
9 send another one of these documents over if you made  
10 another offer on February 2nd, right, because they're  
11 so close --

12 A I don't need to, but if I was writing  
13 another offer on May 3rd or something like that, I  
14 might.

15 Q Mm-hmm. And would that be because you're  
16 now making offers on a different piece of real estate  
17 and so you'd want exclusivity for, you know, a year  
18 following that piece of real estate?

19 I guess what I'm trying to get as is, are  
20 you tying it in in your mind in any way to trying to  
21 be able to recover commission on any real estate that  
22 you're making offers on for them and covering  
23 yourself for a year, or is it just re-upping the  
24 relationship, if that makes sense?

25 A It's a combination of both; reiterating the

1 terms of the agreement that we had executed in place,  
2 and making sure that any action -- any offer I wrote  
3 for them, or represented for them, or dealt with on  
4 their behalf was covered under the length of the  
5 agreement.

6 Q Mm-hmm.

7 A So just basically to keep it on an ongoing  
8 basis.

9 Q Okay. And then looking at what's the fourth  
10 page, Swanson 0076, that's your signature there?

11 A Yes.

12 Q Okay. I'm gonna hand you what will be  
13 premarked as Deposition Exhibit Number 4.

14 (Respondents' Exhibit 4 was marked  
15 for identification by the court  
16 reporter and is attached hereto.)

17 BY MR. DEESE:

18 Q Do you recognize that document?

19 A Yes.

20 Q Looking to the fourth page, is that your  
21 signature?

22 A Yes.

23 Q Okay. And what's the date range on this  
24 document?

25 A The one I'm looking at says May 1st, 2012,



1 to April 30th, 2013.

2 Q And looking at this document compared to  
3 Deposition Exhibit Number 3, there are some  
4 differences in the form.

5 Do you see that?

6 A Yeah. BRE forms get -- sorry, CAR forms get  
7 revised twice a year. So if you look under the  
8 heading, you'll see the earlier ones were last  
9 revised in November 2010. This version was issued in  
10 June 2012.

11 Q And through your membership with California  
12 Association of Realtors do they provide you any  
13 informational package or anything like that to  
14 explain changes that are made to the form or a  
15 redline version of the form so you can see what  
16 changes have been made?

17 A Yeah. You can go and obtain those, if you  
18 want.

19 Q Okay.

20 A They don't send them out automatically. But  
21 if you have questions about it, there are sources  
22 online where you can get these questions answered or  
23 get explanatory material sent to you.

24 Q When a form is updated, what do you do to  
25 update yourself on any changes that are made to the

1 form?

2 A We get notifications of updates. As I said,  
3 those happen regularly twice a year in November and  
4 April there are updates.

5 And we'll get a notice from the CAR that --  
6 what forms have been changed. And they will say what  
7 changes were made on the forms in the context of that  
8 e-mail.

9 Q Okay. Now, when a new form comes out and  
10 you have a preexisting relationship with the client,  
11 so like the Topor's, do you make any effort to  
12 explain any changes to the form?

13 A Well, in this case, the form was just  
14 basically reformatted. But if there were -- if there  
15 were content differences or structural differences  
16 just apart from the formatting and I had a client,  
17 for example, that says wait a minute, this doesn't  
18 look like, you know, the form I signed last time,  
19 then you can have that discussion.

20 Q Okay. Then looking at the fourth page of  
21 this document, is that your signature at the bottom?

22 A Yes.

23 Q All right. And I notice as well the  
24 arbitrary price range went to 1500 in the last  
25 document to 2 million.

1           Is there a reason that you remember for  
2 making that change?

3           A     The 2 mill's probably 1.5?

4           Q     I'm sorry. 1.5, yeah.

5           A     No. Again, even by that point my working  
6 relationship with the Topor's we were looking at  
7 homes that were being priced in the five, 600's  
8 maybe.

9                     It was not likely, you know, to go beyond,  
10 you know, a million. I believe we did make offers  
11 eventually in the million price range, but it was an  
12 arbitrary figure.

13          Q     Okay. I'm gonna hand you what will be  
14 premarked as Deposition Exhibit 5 and 6. Actually,  
15 and 7. Excuse me, and 8. And 9.

16                     (Respondents' Exhibit 5, Exhibit 6,  
17 Exhibit 7, Exhibit 8 and Exhibit 9  
18 were marked for identification by  
19 the court reporter and are attached  
20 hereto.)

21 BY MR. DEESE:

22          Q     Take a look through those documents there  
23 and let me know whether you recognize them.

24          A     (Witness complies.)

25                     I do.

1 Q And how do you recognize these documents?

2 A These are Buyer Representation Agreements  
3 that I wrote for the Topor's as clients, as buyer  
4 clients that were specific to offers that were  
5 written on town home or condo units in Orange County.

6 Q And was this the flurry of offers you made  
7 on town homes in the Orange area that we referenced  
8 earlier?

9 A Yeah, this is what I was referring to  
10 earlier.

11 Q Okay.

12 A I think these are all from May of 2012.

13 Q And since these were in Orange County area  
14 which isn't your normal area of operation, is that  
15 why you made them specific to certain properties?

16 A Yes.

17 Q Okay. Were you aware if Bob was looking at  
18 properties other than these in the Orange area?

19 A I don't know if he was.

20 Q Did he mention to you that he was working  
21 with any other brokers in the Orange area?

22 A No.

23 Q Now, unlike the former documents that we  
24 were looking at, these don't appear to have price  
25 ranges on them.

1           Why is that?

2           A     Because they were specific to a property,  
3 have to have its own price range when we were making  
4 a specific offer at that price on a specific  
5 property.

6           Q     Okay. With the other -- with the previous  
7 documents where it was, you know, somewhere in  
8 Riverside County, was it necessary to establish a  
9 price range, or was it enough that you described the  
10 type of home, property in the location?

11          A     Just to be more -- to put some specific  
12 brackets on it. I don't know that it was necessary  
13 that I do it, but we looked, as I said, from one end  
14 of the valley at Mission Lakes up here northwest of  
15 Desert Hot Springs at a certain price point all the  
16 way out to south central Indio, Indian Springs,  
17 communities in La Quinta, Palm Desert and Rancho  
18 Mirage in addition. So since it was asking for a  
19 price range, I put a price range in there.

20          Q     But like you said, it was fairly arbitrary  
21 just based on --

22          A     Because they weren't, again, specific to a  
23 property at a specific price with a specific offer  
24 tied to it.

25          Q     I see.

1 All right. I'm going to hand you what will  
2 be premarked as Deposition Exhibit 10, 11, 12, and  
3 13.

4 (Respondents' Exhibit 10, Exhibit  
5 11, Exhibit 12 and Exhibit 13 were  
6 marked for identification by the  
7 court reporter and are attached  
8 hereto.)

9 BY MR. DEESE:

10 Q Do you recognize these documents?

11 A Yes. Mm-hmm.

12 Q And how do you recognize them?

13 A These are Buyer Representation Agreements  
14 that I -- that I executed for the Topor's as -- with  
15 them as my buyer clients.

16 Q There are signatures at the end of each of  
17 those. Is your signature on the end of each of those  
18 documents?

19 A Yes.

20 Q All right. Now, the date range that each of  
21 these BRE's covers is the same.

22 Do you see that?

23 A Yes.

24 Q Do you know why you sent the Topor's four  
25 BRE's on the same day or for the same date range at

1 least?

2 A No, I don't recall.

3 Q Based on the timeframe here, assuming you  
4 probably sent this document to them sometime in  
5 January given the signature date --

6 A This one was sent in January. These were  
7 all sent in March, looks like the -- yeah, the 14th,  
8 15th and 17th of March of 2013.

9 Q So what -- do you recall any properties in  
10 particular that you were looking at for the Topor's  
11 at that time period?

12 A We sent them many properties and we looked  
13 at a lot of them, but I don't remember specifically.  
14 I know that on an ongoing basis there were many  
15 properties.

16 We went out and looked physically together  
17 at many properties, wrote many offers for them.  
18 Otherwise, I don't know why basically the same  
19 arbitration or the same representation agreement was  
20 executed within three days of each other three times  
21 in March except that probably we were looking at and  
22 writing offers on properties.

23 Q All right. Now, looking at what's been  
24 marked as Deposition Exhibit 10 which is the one I  
25 think you identified was signed in January --

1 A Mm-hmm.

2 Q -- this has a different location range than  
3 the documents we've previously looked at.

4 Do you see that?

5 A Yeah, I do see that.

6 Q Do you know why in this document you defined  
7 the location range as Riverside, San Bernardino,  
8 Orange, Los Angeles or San Diego County when all the  
9 other ones were confined to Riverside County?

10 A I think my concern at the time was that  
11 there was discussion about broadening the search  
12 outside of Riverside and Orange County which didn't  
13 really happen, but that is probably why that was  
14 sent. We didn't end up making offers on properties,  
15 for example, in San Diego, but otherwise, I don't  
16 know.

17 Q Okay.

18 A Or don't recall.

19 Q Now, when you'd signed the or -- when you'd  
20 sent the Topor's the BRE's for the specific  
21 properties in Orange, you said that you defined it --  
22 you limited it to the property there because Orange  
23 County is not your normal market, right?

24 A Yeah, that's why I did that.

25 Q Okay. So why for this agreement would you



1 have gone so broad, where here for a market you're  
2 not familiar with you kept it limited to the property  
3 that you were making offers on?

4 A Because it looked like it was going to go  
5 broader.

6 Q Now, do you generally go outside of your  
7 normal market to help clients find properties?

8 A I don't, but if they -- you know, if they  
9 want me to do that and I'm comfortable doing that,  
10 I'll ask them if they'll sign a BRE for that.

11 So I'll send it forward to them. And if  
12 they want me to do the legwork, bird dog properties  
13 for them in other areas, or act as their  
14 representative, I'll do that, but I'll ask them to  
15 sign a representation agreement.

16 Q Now, for this representation agreement  
17 that's been marked as Deposition Exhibit Number 10,  
18 did you have a conversation with the Topor's advising  
19 them that this would be much broader in scope than  
20 the previous ones?

21 A I don't recall.

22 Q Okay.

23 A It's there in black and white, but I don't  
24 recall if we had a telephone conversation or e-mail  
25 correspondence.

1 Q When you send these documents over to the  
2 Topor's by e-mail for them to print, sign and scan,  
3 do you list out in the e-mail what documents are  
4 being attached?

5 A Usually.

6 Q Okay. Now, this one also doesn't have a  
7 price range here. Is there any reason that you can  
8 recall why this one doesn't define a price range?

9 A Again, because this is general and not -- we  
10 were -- there was some discussion about looking in  
11 other areas. So I didn't -- it's like if our  
12 relationship is going to expand to that extent where  
13 I'm looking outside of Riverside County to try and  
14 find or to act as their representative on properties  
15 outside of Riverside County or outside of specific  
16 properties cited in Orange County, then I should have  
17 a Buyer Representation Agreement in place. I didn't  
18 bracket it, the price range.

19 Q Okay. Now, turning to what's been marked as  
20 Exhibits 11 and 12 and 13. As you indicated, these  
21 were sent out sometime in March.

22 A Mm-hmm.

23 Q Just days apart, I believe. Now, these  
24 three documents, while they define the location as  
25 Riverside County and they define a price range, they

1 don't describe the types of properties being sought.

2 Do you see that?

3 A Yeah. I mean, it's not mandatory that I, in  
4 using these forms, define the type of property. You  
5 know, I mean, they may not choose to sign it or that  
6 I define a price range. Generally, I did both.

7 Q And whenever you generate these forms to  
8 send them over to the Topor's, did you have any  
9 discussion about what types of properties would be  
10 defined within the document?

11 A Usually, as I said, any single-family  
12 detached, town home -- single-family attached,  
13 detached town home or condominium within Riverside  
14 County.

15 I didn't put that in there. I mean, it was  
16 clear to me that the Topor's weren't gonna be looking  
17 at mobile and manufactured.

18 Q Okay. So that was just based on your  
19 understanding of what the Topor's were interested in?

20 A And then our relationship and our  
21 correspondence and our conversations. So I didn't  
22 put it there and I'm not sure why I didn't because I  
23 usually do or why these were written three days  
24 apart, but purchase of any real property in Riverside  
25 County between that price range. So normally I would

1 have put that language in there as you saw.

2 Q Okay. And these would have gone over the  
3 Topor's as part of an offer package that you put  
4 together on their behalf?

5 A Yes.

6 Q Which is probably what explains why we ended  
7 up with three in a matter of days?

8 A Possible.

9 Q Okay. Do you have an internal checklist  
10 that you use for yourself when preparing a document  
11 package to send over to your clients to make sure  
12 that you have all the right documents in there?

13 A There's a document package that's outlined  
14 when you access through the CAR, the forms, they have  
15 templates in there that you can set up that --  
16 specific documents that are required for taking on  
17 listing-specific documents that are required for  
18 making an offer.

19 Q Okay. So the CAR form database kind of  
20 tells you what documents are needed?

21 A Yeah.

22 Q Okay.

23 A And they tell you also -- increasingly, that  
24 wasn't always the case, but every major brokerage now  
25 uses a transaction management system that will also

1 advise from the state agency, in this case the CAR,  
2 what forms are necessary for what transaction.

3 Q Okay. And is the BRE one of the forms that  
4 the CAR database recommends as part of these offer  
5 packages?

6 A No.

7 Q So that's something you add in on your own?

8 A It's there. You can request it. It's not a  
9 mandatory. I can do a transaction with a buyer  
10 without using a BRE and put it forward to them, but  
11 they can choose not, you know, to sign one.

12 And again, if it looks like it's gonna be  
13 brief, this is the house, you want to write an offer  
14 on it, I'll ask, but they're not obligated. You  
15 know, it's something that the brokerages encourage  
16 their agents and their brokers to use.

17 Q So let me just try to understand what the  
18 CAR database is like here. So if you are pulling up  
19 the -- what do you call it, the RPA? Is that the  
20 acronym?

21 A Residential Purchase Agreement.

22 Q Okay. You pull up the RPA form, and then  
23 there are certain mandatory forms that go with it,  
24 right?

25 A If you pull up an RPA now, it comes attached

1 to a couple forms. It comes attached to an agency  
2 disclosure. It comes attach to a wire fraud  
3 advisory. That gets revised over time as well as  
4 they arise. For example, a wire fraud advisory is  
5 recent, but now it comes packaged with the RPA.

6 Q Okay. So for the mandatory forms you don't  
7 have to do any work, it just comes along with the  
8 package?

9 A There are certain forms. And then as a  
10 matter of best practice, you used to have to add, for  
11 example, the market conditions advisory. Now that  
12 comes bundled with -- I add the statewide buyer and  
13 seller advisory. That doesn't come bundled with it.  
14 It's a much larger form.

15 But for everybody's whatever level of  
16 experience they have with real estate, you know,  
17 information, here's the statewide buyer and seller  
18 advisory, as I said, outlines paragraph by paragraph  
19 the buyer's and seller's rights and responsibilities  
20 in the transaction.

21 Q Okay. Well, I'm gonna hand you what will be  
22 premarked as Deposition Exhibit 14 and Deposition  
23 Exhibit Number 15.

24 ///

25 ///

1 (Respondents' Exhibit 14 and  
2 Exhibit 15 were marked for  
3 identification by the court  
4 reporter and are attached hereto.)

5 BY MR. DEESE:

6 Q Do you recognize those documents?

7 A Yes.

8 Q Okay. How do you recognize them?

9 A They are Buyer Representation Agreements,  
10 Exclusive I sent to the Topor's for representation as  
11 buyer clients.

12 Q All right. And is your signature on the  
13 last page of each of these?

14 A Yes.

15 Q Now, once again, we have two documents here  
16 that are in the same date range sent within a few  
17 days of each other.

18 Is that the same thing, you were probably  
19 just putting together a bunch of offer packages and  
20 included this offer in both?

21 A Yeah, in the same period of time.

22 Q Okay. And for these, these are both for  
23 Riverside County and a single-family residential  
24 attached, detached town home or condominium, right?

25 A Correct.

1 Q Okay. And the general arbitrary price range  
2 that you put in there for each.

3 Now, for all of these RP -- I'm sorry, BRE's  
4 that we've looked at, I believe they've all had your  
5 compensation set at 3 percent, right?

6 A Yes.

7 Q Okay. What would happen in a situation  
8 where, say, it was a short sale and the bank told you  
9 we're only doing 2 and a half percent?

10 A Then I'd get 2 and a half percent.

11 Q Okay.

12 A Normally in real estate commissions are paid  
13 by the seller per the terms of the listing agreement  
14 that they have with the brokerage and the agent  
15 representing the brokerage that they have it listed  
16 with.

17 So a buyer comes along and buys a house.  
18 Out of the buyer -- out of the seller's proceeds they  
19 receive for their house they have agreed to pay 6  
20 percent usually. That gets split with the brokerage  
21 that brought the offer.

22 So normally this wouldn't even come into  
23 play, you know. It would be paid by the seller, but  
24 in case somebody tries to steer around me as an agent  
25 on a property that I introduced, or showed, or



1 answered questions about, or provided information on,  
2 or walked them to, or wrote an offer on, whatever,  
3 that I acted on their behalf, that's when this  
4 happens.

5           So if there was a listing out there that I  
6 sent them that was at 2 and a half percent and I  
7 wrote an offer, even with this attached to it, and  
8 the offer was accepted and we opened escrow, I'd be  
9 paid 2 and a half -- I wouldn't, but Berkshire  
10 Hathaway would be paid. And then from that I'd get  
11 my post commission split --

12           Q     Mm-hmm.

13           A     -- as they call it.

14           Q     Okay. So that brings back another point  
15 here. You said, you know, it's a property that you  
16 introduced to the buyer --

17           A     Mm-hmm.

18           Q     -- right?

19                     So if the buyer found the property on their  
20 own that you never brought to them, would this  
21 agreement come into play?

22           A     If we have a representation agreement in  
23 place, yes.

24           Q     Okay. So even if a buyer does their own  
25 work, finds the property without your help, this

1 still covers you?

2 A We have a Buyer Representation Agreement  
3 that if they find a buyer, they should pick up the  
4 phone, or e-mail me or text me and say "I want to  
5 write an offer."

6 Q Okay. So in the -- let's say in the case of  
7 a short sale where it turns out the commission is 5  
8 percent split between the buyer and the seller, would  
9 this agreement give you a right to come back to the  
10 buyer for the .5 percent that wasn't covered here?

11 A No.

12 Q Okay. So does 3 percent kind of act as more  
13 like a cap for what the seller is willing to  
14 negotiate?

15 A It is. But again, if we got an acceptance  
16 and opened escrow, the commission would be paid per  
17 the terms of the listing agreement that the seller  
18 has in place out of the proceeds that the seller  
19 receives from the sale.

20 So the seller would be paying me 2 and a  
21 half percent, if that were the terms that we agreed  
22 on, and that would be indicated on the RPA.

23 Q Mm-hmm. Okay. But this agreement wouldn't  
24 give you the right to come back to the buyer and say  
25 hey, I'm 5 percent short of what our BRE says?

1 A No.

2 Q Okay.

3 A It would give me protection in the event  
4 that the seller had taken upon himself to breach the  
5 agreement and entered into a contract in spite of the  
6 representation agreement.

7 Q All right. I'll show you another very  
8 similar form.

9 Do you recognize that?

10 A Yes.

11 Q It's been premarked as Deposition  
12 Exhibit 16.

13 (Respondents' Exhibit 16 was marked  
14 for identification by the court  
15 reporter and is attached hereto.)

16 BY MR. DEESE:

17 Q How do you recognize that document?

18 A It is a Buyer Representation Agreement,  
19 Exclusive for the Topor's that I wrote and executed  
20 with them.

21 Q All right. And what's the date range on  
22 that one?

23 A Well, it's a typo.

24 Q Explain the typo to me.

25 A It says June 1st, 2013, to May 31st, 2013.

1 It should be June 1st, 2013, to May 31st, 2014.

2 Q Makes it a little hard to establish the  
3 dates on that one, huh? Yeah. All right.

4 A Well, this probably was executed, given that  
5 it was executed June 13th of 2013, along with the  
6 short sale offer on the house on 78758 Via Carmel,  
7 but yet, the date range on there is a typo. This was  
8 executed on June 13th, 2013.

9 Q So like you've testified before, in a  
10 situation like that where it's on a sale going  
11 forward, it doesn't matter that much?

12 A No. And the transaction concluded and both  
13 parties received their commission.

14 Q Okay. I'm gonna hand you what's being  
15 premarked as Deposition Exhibit 17.

16 (Respondents' Exhibit 17 was marked  
17 for identification by the court  
18 reporter and is attached hereto.)

19 BY MR. DEESE:

20 Q And do you recognize that one?

21 A Yes.

22 Q All right. Is that your signature there?

23 A Yes.

24 Q And what's the date range on this one?

25 A January 1st, 2014, to December 31st, 2014.

1 Q Okay. All right. I'll hand you another set  
2 of exhibits. They will be premarked as Deposition  
3 Exhibits 18, 19, 20, 21 and 22.

4 (Respondents' Exhibit 18, Exhibit  
5 19, Exhibit 20, Exhibit 21 and  
6 Exhibit 22 were marked for  
7 identification by the court  
8 reporter and are attached hereto.)

9 BY MR. DEESE:

10 Q Go ahead and look through those documents.

11 A (Witness complies.)

12 Q All right. Do you recognize all those  
13 documents?

14 A Yes.

15 Q Okay. Same BRE agreements between Windemere  
16 Real Estate and the Topor's?

17 A Yes.

18 Q Okay. And your signature's on the last page  
19 of each of those?

20 A Yes.

21 Q All right. Now, with the exception of  
22 what's labeled at the bottom on the first page is  
23 Swanson 122, looks like the other four were all sent  
24 on May 28th of 2014; is that right?

25 A April 28th.

1 Q Excuse me. You're right, April 28th.

2 A My recollection is in April 2014 we were  
3 writing a series of offers in rapid succession. At  
4 Rancho La Quinta we wrote a flurry of offers at that  
5 time.

6 Q And in writing a flurry of offers on the  
7 same day or around the same day, is there any reason  
8 why you'd need to generate five of these BRE's?

9 A No specific reason. They went out with the  
10 offers.

11 Q Okay. So it was just part of your habit and  
12 practice, you sent one of these to the Topor's with  
13 each offer that you sent over to them?

14 A Not with each offer, but with most offers.  
15 Particularly by that point we were writing a lot of  
16 offers. I would send out a Buyer Representation  
17 Agreement with the package.

18 Q How many pages do you think is in any one of  
19 these offer packages that you sent over?

20 A Not counting the BRE, the standard package  
21 in California is about 34 pages.

22 Q Okay. And that's more than one document,  
23 right?

24 A Yeah.

25 Q Okay.

1 A Yes.

2 Q So it's not like a 30-page purchase sale  
3 agreement?

4 A No. The largest document included in that  
5 was the statewide buyer and seller agreement.

6 Q Okay. And about how many pages is that one?

7 A It's 12 now.

8 Q Okay. And these are all for the Riverside  
9 County, right?

10 A Correct.

11 Q Same property description?

12 A Correct.

13 Q And same arbitrary price range?

14 A Correct.

15 Q Okay. And I'll hand you what's being marked  
16 as Deposition Exhibit 23 and Deposition Exhibit 24.

17 (Respondents' Exhibit 23 and  
18 Exhibit 24 were marked for  
19 identification by the court  
20 reporter and are attached hereto.)

21 BY MR. DEESE:

22 Q Look at those documents for me.

23 A (Witness complies.)

24 Q Same agreement we've been looking at?

25 A Yes.

1 Q All right. Your signature on the end of  
2 each page or at the end of each document?

3 A Yes.

4 Q And it looks like one was sent at the  
5 beginning of May and the other at the end?

6 A Yes.

7 Q Okay. And both for the May 1st to April  
8 30th?

9 A Period.

10 Q Yeah. Do you do anything internally to keep  
11 track of the date ranges that your BRE's cover with  
12 your various clients?

13 A Nothing specific apart having from the hard  
14 copy of the document both in the transaction  
15 management system and on my hard drive files.

16 Q Okay. So you don't have any type of  
17 calendar system or spreadsheet that keeps track of  
18 these things?

19 A No. I could, but it's never been necessary.

20 Q Nothing to tell you oh, I'm -- my  
21 exclusivity period is almost up, I better reach out  
22 to the client and see if they're still interested in  
23 me looking at these properties?

24 A Again, just apart from having the hard copy  
25 of the client files or the copy of the client files



1 on my hard drive.

2 Q All right.

3 A Normally what has happened is they've, you  
4 know, entered into contract. We've closed escrow by  
5 that point.

6 And, you know, then if they want to buy  
7 another property, we enter into a new agreement,  
8 assuming the first had expired.

9 Q So if you have a client where you're  
10 constantly on the lookout for potential properties  
11 for them, it's an ongoing relationship?

12 A Yes.

13 Q And let's say you don't make an offer within  
14 any particular time period. Do you take any steps to  
15 renew your BRE?

16 A Yeah.

17 Q Okay. And what do you do usually?

18 A I send them another Buyer Representation  
19 Exclusive Agreement and say our agreement is expiring  
20 and do you want to renew it?

21 Q Okay. And if you're not tracking these in  
22 any particular way, is it more just happenstance that  
23 you happen to think oh, jeez, I think we're probably  
24 pretty close, I better pull up my hard file?

25 Or how does it come about that you know that

1 you need to renew it?

2 A Either I remember or I can see because I've  
3 got the document. If they're still looking at  
4 properties or they're looking at properties again,  
5 we'll have that discussion, you know, enter into  
6 another -- you know, I'm willing to do that or now  
7 I'm not, and then include it.

8 Q Okay. Now, a little while back we talked  
9 about one of these BRE's was for several counties  
10 'cause you said looked like the Topor's might be  
11 interested in looking beyond the Riverside County  
12 area.

13 A Right.

14 Q Were any efforts made by you to procure  
15 properties for them outside of Riverside County?

16 A No. Nothing came to pass. We didn't have  
17 any further discussion about it. I don't recall the  
18 discussion that led to it to begin with, but nothing  
19 transpired outside of Riverside or Orange County.

20 Q Okay. So once you signed that agreement you  
21 didn't take any steps to go on the MLS and open up  
22 new search criteria?

23 A No.

24 Q Okay.

25 A No, I take that back. There was -- now

1 looking at other MLS search engines outside of my  
2 own, the CRMLS in Orange County or -- and it may  
3 have -- yeah, I did look at other MLS search engines  
4 outside of my own in Palm Springs and Palm Desert.

5 Q Okay. And then did you discover any  
6 properties that you shared with the Topor's based on  
7 those searches?

8 A We may have had discussions about some.

9 Q Okay. Do you know if you created the auto  
10 e-mail service for properties in those other  
11 counties?

12 A Not outside of Riverside County, no.

13 Q Okay. And the Topor's didn't want to move  
14 forward on any of the properties that you brought to  
15 them outside of --

16 A We never had a discussion about looking at  
17 or writing offers on properties outside of Riverside  
18 or Orange County.

19 Q Okay. But you might have had a discussion  
20 about a few properties, just --

21 A We might have had a discussion about the  
22 possibility of doing so, but we never did.

23 Q Mm-hmm. I'm gonna hand you what's being  
24 marked as Deposition Exhibit 25.

25 ///

1 (Respondents' Exhibit 25 was marked  
2 for identification by the court  
3 reporter and is attached hereto.)

4 BY MR. DEESE:

5 Q Do you recognize this document?

6 A Yes.

7 Q How do you recognize this document?

8 A The Buyer Representation Agreement written  
9 by myself for representation between me and the  
10 Topor's as buyers on a specific property as a short  
11 sale in Orange County in the development where their  
12 primary home is located.

13 Q And do you know if this offer or -- you made  
14 an offer on this property on the behalf of the  
15 Topor's? Did the Topor's submit an offer to you in  
16 writing?

17 A I don't recall. I don't recall if an offer  
18 was actually submitted on that.

19 Q They certainly never ended up purchasing the  
20 property --

21 A No, but it was --

22 Q -- right?

23 A -- a defaulted situation on a short sale,  
24 potential short sale situation which is why that was  
25 executed and may have executed the contracts, but

1 didn't go forward as a purchase into escrow.

2 Q And if you look at the paragraph 1 of that  
3 document, you'll notice that your brokerage has  
4 changed, right?

5 A Yes. I had gone to Berkshire Hathaway Home  
6 Services on August 1st of 2015.

7 Q Okay. Now, these agreements are between the  
8 buyer and the brokerage company, right?

9 A With me as their representative.

10 Q Okay.

11 A Me as their representing agent and with me  
12 representing the client.

13 Q Now, under the agreements if another agent  
14 at Berkshire Hathaway Home Services were to close  
15 this deal, would that be in violation of this  
16 exclusivity agreement?

17 A No, then that would have to be settled  
18 inhouse.

19 Q Okay. All right. I'm gonna hand you what  
20 will be premarked as Deposition Exhibit 26.

21 (Respondents' Exhibit 26 was marked  
22 for identification by the court  
23 reporter and is attached hereto.)

24 BY MR. DEESE:

25 Q Do you recognize this document?

1 A Yes.

2 Q How do you recognize this document?

3 A This is a Buyer Representation Agreement,  
4 Exclusive executed by me with the Topor's as the  
5 Topor's as my buyer clients.

6 Q And what's the date range on this one?

7 A From August 1st, 2016, to July 31st of 2017.

8 Q And what location is this limited to?

9 A This is generally for Riverside County  
10 single-family residential attached, detached town  
11 home or condominium.

12 Q All right. And same arbitrary price range  
13 of a dollar to 2 million?

14 A Correct.

15 Q All right. And that's your signature at the  
16 end there?

17 A Correct.

18 Q Okay. And this is with -- while you were  
19 with Berkshire Hathaway?

20 A This is with Berkshire Hathaway. This went  
21 out with an offer that was made on the 16th, I  
22 believe August 8th of 2016 on a house in Rancho La  
23 Quinta.

24 Q And was that offer accepted by the seller?

25 A No.

1 Q Were any further offers made on that  
2 property?

3 A My recollection is that a couple offers were  
4 made. There was some difficulty obtaining financing.  
5 And the difference between the offer price and the  
6 listed price or asking price was too broad. We  
7 didn't get a response, written response from the  
8 seller.

9 Q Okay. Like the other agreements, this one  
10 defines the amount of compensation as 3 percent?

11 A Correct.

12 Q And you understand this to be the BRE that  
13 you're bringing this arbitration?

14 A Correct, for an offer written with another  
15 agent during that time period.

16 Q Okay. And to your knowledge, there aren't  
17 multiple BRE's between Berkshire Hathaway and the  
18 Topor's executed by you that are covering the same  
19 time period?

20 A Not to my knowledge.

21 Q Okay. Now, during this time period in  
22 August of 2016 when this document was executed, were  
23 the Topor's active in looking for properties in the  
24 same way they had been in the past?

25 A Yes.

1 Q Okay. This was the only offer that was  
2 generated during that time period?

3 A During that time period, correct.

4 Q Okay. Were there any offers sent in the  
5 months before?

6 A I don't recall. My recollection is that  
7 their focus during the summer of the spring and  
8 summer of 2015 -- I'm sorry, '16 was possibly  
9 renovating and expanding one of their properties at  
10 Rancho La Quinta.

11 So there was -- then in late summer another  
12 property came up. And as I said, we made a couple  
13 approaches on that, but couldn't bring it together.

14 Q Okay. And then as you testified earlier, a  
15 little later in the year Bob gave you a call and told  
16 you that he was going to make an offer?

17 A In December.

18 Q In December of 2016?

19 A Correct.

20 Q Okay.

21 A He told me that an offer had been written  
22 and submitted on this basis of writing it with  
23 another agent with another brokerage.

24 Q Okay. And did you at that time remind him  
25 of this agreement that you had with him?



1           A     No, because it had been executed over three  
2 dozen times over the course of our relationship, B,  
3 because realtors are not party to the transaction on  
4 either side.

5                     And, C, because the CAR Code of Ethics we  
6 are not -- we are prohibited from interfering with,  
7 in any sense, a buyer or seller's transaction of  
8 their property.

9           Q     Okay. What did you tell Bob in response to  
10 him notifying you of the offer?

11           A     I didn't tell him anything. And he just  
12 told me and -- that the offer had been written and  
13 submitted, and then here's why.

14                     It was my question at the time privately was  
15 why are you telling me, A, why are you telling me now  
16 after it's been done. If you feel you owe me an  
17 explanation at all, why didn't you mention it prior  
18 to doing this?

19                     And since the offer hadn't been accepted  
20 yet, there was nothing really to say any way. So he  
21 called me back two days later and said they'd reached  
22 an agreement.

23           Q     Okay. And you said your private question.  
24 Does that mean you didn't tally voice those questions  
25 to Bob?

1           A     I didn't articulate, you know, why are you  
2 calling me with this, you know, you didn't ask me to  
3 be involved. It'd already been done. So, you know,  
4 I wasn't going to engage in any confrontational way  
5 on the phone about it.

6           Q     Okay. Once you were aware of the offer  
7 having been submitted what did you do?

8           A     Nothing.

9           Q     Did you do anything once you learned that  
10 the offer had been accepted?

11          A     When I learned that the offer had been  
12 accepted and it was going forward, I'm delving that  
13 we had had an ongoing Buyer Representation Agreement  
14 and that we had one that was currently active until  
15 the next July.

16                I went through online through California  
17 Association of Realtors legal, you know, which I  
18 access every time I access my portal to bring up to  
19 write offers or something to get access to those docs  
20 asking, you know, whether there were an issue and was  
21 routed to a representative from them who went to  
22 listen to my question.

23                And then was referred to two agents, one in  
24 Pasadena and one in Palm Desert to, you know, have a  
25 discussion with them.

1           And I talked to both of them. They called  
2 me and I had a discussion with them about it. And  
3 both of them indicated to me that they felt I had a  
4 case and they were pursuant -- the ownership of the  
5 Berkshire Hathaway franchise at that time was in  
6 different hands, but I took it to my managing broker,  
7 the owner of -- at the time of the franchise and, you  
8 know, informed him that I had had this discussion  
9 with CAR legal who referred me to two lawyers, had a  
10 discussion with them in Pasadena.

11           His recommendation was that I seek  
12 representation with somebody that was local out there  
13 and, you know, engaged a retainer with that attorney  
14 in Palm Desert.

15           Q     Okay. So the CRA [sic] legal, are these  
16 just lawyers that are available to give advice to  
17 agents?

18           A     That's my understanding.

19           Q     Okay. There's no formal representation or  
20 anything like that?

21           A     Not that I'm aware of.

22           Q     Okay. And what did Berkshire Hathaway do  
23 with the information that you provided them?

24           A     They asked for any supporting documents and  
25 spoke with the attorney who said she felt I had a

1 case and that I had retained during the process.

2 Then the franchise was sold to another company.

3 Q Okay. Did Berkshire Hathaway want to pursue  
4 the claim initially?

5 A The case was brought -- the claim was  
6 brought to the new owners of the Berkshire Hathaway  
7 franchise who agreed to take the case on.

8 Q The prior owners weren't --

9 A Looking at --

10 Q -- interested?

11 A The prior owners were leaving it up to my  
12 representing attorney at that time. The new owners  
13 of the Berkshire Hathaway franchise agreed to take on  
14 the case, represent the case.

15 Q Okay. Now, you're bringing this case  
16 against the Topor's, not Berkshire Hathaway, right?

17 A That's my understanding, as an individual.

18 Q Okay. And why as an individual do you have  
19 a right to bring this -- do you know why you can  
20 bring this instead of Berkshire Hathaway?

21 MR. WELSH: He can answer, but I object; it  
22 calls for a legal conclusion.

23 THE WITNESS: I don't know why.

24 BY MR. DEESE:

25 Q Have you had any discussions with Berkshire

1 Hathaway management about them bringing the case?

2 A About their agreement to bring the case?

3 Q Yes.

4 A Yes.

5 Q And did they believe it was a good idea?

6 A I don't know.

7 Q They just left it up to your discretion?

8 A They agreed to represent it. They didn't  
9 indicate to me whether they felt it was a good case  
10 or not.

11 Q Now, you first started sending these BRE's  
12 to the Topor's in 2011, right?

13 A I first sent BRE's to the Topor's in -- at  
14 the end of 2010 when we wrote our first offer which  
15 was out in south La Quinta in a development called  
16 The Palms.

17 Q Okay. And when you sent that over to them,  
18 you basically said, you know, look it over, let me  
19 know if you have any questions, right?

20 A With all the docs.

21 Q Mm-hmm. Whenever you sent over a package --

22 A But I mean, again, I had a relationship with  
23 them as clients, perspective clients since September  
24 of 2009. So at that point we'd already been looking  
25 at, corresponding about, discussing properties for 15

1 months.

2 Q Mm-hmm. You don't recall ever having a  
3 specific conversation, though, with them about  
4 what --

5 A About the BRE?

6 Q About the BRE.

7 A Yeah. We had phone conversations because it  
8 looked like this was going to be a lengthy ongoing  
9 process looking at many types of properties or  
10 looking at many different developments in an  
11 increasingly refined definition of a property that  
12 they were looking, you know, the type of low-income  
13 retirement property on the golf course in Mission  
14 Lakes versus the type of high-end, you know, possible  
15 retirement property that ultimately they bought three  
16 houses in Rancho La Quinta.

17 So that evolved over time, but it looked  
18 like it was gonna be an ongoing process. And, you  
19 know, Bob had indicated to me that he was part of a  
20 real estate investment partnership in Orange County.

21 So with other people in that investment  
22 pool, acquired and flipped real estate there,  
23 comfortable with the process and the contracts.

24 Also, I learned more and more about them,  
25 their backgrounds and their occupation, their

1 education level, what their jobs entail. Bob was a  
2 senior corporate fleet salesman for Nissan USA, but  
3 we had discussions about okay, it's fine if I'm gonna  
4 be sending you properties, you know, promoting  
5 properties to you, meeting you, jumping in the car  
6 and running out to La Quinta or something and opening  
7 properties and looking at them on an ongoing basis,  
8 take your time, but I would like to have a Buyer's  
9 Representation Agreement in place and here's why.  
10 The response was understood, you know.

11 Q Okay. Did you explain that the BRE wouldn't  
12 be specific to any property, but would cover the  
13 county for a particular timeframe?

14 A I don't recall.

15 Q Okay. Do you recall aside from just saying  
16 understood, that the Topor's had any questions for  
17 you about what the terms of the BRE were?

18 A They did not articulate those, but Bob never  
19 hesitated to contact me by phone or e-mail with any  
20 questions.

21 Q Okay. Did you ever advise the Topor's to  
22 have someone outside -- outside of you and them take  
23 a look at this document to understand what their  
24 rights were?

25 A The only people outside of me were taking a

1 look at them.

2 Q Who were those people?

3 A The managing brokers of the franchise under  
4 whom they were written because they were actually  
5 between the brokerage with me acting as the brokerage  
6 agent.

7 So the agreement was not just with me, but  
8 it was with Bennion Deville as a Windemere franchisee  
9 or Berkshire Hathaway, HLH, as a Berkshire Hathaway  
10 franchisee.

11 Q Do you know who James Latta is?

12 A James Latta?

13 Q L-A-T-T-A.

14 A Yeah.

15 Q Who's that?

16 A He's an agent. I don't know if he's a  
17 broker for Rancho La Quinta properties. I had  
18 contacted a James and talked to him on the phone  
19 about showing some of -- at least a couple of his  
20 listings out there over the years.

21 And not just with the Topor's, but with  
22 other clients, James Latta and another gentleman  
23 named Ron Royson (phonetic).

24 Q Did you ever introduce James Latta and Bob  
25 Topor?



1 A No.

2 Q No reason to ever have him -- James was  
3 never the seller's broker on any of the properties  
4 that you made offers on?

5 A We never got to a point of introducing them.  
6 That doesn't happen often any way where the buyers  
7 are, you know, meeting the sellers or meeting the  
8 seller's agent.

9 The buyers have the own agent usually.  
10 California is a dual-agency state. Sometimes it  
11 happens, but an occasion or a reason never came up  
12 for it.

13 Q Okay.

14 MR. DEESE: I think I'm almost done here.  
15 Maybe we can take a 10-minute break and finish up.  
16 Sound good?

17 MR. WELSH: Sounds good.

18 MR. DEESE: All right. Go off the record.

19 (Recess.)

20 MR. DEESE: Back on the record.

21 BY MR. DEESE:

22 Q All right. Mr. Swanson, I'll just remind  
23 you, we're back on the record now and you're still  
24 under oath, right?

25 A Correct.

1 Q Okay. Now, the previous owners of Berkshire  
2 Hathaway, they weren't interested in pursuing this  
3 claim, right?

4 A I don't know that.

5 Q When you brought it to them at the time,  
6 they didn't say that they'd represent you in the  
7 claim?

8 A They didn't say they would represent me.  
9 They said that they would allow me to pursue the  
10 claim on my own.

11 Q Okay. So you had to acquire your own  
12 attorney?

13 A So I retained an attorney.

14 Q Okay. Is this the first time you've sued a  
15 client under the BRE?

16 A Yes. It's the only time.

17 Q You ever sued a client for anything else?

18 A No.

19 Q Okay.

20 MR. DEESE: Nothing further.

21 MR. WELSH: Nothing from me.

22 MR. DEESE: Great. Well, then I propose  
23 that we enter into a stipulation.

24 MR. WELSH: What's that?

25 MR. DEESE: I propose that we enter into

1 a -- read the stipulation regarding the transcript.

2 MR. WELSH: Oh. Yeah, that's fine.

3 MR. DEESE: Okay. Well, then for the record  
4 I'll propose that we agree to relieve the reporter of  
5 her statutory duty to maintain custody of the  
6 original transcript.

7 That after it has been transcribed the  
8 reporter shall send the original transcript to  
9 Mr. Swanson's counsel.

10 Counsel will provide the original transcript  
11 to Mr. Swanson. That he shall have 30 days to read  
12 and review the transcript, make any changes that he  
13 deems appropriate and listing such changes on the  
14 errata page provided by counsel.

15 Upon completion of the review and listing of  
16 the changes, if any, the witness shall sign the  
17 transcript under penalty of perjury where indicated  
18 at the end of the transcript.

19 Counsel will maintain custody of original  
20 transcript and will agree to produce it and lodge it  
21 with the arbitrator at the time of the hearing or for  
22 any motion for which it may be required upon  
23 reasonable request.

24 Counsel will also advise all other counsel,  
25 namely me, in writing of any changes, corrections,

1 additions or deletions made by the witness at the  
2 time of the review of the transcript.

3 And he'll provide all counsel with a copy of  
4 the errata and signature page within 10 days of  
5 Counsel's receipt of the original executed transcript  
6 from Mr. Swanson.

7 Should the original executed transcript not  
8 be reviewed, corrected and signed by the witness  
9 within that timeframe, or should the original  
10 executed transcript later become lost or otherwise  
11 unavailable, the parties agree that a certified copy  
12 may be used for all purposes as if it were a duly  
13 executed and corrected original transcript.

14 So stipulated?

15 MR. WELSH: Yep.

16 MR. DEESE: All right. Thank you very much  
17 for your time. We're all done here.

18 We'll go off the record.

19 MR. WELSH: We're off the record.

20 (Deposition concluded at 12:14 p.m.)

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DECLARATION UNDER PENALTY OF PERJURY

I, Dale Swanson, do hereby certify under penalty of perjury that I have reviewed the foregoing transcript of my deposition taken on June 17, 2019; that I have made such corrections as appear noted herein in ink; that my testimony as contained herein, as corrected, is true and correct.

DATED this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_, at \_\_\_\_\_, California.

\_\_\_\_\_

Dale Swanson

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ERRATA SHEET

Printed Name \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_

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## 1 REPORTER'S CERTIFICATION

2  
3 I, Christine Rybicki, Certified Shorthand  
4 Reporter in and for the State of California, do  
5 hereby certify:  
6

7 That the foregoing witness was by me duly  
8 sworn; that the deposition was then taken before me  
9 at the time and place herein set forth; that the  
10 testimony and proceedings were reported  
11 stenographically by me and later transcribed into  
12 typewriting under my direction; that the foregoing is  
13 a true record of the testimony and proceedings taken  
14 at that time.  
15

16 IN WITNESS WHEREOF, I have subscribed my  
17 name on this date: July 11, 2019.  
18

19   
20

21 \_\_\_\_\_  
Christine Rybicki, CSR No. 13481  
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