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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

PAUL SIMMONS,

Plaintiff,

v.

WINDERMERE REAL
ESTATE/NORTHWEST, INC.,

Defendants.

NO. 10-2-30838-5 SEA

WINDERMERE DEFENDANTS'
ANSWER TO COMPLAINT

COME NOW Defendants Windermere Real Estate/Northwest, Inc., Loretta Larson, and Howard Johnson (collectively "the Windermere Defendants") by and through their attorneys, Melanie A. Leary and the Demco Law Firm, P.S., and answer the plaintiff's Complaint. Paragraph numbers correspond to those of the Complaint. "Insufficient knowledge" is an abbreviation for "responding defendants have insufficient knowledge and information upon which to form an answer and therefore deny."

I. ANSWER

1. Insufficient knowledge.
2. Admit.
3. Admit that Howard Johnson is a Washington resident and that he was previously licensed as an independent contractor to Defendant Windermere. Deny all other allegations contained in paragraph 3 of the complaint.

- 1 4. Admit that Loretta Larson is a Washington resident, is the branch manager for
- 2 Defendant Windermere and was the branch manager for Defendant Windermere while
- 3 Defendant Johnson was licensed there. Deny all other allegations contained in paragraph
- 4 4 of the complaint.
- 5 5. Insufficient knowledge.
- 6 6. Deny.
- 7 7. Admit, upon information and belief, that the court has jurisdiction.
- 8 8. Admit upon information and belief.
- 9 9. Admit the first sentence upon information and belief. Insufficient knowledge with
- 10 respect to the second sentence.
- 11 10. Deny.
- 12 11. Deny.
- 13 12. Admit, upon information and belief, that Windermere was paid a referral fee by SCI, but
- 14 insufficient knowledge with respect to whether there was a written agreement. Deny all
- 15 other allegations contained in paragraph 12.
- 16 13. Deny.
- 17 14. Admit.
- 18 15. Insufficient knowledge.
- 19 16. Deny.
- 20 17. Deny.
- 21 18. Deny.
- 22 19. Deny.
- 23 20. Deny.
- 24 21. Deny.
- 25 22. Deny.

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- 1 23. Deny that Defendant Johnson failed to do anything. Insufficient knowledge with respect
2 to all other allegations contained in paragraph 23.
- 3 24. Insufficient knowledge.
- 4 25. Insufficient knowledge.
- 5 26. Deny.
- 6 27. Deny.
- 7 28. Insufficient knowledge.
- 8 29. Insufficient knowledge.
- 9 30. Insufficient knowledge.
- 10 31. Insufficient knowledge.
- 11 32. Insufficient knowledge.
- 12 33. Insufficient knowledge.
- 13 34. Admit with respect to Defendants Larson and Windermere, but deny with respect to
14 Defendant Johnson.
- 15 35. No response is required by the Windermere Defendants.
- 16 36. Admit, upon information and belief, that Simmons invested in a real estate TIC issued by
17 Sun Roper. Admit that Defendant Johnson was a real estate salesperson licensed to
18 Defendant Windermere. Deny all other allegations contained in the first sentence.
19 Insufficient knowledge with respect to the second sentence.
- 20 37. Deny.
- 21 38. Admit that Windermere received a referral fee from Sun Roper, but insufficient
22 knowledge with respect to whether there was a written fee agreement. Deny all other
23 allegations contained in paragraph 38 of the complaint.
- 24 39. Deny.
- 25 40. Insufficient knowledge.
- 26 41. Deny.

- 1 42. Deny.
- 2 43. Deny.
- 3 44. Deny.
- 4 45. Deny.
- 5 46. Deny.
- 6 47. Deny.
- 7 48. Insufficient knowledge.
- 8 49. Insufficient knowledge.
- 9 50. Insufficient knowledge.
- 10 51. Admit with respect to Defendants Larson and Windermere, but deny with respect to
11 Defendant Johnson.
- 12 52. No response is required by the Windermere Defendants.
- 13 53. Admit that none of the Windermere Defendants so informed Simmons but deny that the
14 allegations in paragraph 53 are correct statements of the law or that the Windermere
15 Defendants had any duty to so inform Simmons.
- 16 54. Admit.
- 17 55. Admit.
- 18 56. Admit that none of the Windermere Defendants so informed Simmons but deny that the
19 allegations in paragraph 56 are correct statements of the law or that the Windermere
20 Defendants had any duty to so inform Simmons.
- 21 57. Admit that none of the Windermere Defendants so informed Simmons but deny that the
22 allegations in paragraph 57 are correct statements of the law or that the Windermere
23 Defendants had any duty to so inform Simmons.
- 24 58. Admit.
- 25 59. Admit.
- 26 60. Deny.

- 1 61. Deny.
- 2 62. Deny.
- 3 63. Deny.
- 4 64. The Windermere defendants hereby restate all responses herein.
- 5 65. Deny.
- 6 66. Deny.
- 7 67. Deny.
- 8 68. The Windermere defendants hereby restate all responses herein.
- 9 69. Deny.
- 10 70. Deny.
- 11 71. Deny.
- 12 72. The Windermere defendants hereby restate all responses herein.
- 13 73. Deny.
- 14 74. Deny as an incomplete hypothetical and erroneous legal conclusion.
- 15 75. Deny as an incomplete hypothetical and erroneous legal conclusion.
- 16 76. Deny.
- 17 77. The Windermere defendants hereby restate all responses herein.
- 18 78. Deny.
- 19 79. Deny as an incomplete hypothetical and erroneous legal conclusion.
- 20 80. Deny.
- 21 81. Deny.
- 22 82. The Windermere defendants hereby restate all responses herein.
- 23 83. Deny as an incomplete hypothetical and erroneous legal conclusion.
- 24 84. Deny.
- 25 85. The Windermere defendants hereby restate all responses herein.
- 26 86. Deny as an incomplete hypothetical and erroneous legal conclusion.

- 1 87. Admit that the Windermere Defendants acted as real estate agents. Deny all other
2 allegations as incomplete hypothetical and erroneous legal conclusions.
- 3 88. Deny as an incomplete hypothetical and erroneous legal conclusion.
- 4 89. Deny.
- 5 90. Deny.
- 6 91. Deny.
- 7 92. Deny.
- 8 93. Deny.
- 9 94. Deny.
- 10 95. The Windermere defendants hereby restate all responses herein.
- 11 96. Deny as an incomplete hypothetical and erroneous legal conclusion.
- 12 97. Deny as an incomplete hypothetical and erroneous legal conclusion.
- 13 98. Admit that the Windermere Defendants advertise real property and real estate brokerage
14 services to the public through various media. Admit that the Windermere Defendants are
15 not licensed securities brokers or broker-dealers. Deny all other allegations contained in
16 paragraph 98 of the complaint.
- 17 99. Deny.
- 18 100. Deny.
- 19 101. Deny.
- 20 102. The Windermere defendants hereby restate all responses herein.
- 21 103. Deny.
- 22 104. Deny.
- 23 105. Deny.
- 24 106. Deny.

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II. AFFIRMATIVE DEFENSES

BY WAY OF FURTHER ANSWER AND AFFIRMATIVE DEFENSES, the Windermere defendants state as follows:

1. The alleged damages, if any, were caused by persons and entities other than the Windermere Defendants, including, but not limited to, the plaintiff himself.
2. Plaintiff has alleged fraud without setting forth the circumstances with sufficient particularity as required by CR 9(b).
3. Plaintiff has not set forth his alleged damages with sufficient particularity.
4. Plaintiff has failed to state a claim upon which relief may be granted against the Windermere Defendants.
5. Plaintiff assumed the risk with respect to his purchases from Sun Roper and/or SCI.
6. Plaintiff's claims against the Windermere defendants are frivolous and brought without reasonable cause.
7. Plaintiff's claims are barred by the statute of limitations and/or laches.
8. Plaintiff failed to mitigate his alleged damages.
9. Plaintiff was contributorily negligent and/or comparatively at fault.
10. The TIC interests purchased by the plaintiff were not securities.
11. If the TIC interests purchased by the plaintiff were securities, then they and the transactions were exempt under all applicable securities law.
12. The Windermere Defendants were not sellers.
13. The Windermere Defendants were not control persons.
14. The Windermere Defendants made no representations to the plaintiff about the TIC interests that he purchased.
15. Plaintiff did not justifiably rely or rely at all upon any act, omission, failure to act, representation or conduct of the Windermere Defendants.

1 III. RESERVATION OF RIGHTS

2 The Windermere defendants expressly reserve their right to plead further answer,
3 affirmative defenses, counterclaims, cross-claims and/or third-party claims, as investigation and
4 discovery may warrant.

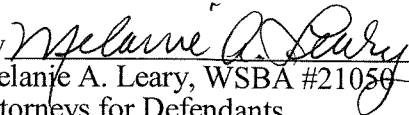
5 IV. PRAYER FOR RELIEF

6 WHEREFORE, the Windermere defendants seek the following relief:

- 7 1. Dismissal with prejudice of all claims against them;
8 2. An award of fees and costs to the full extent permitted by contract, statute, law and/or
9 equity; and
10 3. Such other relief as the court may award.

11
12 DATED this 25th day of October, 2010.

13 DEMCO LAW FIRM, P.S.

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15 By  _____
16 Melanije A. Leary, WSBA #21050
17 Attorneys for Defendants
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