

HONORABLE CHRISTOPHER A. WASHINGTON

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

ROBERTO RODRIGUEZ,

Plaintiff,

v.

WINDERMERE REAL ESTATE/WALL
STREET, INC., a Washington corporation; and
SARA THOMPSON and JOHN DOE
THOMPSON, and the marital community
comprised thereof,

Defendants.

Case No.: 06-2-35308-1SEA

FIRST AMENDED COMPLAINT

Plaintiff Roberto Rodriguez alleges as his complaint against defendants Windermere Real Estate Wall Street, Inc. and Sara Thompson and John Doe Thompson the following:

I. PARTIES

1. Plaintiff Roberto Rodriguez is an individual residing in Seattle, Washington.
2. Defendant Windermere Real Estate Wall Street, Inc. ("Windermere Wall Street") is a Washington corporation with its principal place of business in Seattle, Washington.
3. Defendants Sara Thompson and John Doe Thompson are husband and wife and residents of Seattle, Washington. Sara Thompson conducts business in Seattle, Washington.

ORIGINAL

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this complaint pursuant to RCW 4.28.185(1)(a) - (c).

5. Venue is appropriate in King County pursuant to RCW 4.12.010 as the subject of this action is situated in King County.

6. This Court has jurisdiction over each of the defendants as Sara Thompson is a resident in the State of Washington and Windermere Wall Street is doing business in the state of Washington.

III. FACTS

7. Mr. Rodriguez worked at Windermere Wall Street as a "sales associate" until April 2005. While at Windermere Wall Street, Mr. Rodriguez had a 50/50 equal partnership with Ms. Thompson (also a "sales associate" at Windermere Wall Street) where they sold properties jointly and shared the agents' portion of the commission fee on an equal basis.

8. During the partnership, Mr. Rodriguez and Ms. Thompson jointly listed a property owned by Michael (and Doreen?) Brady ("Brady Property"). The Purchase and Sale Agreement for the Brady Property lists Mr. Rodriguez and Ms. Thompson jointly as the "Listing Broker." The Commission Disbursement Form states that Mr. Rodriguez and Ms. Thompson were each to receive 50% each of the listings agents' commission of \$16,800 each.

9. Mr. Rodriguez's association with Windermere Wall Street was terminated, abruptly and without cause, before the Brady Property sale was finalized. Although Windermere Wall Street stated that Mr. Rodriguez' license would be transferred to an office in which he could list and sell property, Mr. Rodriguez' license was transferred to a "referral office" where Mr. Rodriguez was unable to list or sell property.

10. Before leaving Windermere Wall Street, Mr. Rodriguez and Windermere Wall Street management signed a Salesperson Exit Form confirming the agreement that Mr. Rodriguez would receive \$16,800 from the sale of the Brady Property upon its finalization.

1 11. Notwithstanding the agreement, upon the closing of the sale on the Brady
2 Property Windermere Wall Street refused to pay Mr. Rodriguez his share of the agents'
3 commission fee.

4 12. Shortly before the sale of the Brady Property closed, and without Mr. Rodriguez'
5 knowledge or consent, Windermere Wall Street altered the Commission Disbursement Form to
6 disburse 100% of the listing agents' commission to Ms. Thompson.

7 13. Only after obtaining discovery in this case, Mr. Rodriguez learned that Ms.
8 Thompson had been involved in a number of transactions during the period of their partnership,
9 for which she received a commission. Ms. Thompson did not disclose these transactions to Mr.
10 Rodriguez and she sought to hide from Mr. Rodriguez. Mr. Rodriguez was unaware of these
11 transactions and he did not receive any portion of the commissions from them.

12 **IV. WINDERMERE'S ARBITRATION CLAUSE IS UNENFORCEABLE**

13 14. Windermere's agreement with Mr. Rodriguez includes an arbitration provision.
14 Windermere's arbitration provision, however, requires Mr. Rodriguez to submit his claims to a
15 partisan panel of "Windermere owners, brokers, managers, and sales associates" as arbitrators.
16 Windermere attempts to mask the inherent bias of a Windermere-only arbitration panel by
17 inserting provisions superficially providing participation in selection and requiring fairness and
18 lack of bias.

19 15. Because Windermere's arbitration provision requires submission of disputes to a
20 partisan panel the provision cannot provide an impartial decision maker. Provisions requiring
21 arbitration before a party to the action are "repugnant to a proper sense of justice" and are not
22 enforceable. Contract provisions requiring arbitration before arbitrators designated through one
23 party's unrestricted choice would not provide an impartial decision maker and is unenforceable.

24 **FIRST CLAIM: WILLFUL WITHHOLDING OF WAGES (RCW 49.52)**

25 16. Plaintiff realleges and incorporates by reference the allegations contained in
26 paragraphs 1 through 15 as if fully set forth herein.

1 17. Windermere Wall Street has willfully failed to pay Mr. Rodriguez commissions
2 that he has earned.

3 18. Windermere Wall Street is liable to Mr. Rodriguez for its violation of RCW
4 49.52.050 in an amount to be determined at trial.

5 19. Windermere Wall Street is liable to Mr. Rodriguez for double damages pursuant
6 to RCW 49.52.070.

7 20. Windermere Wall Street is liable to Mr. Rodriguez for attorney's fees pursuant to
8 RCW 49.48.030.

9 **SECOND CLAIM: CONSUMER PROTECTION ACT VIOLATION (RCW 18.86)**

10 21. Plaintiff realleges and incorporates by reference the allegations contained in
11 paragraphs 1 through 20 as if fully set forth herein.

12 22. Windermere Wall Street's unfair and deceptive acts and practices occurring in
13 trade or commerce have the potential to damage the general public and have caused Mr.
14 Rodriguez damages.

15 23. Windermere Wall Street is liable to Mr. Rodriguez for its violation of RCW
16 18.86.020 in an amount to be determined at trial.

17 24. Windermere Wall Street is liable to Mr. Rodriguez for treble damages and
18 attorney's fees pursuant to RCW 19.86.090.

19 **THIRD CLAIM: BREACH OF CONTRACT**

20 25. Plaintiff realleges and incorporates by reference the allegations contained in
21 paragraphs 1 through 24 as if fully set forth herein.

22 26. Mr. Rodriguez entered into a valid oral and written agreement with Ms.
23 Thompson regarding a partnership between them. Ms. Thompson breached this agreement
24 causing Mr. Rodriguez damages in an amount to be determined at trial.

1 27. Mr. Rodriguez entered into a valid written agreement with Windermere Wall
2 Street regarding the commissions owed to Mr. Rodriguez. Windermere Wall Street breached
3 this agreement causing Mr. Rodriguez damages in an amount to be determined at trial.

4 **FOURTH CLAIM: UNJUST ENRICHMENT**

5 28. Plaintiff realleges and incorporates by reference the allegations contained in
6 paragraphs 1 through 27 as if fully set forth herein.

7 29. Ms. Thompson's retention of the commissions owed to Mr. Rodriguez is under
8 circumstances that make it inequitable to retain the commissions.

9 30. Ms. Thompson is liable to Mr. Rodriguez for her unjust enrichment in an amount
10 to be determined at trial.

11 **FIFTH CLAIM: BREACH OF FIDUCIARY DUTY**

12 31. Plaintiff realleges and incorporates by reference the allegations contained in
13 paragraphs 1 through 30 as if fully set forth herein.

14 32. During the period of time that Mr. Rodriguez and Ms. Thompson were partners,
15 each owed the other a fiduciary duty.

16 33. Ms. Thompson's failure to disclose to Mr. Rodriguez other transactions that she
17 was involved in, and for which she received a commission, during the period of the partnership
18 constitutes a breach of her fiduciary duty to Mr. Rodriguez.

19 34. Ms. Thompson's failure to pay to Mr. Rodriguez his 50% of the commissions
20 earned on the undisclosed transactions constitutes a breach of her fiduciary duty to Mr.
21 Rodriguez.

22 35. Ms. Thompson is liable to Mr. Rodriguez for damages in an amount to be
23 determined at trial.

24 **SIXTH CLAIM: FRAUD**

25 36. Plaintiff realleges and incorporates by reference the allegations contained in
26 paragraphs 1 through 35 as if fully set forth herein.

1 37. Ms. Thompson's failure to disclose to Mr. Rodriguez other transactions that she
2 was involved in, and for which she received a commission, during the period of the partnership
3 constitutes fraud.

4 38. Ms. Thompson is liable to Mr. Rodriguez for damages in an amount to be
5 determined at trial.

6 **SEVENTH CLAIM: MISREPRESENTATION**

7 39. Plaintiff realleges and incorporates by reference the allegations contained in
8 paragraphs 1 through 38 as if fully set forth herein.

9 40. Ms. Thompson's failure to disclose to Mr. Rodriguez other transactions that she
10 was involved in, and for which she received a commission, during the period of the partnership
11 constitutes misrepresentation.

12 41. Ms. Thompson is liable to Mr. Rodriguez for damages in an amount to be
13 determined at trial.

14 **V. PRAYER FOR RELIEF**

15 WHEREFORE, plaintiff prays for relief as follows:

16 A. For judgment in favor of plaintiff Roberto Rodriguez against defendants
17 Windermere Real Estate Wall Street and Sara Thompson and John Doe Thompson on all claims
18 asserted against them, and for damages in a total amount in excess of \$50,000, the exact amount
19 to be determined at trial;

20 B. For an award of treble damages pursuant to RCW 19.86.090 for Windermere Wall
21 Street's violation of Washington's Consumer Protection act;

22 C. For an award of double damages pursuant to RCW 49.52.070 for Windermere
23 Wall Street's wrongful withholding of wages;

24 D. For pre and post judgment interest at the statutory rate, in an amount to be
25 determined at trial;

1 E. For reasonable attorney's fees and costs pursuant to RCW 49.48.030 for
2 Windermere Wall Street's wrongful withholding of wages; pursuant to RCW 19.86.090 for
3 Defendant Windermere Wall Street's violation of Washington Consumer Protection Act; or
4 pursuant to any basis grounded in equity or law, in an amount to be determined at trial;

5 F. For any other relief the Court deems just and equitable.

6 DATED this 23rd day of April 2009.

7 STOKES LAWRENCE, P.S.

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9 By: 

10 Scott A.W. Johnson (WSBA #15543)
11 Attorneys for Plaintiff Roberto Rodriguez
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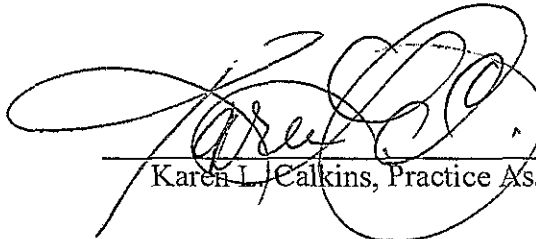
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 24th day of April, 2009, I caused copies of *First Amended*
3 *Complaint* to be served upon each of the following, by hand delivery:

4 Melanie Leary
5 Matt Davis
6 Demco Law Firm
7 5224 Wilson Avenue South, #200
8 Seattle, WA 98118

9 I certify that the foregoing is true and correct upon penalty of perjury according to the
10 laws of the State of Washington, at King County.

11 EXECUTED at Seattle, Washington this 24th day of April, 2009.

12 
13 _____
14 Karen L. Calkins, Practice Assistant

15 File No.: 18168-001