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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN THE COUNTY OF KING

PAUL SIMMONS, individually and on behalf )  
of his marital community, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
WINDERMERE REAL ESTATE/NORTHWEST, )  
INC.; LORETTA LARSON; HOWARD )  
JOHNSON and Does 1-5, inclusive, )  
 )  
Defendants. )

Cause No.:  
  
**COMPLAINT**

Plaintiff, through the undersigned attorneys, alleges as follows:

**I. Parties**

1. Plaintiff Paul Simmons ("Simmons") is a resident of Washington, is and at all relevant times has been married, and the loses at issue are either his own personal property or property of the marital community.

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1 8. Venue is proper in King County, Washington.

2 **III. Facts**

3 9. In 2007, Simmons invested roughly \$554,000 in a tenant-in-common interest in  
4 real property and improvements (“TIC”), issued by SCI Real Estate Investments, LLC or one of its  
5 affiliates (“SCI”). The investment was essentially an interest, made with co-investors, in a student  
6 housing project near the University of Southern Mississippi, for which Simmons was to receive  
7 monthly interest payments, in addition to retaining an interest in the underlying subject property.

8 10. The SCI investment is a security under Washington law, pursuant to RCW  
9 21.20.005 of the Washington State Securities Act (“WSSA”) and/or common law.

10 11. The SCI investment was made through and at the recommendation of Johnson,  
11 who at the time was, and then represented himself to Simmons to be, an agent or broker for  
12 Windermere.

13 12. Pursuant to a written agreement between SCI and Windermere, Windermere was  
14 paid a commission or other fee, attributable to Simmons’ SCI investment.

15 13. Windermere and Johnson divided the commission or fee received from SCI in  
16 connection with Simmons’ investment in some manner between themselves and possibly others.

17 14. None of the named Defendants is a licenced securities broker or licensed securities  
18 broker-dealer.

19 15. The SCI investment was never registered under applicable securities laws,  
20 including without limitation, the WSSA.

21 16. Simmons is informed and believes that the SCI investment was not and is not  
22 exempt from registration under applicable securities laws, including without limitation, the

1 WSSA. Since the SCI investment was never registered, Defendants have the burden of proving a  
2 valid exemption under applicable securities laws.

3 17. All named Defendants were substantial contributing factors in connection with  
4 Simmons' SCI investment.

5 18. Windermere and Johnson were "sellers" of the SCI investment to Simmons  
6 under the WSSA and common law.

7 19. Windermere and Larson were "control persons" of Johnson under the WSSA with  
8 respect to Simmons' SCI investment, pursuant to RCW 21.20.430 and common law.

9 20. Windermere and Larson had the power to control Johnson's offers or sales of  
10 products to the public and Larson was the branch manager, charged with monitoring and  
11 managing the activities of the agents and brokers affiliated with such branch, including Johnson.

12 21. In connection with the SCI investment, Johnson misrepresented material facts to  
13 Simmons or omitted to state material facts necessary to make Johnson's other material  
14 representations, in light of the circumstances under which they were made, not misleading.

15 22. In connection with the SCI investment, Johnson told Simmons that once his  
16 investment was made Simmons didn't need to do anything else, other than listen to a yearly  
17 conference call with other co-investors. Johnson told Simmons that "All you really do is sit back  
18 and wait for your monthly interest payment to arrive in the mail."

19 23. In connection with the SCI investment, Johnson failed to inform Simmons of all  
20 competing income producing properties, and Simmons was informed by SCI representatives that  
21 the closest new property was "over three miles away" from the subject property. Johnson did not  
22 correct this representation.

1           24.     In connection with the SCI investment, Simmons was told that the issuer retained a  
2 large percentage interest in the aggregate investor holdings (i.e., 10-15%, depending on the deal).

3           25.     SCI maintained a much smaller stake in this offering than represented, although  
4 SCI did maintain a large enough share so as to be able participate in co-investor meetings and to  
5 block voting on certain issues.

6           26.     In connection with the SCI investment, Johnson told Simmons that SCI was the  
7 “biggest and the best” of the TIC issuers. Johnson also claimed to have sold TICs issued by SCI  
8 to investors for years without problems.

9           27.     However, in connection with the SCI investment, Johnson failed to inform  
10 Simmons of the possibility that Simmons might need to make additional contributions in the  
11 future, or that Simmons might lose his entire interest in the property if he and/or other “co-  
12 investors” failed to make contributions in the future, or that Simmons might be sued by the lender  
13 in the future (in the context of a judicial foreclosure or otherwise), should the assessed value of  
14 the property drop below the loan value.

15           28.     Prior to his purchase of the SCI investment, no one informed Simmons of any of  
16 the misrepresentations or omissions of material facts in any of the offering or related documents  
17 presented to Simmons in connection with this SCI investment.

18           29.     The promised interest payments ceased within months after Simmons invested in  
19 the SCI investment.

20           30.     Simmons was recently informed of a “cash call”, and that he would lose his entire  
21 interest in the property if he (and the group of other investors) did not deposit additional funds.

22 ///

1           31.     Simmons recently learned that he could be sued in connection with this investment,  
2 since the assessed value of the property is now less than the loan amount.

3           32.     Simmons recently paid additional funds toward the “cash call”, some of which are  
4 to be used to hire an attorney to attempt to renegotiate a new loan on the property.

5           33.     It now appears that Simmons’ investment in the SCI investment is worthless, and  
6 Simmons may be subject to additional cash calls and/or litigation.

7           34.     Simmons recently tendered his entire interest in the SCI investment to Defendants,  
8 in exchange for rescission of the investment principal, less amounts received to date, plus  
9 statutory interest under the WSSA. That tender was not accepted within thirty (30) days of it  
10 being made or at any other time.

11          35.     Simmons tenders his entire interest in the SCI investment to Defendants, in  
12 exchange for rescission of the investment principal, less amounts received to date, plus statutory  
13 interest and attorneys’ fees under the WSSA.

14          36.     Also in 2007, Simmons invested roughly \$250,000 in a TIC issued by Sun Roper,  
15 LLC or one of its affiliates (“Sun Roper”), through and at the recommendation of Johnson, who at  
16 the time was, and then represented himself to be, an agent or broker of Windermere. The  
17 investment was essentially an interest, made with co-investors, in a business center located in  
18 South Carolina, for which Simmons was to receive monthly interest payments, in addition to  
19 retaining an interest in the underlying subject property.

20          37.     The Sun Roper investment is a security under the WSSA and/or common law.

21          38.     Pursuant to a written agreement between Sun Roper and Windermere, Windermere  
22 was paid a commission or other fee, attributable to Simmons’ Sun Roper investment.

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24 **COMPLAINT**

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1           39.     Windermere and Johnson divided the commission or fee received from Sun Roper  
2 in connection with Simmons investment between themselves, and possibly others, in some  
3 manner.

4           40.     The Sun Roper investment was never registered under applicable securities laws,  
5 including without limitation, the WSSA.

6           41.     Simmons is informed and believes that the Sun Roper investment was not and is  
7 not exempt from registration under applicable securities laws, including without limitation, the  
8 WSSA. Since the SCI investment was never registered, Defendants have the burden of proving  
9 such exemption.

10          42.     All named Defendants were substantial contributing factors in connection with  
11 Simmons' Sun Roper investment.

12          43.     Windermere and Johnson were "sellers" of a the Sun Roper investment to  
13 Simmons under the WSSA and common law.

14          44.     Windermere and Larson were "control persons" of Johnson under the WSSA with  
15 respect to the Sun Roper investment, pursuant to RCW 21.20.430 and common law.

16          45.     In connection with the Sun Roper investment, Johnson misrepresented material  
17 facts to Simmons or omitted to state material facts necessary to make Johnson's other material  
18 representations, in light of the circumstances under which they were made, not misleading.

19          46.     When recommending the Sun Roper investment to Simmons, Johnson said that  
20 Sun Roper was a "good company" and that Johnson had sold TICS issued by Sun Roper in the  
21 past without any problems.

22          47.     However, in connection with the Sun Roper investment, Johnson failed to inform  
23 Simmons of the possibility that Simmons might need to make additional contributions in the

1 future, or that Simmons might lose his entire interest in the property if he and/or other “co-  
2 investors” failed to make contributions in the future, or that Simmons might be sued by the lender  
3 in the future (in the context of a judicial foreclosure or otherwise), should the assessed value of  
4 the property drop below the loan value.

5 48. Prior to his purchase of the Sun Roper investment, no one informed Simmons of  
6 any of the misrepresentations or omissions of material facts in any of the offering or related  
7 documents presented to Simmons in connection with this Sun Roper investment.

8 49. It now appears that Simmons’ investment in the Sun Roper investment is worth  
9 much less than his initial investment.

10 50. In addition to being worth much less, the promised interest payments on Simmons’  
11 Sun Roper investment have ceased.

12 51. Simmons recently tendered his entire interest in the Sun Roper investment to  
13 Defendants, in exchange for rescission of the investment principal, less amounts received to date,  
14 plus statutory interest under the WSSA. That tender was not accepted within thirty (30) days of it  
15 being made or at any other time.

16 52. Simmons tenders his entire interest in the Sun Roper investment to Defendants, in  
17 exchange for rescission of the investment principal, less amounts received to date, plus statutory  
18 interest and attorneys’ fees under the WSSA.

19 53. None of the Defendants informed Simmons that it was unlawful to conduct  
20 transactions in Washington as a securities broker-dealer or salesperson unless being: (i) registered  
21 to do so; (ii) exempt from registration; (iii) a salesperson who satisfies certain requirements of the  
22 Securities Exchange Act of 1934; or (iv) or a salesperson effecting transactions in open-end  
23 investment company securities sold absent sales charges.

1           54.     Simmons is informed and believes that none of the Defendants conducted any  
2 independent or third party due diligence on the SCI or Sun Roper offerings.

3           55.     None of the Defendants provided any independent or third party due diligence on  
4 the SCI or Sun Roper offerings to Simmons.

5           56.     None of the Defendants informed Simmons that if the SCI investment was a  
6 security, and if it was neither registered nor exempt from registration under state or federal  
7 securities laws, the investment could be unwound by any of the co-investors, perhaps to  
8 Simmons' detriment.

9           57.     None of the Defendants informed Simmons that if the Sun Roper investment was a  
10 security, and if it was neither registered nor exempt from registration under state or federal  
11 securities laws, the investment could unwound by any of the co-investors, perhaps to Simmons'  
12 detriment.

13           58.     None of the Defendants explained the intricacies of the mechanics, structure or  
14 various risks associated with the SCI investment to Simmons.

15           59.     None of the Defendants explained the intricacies of the mechanics, structure or  
16 risks associated with the Sun Roper investment to Simmons.

17           60.     Defendants marketed the SCI and Sun Roper investments to Simmons as valid  
18 Section 1031 exchanges, without informing him that such investments might not qualify for such  
19 tax treatment.

20           61.     The facts misrepresented and omitted by Defendants were material to a reasonable  
21 investor, including Simmons.

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23 ///



1 70. Simmons is entitled to rescission or damages for both the SCI and Sun Roper  
2 investments, less income received on each, plus interest and attorneys' fees, pursuant to RCW  
3 21.20.430(1) or otherwise.

4 71. Johnson and Windermere are primarily liable to Simmons pursuant to RCW  
5 21.20.430(1), and Larson and Windermere are jointly and severally liable for Johnson's conduct,  
6 pursuant to RCW 21.20.430(3).

7 **C. Negligence (Against All Defendants)**

8 72. Simmons alleges and incorporates the preceding and below paragraphs as if fully  
9 set forth herein.

10 73. Even though not licensed salespersons and/or broker-dealers, Defendants  
11 engaged in the business of such licensed individuals and entities by selling the securities at issue.  
12 Such conduct is unlawful since none of the statutory exemptions to registration under RCW  
13 21.20.040 are applicable to Defendants under the circumstances.

14 74. Licenced securities salespersons and/or broker-dealers are required to make only  
15 suitable recommendations, based on a number of factors. RCW 21.20.702. It is a dishonest and  
16 unethical practice to recommend the purchase or sale of a security without reasonable grounds to  
17 believe the transaction is suitable, based upon a reasonable inquiry into the customer's investment  
18 objectives, financial situation, and other information known to the broker-dealer. WAC 460-21B-  
19 060(2) and (3), 460-22B-090(6) and (7).

20 75. Even though not licensed salespersons and/or broker-dealers, Defendants owed  
21 Simmons various duties in connection with both the SCI and Sun Roper investments.

22 ///

1           76. Defendants breached one or more of these duties, proximately causing damages to  
2 Simmons in connection with his SCI and Sun Roper investments, for which these Defendants are  
3 liable in an amount according to proof at trial.

4 **D. Negligent Misrepresentation (Against All Defendants)**

5           77. Simmons alleges and incorporates the preceding and below paragraphs as if fully  
6 set forth herein.

7           78. Defendants negligently represented and omitted certain material facts to Simmons  
8 in connection with his SCI and Sun Roper investments.

9           79. Moreover, where there is a duty to speak, a failure to disclose material information  
10 is actionable as a misrepresentation. RESTATEMENT (2D) OF TORTS § 551.

11           80. Simmons justifiably relied upon these misrepresentations and omissions of  
12 material facts to his detriment.

13           81. Defendants are liable for damages proximately caused by their negligent  
14 misrepresentations and omissions in connection with Simmons' SCI and Sun Roper investments,  
15 in an amount according to proof at trial.

16  
17 **E. Negligent Supervision (Against Windermere and Larson)**

18           82. Simmons alleges and incorporates the preceding and below paragraphs as if fully  
19 set forth herein.

20           83. Windermere and Larson had a duty to properly supervise Johnson, who  
21 worked primarily from his home.

22 ///

1 84. Windermere and Larson breached their duty of supervision, proximately causing  
2 damage to Simmons in connection with his SCI and Sun Roper investments, in an amount  
3 according to proof at trial.

4 **F. Breach of Fiduciary Duty (Against All Defendants)**

5 85. Simmons alleges and incorporates the preceding and below paragraphs as if fully  
6 set forth herein.

7 86. A licensed securities broker owes a fiduciary duty to his/her clients under  
8 Washington law, and the duties owed are more stringent than those imposed by agency law.

9 87. The relationship between Simmons and Defendants was also one of  
10 principal/agent, giving rise to fiduciary and other duties.

11 88. Even though not licensed to sell securities to Washington residents, Defendants  
12 nevertheless had duties to Simmons to act in a fair, honest, just, trustworthy, and equitable  
13 manner, and to act in furtherance of Simmons' best interests with the utmost care and loyalty,  
14 even if doing so meant placing Simmons' interest above their own interests.

15 89. Defendants had an obligation to ensure that the SCI and Sun Roper investments  
16 were suitable for Simmons before any of them recommended either product to Simmons.

17 90. Defendants had an obligation to advise Simmons against unsuitable transactions.

18 91. Defendants had an obligation to warn Simmons about potentially unlawful  
19 transactions and strategies directly or indirectly connected to the investments at issue.  
20

21 92. Defendants' conduct was grossly reckless and they breached one or more fiduciary  
22 duties to Simmons.

1 93. As fiduciaries, Defendants have the burden of proving they did not breach their  
2 fiduciary duties to Simmons.

3 94. Defendants' breaches of one or more fiduciary duties proximately caused damage  
4 to Simmons in connection with his SCI and Sun Roper investments, for which they are liable in  
5 an amount according to proof at trial.

6 **G. Violation of Washington's Consumer Protection Act (Against All Defendants)**

7 95. Simmons alleges and incorporates the preceding and below paragraphs as if fully  
8 set forth herein.

9 96. Pursuant to RCW 19.86, et seq., named Defendants have a duty not to engage in  
10 unfair or deceptive acts or practices in their business practices.

11 97. In addition, the CPA applies to the sales of securities. *Burgess v. Premier Corp.*,  
12 727 F.2d 826 (9<sup>th</sup> Cir. 1984); *Reeves v. Teuscher*, 881 F.2d 1495 (9<sup>th</sup> Cir. 1989); *Ives v. Ramsden*,  
13 142 Wn.App. 369 (2008).

14 98. Defendants advertise to the public through various media; their conduct affects the  
15 public interest; the sales of the SCI and Sun Roper investments were made in the course of their  
16 regular business; and Defendants have sold TICs to multiple residents of Washington, even though  
17 none of them are licensed securities brokers or licensed securities broker-dealers.

18 99. Defendants have knowledge, skill and bargaining power superior to their clients,  
19 including Simmons

20 100. Named Defendants engaged in unfair and deceptive practices in the course of their  
21 business practices, which affect the public.  
22

1 101. Defendants are liable to Simmons for compensatory damages, statutory interest and  
2 attorneys' fees, and statutory treble damages in connection with Simmons' SCI and Sun Roper  
3 investments.

4 **H. Breach of Contract or Quasi-Contract (Against All Defendants)**

5 102. Simmons alleges and incorporates the preceding and below paragraphs as if fully  
6 set forth herein.

7 103. Simmons is informed and believes that he entered into a contract or some form of  
8 quasi-contractual relationship with one or all Defendants in connection with the investments at issue,  
9 based on the conduct of the parties, among other things.

10 104. Simmons is informed and believes that he was the intended third party beneficiary of  
11 one or contracts entered into between one or more Defendants and one or more third parties.

12 105. Defendants owed Simmons contractual or quasi-contractual obligations pursuant to  
13 any contract between any Defendant and Simmons and/or pursuant to any contract between any  
14 Defendant and any third party to which Simmons was an intended beneficiary.

15 106. Defendants breached one or more contractual or quasi-contractual obligations to  
16 Simmons, proximately causing damage to Simmons in an amount according to proof at trial.

17 **V. Relief Requested**

18 Simmons prays for relief as follows:

19 1. Rescission or damages from Windermere and Johnson in connection with the SCI  
20 investment, plus statutory interest and attorneys' fees, less amounts received in connection with this  
21 investment, pursuant to RCW 21.20.430(1) or otherwise;

