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KING COUNTY
 Superior Court Clerk
 E-FILED
 CASE NUMBER: 10-2-36192-8 SEA

SUPERIOR COURT OF KING COUNTY
 STATE OF WASHINGTON

WSC REAL ESTATE SERVICES
 COMPANY, a Washington corporation,

Plaintiff,

v.

ELDON J. MAXWELL, II, an individual a/k/a
 JOE MAXWELL, a/k/a JOSEPH
 MAXWELL, and JANE DOE MAXWELL,
 husband and wife and the marital community
 thereof,

Defendants.

ELDON J. MAXWELL, II, an individual a/k/a
 JOE MAXWELL, a/k/a JOSEPH
 MAXWELL,

Counterclaimant,

v.

WSC REAL ESTATE SERVICES
 COMPANY, a Washington corporation,

Counterdefendant.

Case No. 10-2-36192-8 SEA

DEFENDANTS ELDON J. MAXWELL, II
 AND JANE DOE MAXWELL'S
 ANSWER TO COMPLAINT AND
 COUNTERCLAIMS

I. ANSWER

COME NOW Defendants Eldon J. Maxwell II and Jane Doe Maxwell and answer the
 allegations of Plaintiff's Verified Complaint as follows:

1 1. Defendants lack sufficient information as to the allegations in Paragraph 1 and
2
3 therefore deny these allegations.

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5 2. Defendants admit the allegations in Paragraph 2.

6
7 3. Defendants admit Jane Doe Maxwell is a married woman residing in Pierce County,
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9 Washington. Defendants deny every other allegation contained in Paragraph 3.

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11 4. Answering the allegations in Paragraph 4 of the Complaint, Defendants allege that
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13 the documents attached as Exhibits 1 and 2 speak for themselves and deny all other allegations in
14
15 Paragraph 4.

16
17 5. Answering the allegations in Paragraph 5 of the Complaint, Defendants allege that
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19 the document attached as Exhibit 1 speaks for itself and appears to have the signature of Defendant
20
21 Eldon J. Maxwell, II. Defendants deny all other allegations in Paragraph 5.

22
23 6. Answering the allegations in Paragraph 6 of the Complaint, Defendants deny the
24
25 allegations contained therein.

26
27 7. Answering the allegations in Paragraph 7 of the Complaint, Defendants allege that
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29 the document attached as Exhibit 2 speaks for itself and deny all other allegations in Paragraph 7.

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31 8. Defendants deny the allegations in Paragraph 8.

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33 9. Answering the allegations in Paragraph 9 of the Complaint, Defendants allege that
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35 the document referred to speaks for itself and deny all other allegations in Paragraph 9.

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37 10. Answering the allegations in Paragraph 10 of the Complaint, Defendants allege that
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39 the document referred to speaks for itself and deny all other allegations in Paragraph 10.

40
41 11. Defendants deny the allegations in Paragraph 11.

42
43 12. Defendants deny the allegations in Paragraph 12.

1 13. Answering the allegations in Paragraph 13 of the Complaint, Defendants allege that
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3 the document referred to speaks for itself and deny all other allegations in Paragraph 13.
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5 14. Answering the allegations in Paragraph 14 of the Complaint, Defendants allege that
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7 the documents attached as Exhibits 1 and 2 speak for themselves and deny all other allegations in
8
9 Paragraph 14.
10

11 15. Defendants deny the allegations in Paragraph 15.
12

13 16. Defendants deny the allegations in Paragraph 16.
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16

17 **II. AFFIRMATIVE DEFENSES**

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19 In further answer to the Verified Complaint and as affirmative defenses thereto, Defendants
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21 allege:
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23 1. The Complaint fails to state a claim upon which relief can be granted.
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25 2. Defendants have not been properly served with process and the courts lacks personal
26
27 jurisdiction.
28

29 3. The alleged Note and Guarantee are unconscionable and unenforceable.
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31 4. The terms and conditions of the alleged Note and Guarantee do not reflect the
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33 understanding and intent of Defendants and were misrepresented by Plaintiff.
34

35 5. The Note and Guarantee are unenforceable due to the breach by Plaintiff of the terms
36
37 of the written operating agreement for Windermere Puyallup-Canyon Road, LLC which required all
38
39 members to guarantee any notes or other indebtedness of the company.
40

41 6. The Note and Guarantee violate the Washington Franchise Investment Protection
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43 Act and are unenforceable.
44

45 7. Plaintiff's claims are barred by Plaintiff's fraud, duress, and unclean hands.

8. Plaintiff's claims are subject to set-off for any damages Defendants are awarded on their counterclaims alleged herein.

9. Plaintiff's claims are barred by failure of consideration.

10. Plaintiff's claims are barred by accord and satisfaction.

11. Plaintiff's claims are barred by waiver.

III. COUNTERCLAIMS

NOW COMES Counterclaimant Eldon J. Maxwell, II (“Maxwell”) and alleges counterclaims against Windermere Real Estate Services Company (“WSC”) as follows:

1. Maxwell is an individual residing in Pierce County, Washington.

2. Maxwell is the President and shareholder of Maxwell & Associates, Inc. (“MAI”).

Maxwell is also a licensed real estate broker and the designated broker for Windermere Puyallup-Canyon Road, LLC (“WPCR”).

3. MAI is the majority owner of WPCR and Maxwell is its Manager.

4. WPCR is a real estate brokerage formed on or about September 11, 2000. The original members of WPCR were MAI, P & U Capital Partners I, LLC (“PCP”), Windermere South, Inc. and John Jacobi (“Jacobi”). Jacobi was the President and founder of WSC. The members entered into a written Operating Agreement for WPCR (“Operating Agreement”) on or about January 17, 2001.

5. WPCR was formed to operate as a WSC real estate franchise. WSC and its attorneys prepared the documents necessary to form WPCR including the WPCR Operating Agreement entered into by MAI and the other members of WPCR.

1 6. The WPCR Operating Agreement contains a provision granting Jacobi a special veto
2
3 power which among other things, states that the company shall conduct its business and manage its
4
5 affairs in accordance with the directions of Jacobi and all management decisions are subject to
6
7 Jacobi's review.

8
9 7. Maxwell was the manager of WPCR and was responsible for the day-to-day
10
11 operations of WPCR. As a result of Maxwell's efforts in operating WPCR, WPCR become a very
12
13 successful WSC franchise and was the largest WSC franchise in the State of Washington.

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15 8. Maxwell and another WPCR member, Michael Ratcliffe ("Ratcliffe"), met with
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17 WSC's representatives to discuss opening another WSC office in Tacoma. WSC and Jacobi told
18
19 Maxwell and Ratcliffe they must buyout PCP's membership interest in WPCR before WSC would
20
21 allow them to open a WSC office in Tacoma.

22
23 9. WSC loaned WPCR approximately \$550,000 to purchase PCP's interest in WPCR
24
25 with the condition that WPCR would immediately obtain financing to repay the WSC loan.

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27 10. In late 2005, the purchase of PCP's interest in WPCR was completed and WPCR
28
29 borrowed approximately \$550,000 from U.S. Bank to repay WSC.

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31 11. In 2006, WPCR opened another WSC office in downtown Tacoma as agreed with
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33 WSC. WPCR incurred substantial start-up expenses for opening the Tacoma office.

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35 12. Before the buyout of PCP and the opening of the Tacoma office, WPCR had no
36
37 long-term debt and was very profitable.

38
39 13. In early 2006, WSC and Jacobi decided to open another WSC office in the territory
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41 in which WPCR was operating, despite the objections of Maxwell. As a result of the opening of
42
43 this new WSC office, WPCR lost a significant number of its real estate agents and revenue that
44
45 transferred to the new office in Graham, Washington.

1 14. As a direct result of these actions taken by WSC and Jacobi, WPCR was left with a
2
3 large debt burden and overhead, and WPCR's revenue was significantly reduced.
4

5 15. Maxwell made repeated verbal and written complaints to WSC and Jacobi about the
6
7 decision to open the office in Graham. Maxwell filed a formal written complaint with WSC's
8
9 internal dispute resolution board. WSC and Jacobi did not take any action in response to Maxwell's
10
11 complaints.
12

13 16. After WPCR opened the Tacoma office as agreed, Jacobi and WSC agreed to the
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15 opening of another WSC franchise located only blocks away from WPCR's Tacoma office. This
16
17 was done without the knowledge or consent of Maxwell.
18

19 17. WSC and Jacobi's actions in directing Maxwell and Ratcliffe to buy PCP's interest
20
21 in WPCR and borrow over \$550,000 to pay for PCP's interest, opening the WSC office in Graham,
22
23 and allowing another WSC franchise to open in the same location as WPCR's Tacoma office,
24
25 severely damaged WPCR's business and WPCR's financial condition.
26

27 18. Despite the impairment to WPCR's business and financial condition, WSC
28
29 demanded WPCR pay it license fees in a timely manner or its franchise would be terminated.
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31 19. The WPCR Operating Agreement requires all members to personally guarantee any
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33 loan or other obligation of the company that another member is required to personally guarantee.
34

35 20. Maxwell and Ratcliffe were required to sign personal guarantees of WPCR's
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37 obligation to Bank of America. WSC demanded that Maxwell and Ratcliffe sign personal
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39 guarantees of license fees allegedly due WSC, including the Note and Guarantee on which WSC is
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41 seeking to collect in this action.
42
43
44
45

1 21. Despite Jacobi's contractual obligation to personally guarantee WPCR obligations to
2
3 Bank of America and WSC, and demands by members to do so, WSC did not seek personal
4
5 guarantees from Jacobi and Jacobi failed to sign personal guarantees of these WPCR's obligations.
6

7 22. On September 14, 2010, Maxwell heard from a real estate agent working at WPCR
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9 that the agent had received an email from WSC notifying him WPCR's franchise had been
10
11 terminated. This notice was sent to WPCR's real estate agents before Maxwell learned of the
12
13 termination of WPCR's franchise.
14

15 23. After WSC terminated WPCR's franchise agreement, Maxwell entered into a
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17 franchise agreement with Better Homes and Gardens ("BHG"). When WSC learned Maxwell had
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19 entered into the BHG franchise agreement, WSC's corporate counsel, Paul Drayna, sent an email
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21 directly to BHG's corporate counsel. Mr. Drayna's email stated that WSC had recently terminated
22
23 WPCR's franchise for failure to pay license fees and other amounts and that WSC reserved all
24
25 rights to pursue all amounts owing against Maxwell personally.
26

27 24. Mr. Drayna's email to BHG's counsel also informed them that Jacobi, the founder
28
29 and Chairman of the Board of WSC, was also a member of WPCR, and included portions of the
30
31 WPCR Operating Agreement which gave Jacobi "veto" power. Mr. Drayna further warned BHG
32
33 that Jacobi was preparing to commence legal action against Maxwell and his new company.
34

35 **A. First Counterclaim – Violation of Washington Franchise Investment Protection**
36 **Act**
37

38 25. The acts of Counterdefendant WSC alleged hereinabove constitute numerous
39
40 violations of the Washington Franchise Investment Protection Act ("FIPA"). As a proximate result
41
42 of Counterdefendant's violations of FIPA, Counterclaimant has suffered damages in excess of
43
44 \$4,000,000.
45

1 **B. Second Counterclaim – Interference with Business Relations**

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3 26. The acts of Counterdefendant alleged hereinabove constitute intentional interference
4
5 with the business and contractual relations of Counterclaimant. As a proximate result,
6
7 Counterclaimant has suffered damages in excess of \$4,000,000.
8

9 **C. Third Counterclaim – Unfair Competition**

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11 27. The acts of Counterdefendant alleged hereinabove constitute unfair and deceptive
12
13 acts and practices in violation of RCW 19.86. As a proximate result, Counterclaimant has suffered
14
15 damages in excess of \$4,000,000.
16

17 **D. Fourth Counterclaim – Breach of Duty of Good Faith and Fair Dealing**

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19 28. Counterdefendant owed Counterclaimant a duty to act in good faith and treat
20
21 Counterclaimant fairly. The actions of Counterdefendant alleged hereinabove constitute numerous
22
23 breaches of its duty of good faith and fair dealing. As a proximate result, Counterclaimant has
24
25 suffered damages in excess of \$4,000,000.
26

27
28
29 **IV. PRAYER FOR RELIEF**

30
31 WHEREFORE, Defendants and Counterclaimant request the following relief:
32

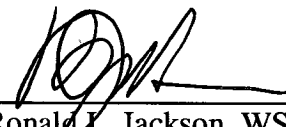
- 33 i) That Plaintiff's claims be dismissed with prejudice;
34
35 ii) For an award of damages against Plaintiff and Counterdefendant
36 Windermere Real Estate Services Company in an amount in excess of
37 \$4,000,000;
38
39 iii) That the amount of said damages be trebled pursuant to RCW 19.100.190;
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41 iv) For costs and attorney fees incurred pursuant to contract and statutory law;
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43 v) For prejudgment interest at the maximum legal rate; and
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45

1 vi) For such other and further relief as the court deems just and equitable.
2
3

4 DATED this 16th day of November, 2010.
5
6
7

8 JACKSON & CO.
9

10
11
12 By: _____


Ronald L. Jackson, WSBA #14903
Attorney for Defendants, and
Counterclaimant

Honorable Mary Yu

SUPERIOR COURT OF KING COUNTY
STATE OF WASHINGTON

WINDERMERE REAL ESTATE SERVICES
COMPANY, a Washington corporation,

Plaintiff,

v.

ELDON J. MAXWELL, II, an individual a/k/a
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v.

WINDERMERE REAL ESTATE SERVICES
COMPANY, a Washington corporation,

Counterdefendant.

Case No. 10-2-36192-8 SEA

CERTIFICATE OF SERVICE

I, Jennifer Lee, certify that at all times mentioned herein, I was and am a resident of the State of
Washington, over the age of eighteen years, not a party to the proceeding or interested therein, and

1 competent to be a witness therein. My business address is that of Jackson & Co., 10900 NE 8th Street,
2
3 Suite 820, Bellevue, Washington 98004.
4

5 On November 16, 2010, I caused a copy of the following documents:
6

7 1. Defendants Eldon J. Maxwell, II and Jane Doe Maxwell's Answer to Complaint and
8
9 Counterclaims; and
10

11 2. this Certificate of Service
12

13 to be served upon the following individuals in the manner indicated below:
14

15
16
17 Paul Stephen Drayna, P.S.
18 5424 Sand Point Way NE
19 Seattle, WA 98105
20

[] Via Facsimile
[] Via Mail
[X] Via Messenger
[X] Via E-Mail
21
22
23

24 DATED: November 16, 2010, at Bellevue, Washington.
25
26
27

28
29 
30 Jennifer Lee
31 Legal Assistant
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