

FILED

FEB 12 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

CARYL HELLER,

Plaintiff,

vs.

VESTUS, LLC, a Washington Limited Liability
Company; BRIAN SANDUSKY and JANE DOE
SANDUSKY, individually and the marital
community comprised thereof; and AARON
CUNNINGHAM and JANE DOE
CUNNINGHAM, individually and the marital
community comprised thereof,

Defendants.

NO.

13200611-6COMPLAINT FOR VIOLATIONS OF
CONSUMER PROTECTION ACTCLASS ACTION CERTIFICATION
PENDING

Plaintiff CARYL HELLER, by and through her attorney of record, Breean Beggs of
Paukert & Troppman PLLC, make the following claims for relief:

I. INTRODUCTION

Plaintiff, Caryl Heller, brings this lawsuit on behalf of herself, individually, for the
Defendants individual and collective violations of her rights under Washington's Consumer
Protection Act. In addition, Plaintiff brings this lawsuit on behalf of herself and others similarly
situated, seeking rescission and monetary damages against only the Defendant VESTUS, LLC for
violations of Plaintiff's, and other similarly situated individuals, rights under Washington's

COMPLAINT FOR VIOLATIONS OF CONSUMER PROTECTION ACT - I

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1 Consumer Protection Act for implementing and collecting upon a fee/compensation structure that
2 is unfair and/or deceptive.

3 4 **II. PARTIES**

5 1.1 At all relevant times, Plaintiff Caryl Heller was and remains a resident of the
6 County of Spokane, State of Washington.

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8 1.2 At all relevant times, Defendant Vestus, LLC is a Washington Limited Liability
9 Corporation operating in the County of Spokane, State of Washington. Vestus, LLC employs or
10 controls as agents the co-defendants Brian Sandusky and Aaron Cunningham. All acts complained
11 of herein occurred within Spokane County, Washington.

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13 1.3 Upon belief, Defendant Brian Sandusky was and is a resident of Spokane County,
14 Washington, at all relevant times and if married, he and Jane Doe Sandusky constitute a marital
15 community residing in Spokane County. All acts hereinafter alleged of Defendant Brian Sandusky
16 were done on his own behalf and on behalf of his marital community.

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18 1.4 Upon belief, Defendant Aaron Cunningham was and is a resident of Spokane
19 County, Washington, at all relevant times and if married, he and Jane Doe Cunningham constitute
20 a marital community residing in Spokane County. All acts hereinafter alleged of Defendant Aaron
21 Cunningham were done on his own behalf and on behalf of his marital community.

22 **II. JURISDICTION AND VENUE**

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24 2.1 Plaintiff alleges all matters set forth in paragraphs 1.1 to 1.4 above.

25 2.2 The plaintiff files this Complaint and institutes these proceedings under the
26 provisions of the Consumer Protection Act, RCW 19.86.

27 2.3 The Defendants have engaged in the conduct set forth in this Complaint in Spokane
28 County, State of Washington. This Court has subject matter jurisdiction over this matter.
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1 2.4 Venue is proper in Spokane County pursuant to RCW 4.12.020 and RCW 4.12.025.

2 **III. FACTUAL ALLEGATIONS**

3 3.1 Plaintiff alleges all matters set forth in paragraphs 1.1 to 2.4 above.

4 3.2 Defendants are now, and have at all times relevant to this lawsuit, been engaged in
5 trade or commerce within the meaning of RCW 19.86.020 by directly or indirectly advertising and
6 engaging in real estate services with the general public in the State of Washington.

7 3.3 On or about November, 2007 plaintiff Caryl Heller (hereinafter "Caryl") met co-
8 defendant Aaron Cunningham, who was advertising the services of co-defendant Vestus, LLC,
9 (also known as/formerly known as The Foreclosure Group) which specialized in assisting clients
10 with the purchase of homes in foreclosure. Mr. Cunningham requested that Caryl attend a meeting
11 to inquire about the services available.

12 3.4 Vestus (also known as, formerly known as, and/or operating under The Foreclosure
13 Group) advertises that they are the largest foreclosure buying service in the Northwest and are
14 considered to be "the experts" in their field. The focus of their business is to provide in-depth
15 training and property tracking and background on all properties (title, liens, postponements, values,
16 opening bids, etc.) scheduled for auction each week in the Pacific Northwest. Vestus advertises
17 that with their assistance, the investor (their client) has all the tools necessary to purchase
18 properties below fair market value with confidence. In addition, Vestus advertises state of the art
19 technology that provides the investor (their client) with real time data and updates on each
20 property, as well as a very detailed value of each property (CMA) complete with charts, graphs,
21 and statistics that will give the client accurate figures.

22 3.5 To benefit from the information and expertise advertised and offered by the
23 Defendants, an investor has the opportunity to attend a Thursday night "workshop and strategy
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1 meeting." Every Thursday evening at 5:30 p.m., investors arrive at the Spokane Vestus office,
2 where they are presented with Vestus' "top picks" of the week. The representatives of Vestus
3 purport to present all of the relative information to the investors, including the "Comparative
4 Market Analysis" ("CMA") for each property that is scheduled for auction the next morning. A
5 Vestus representative classifies each property as "fair," "good," or "excellent" investment based on
6 their evaluation of the property. The representatives indicate that they are providing investors with
7 their "expertise" when evaluating each property.
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10 3.6 Co-defendants Brian Sandusky and Aaron Cunningham, at all times relevant hereto,
11 held themselves out as representatives and/or principles of Vestus for Spokane County and each of
12 them participated in the meetings attended by Plaintiff through some means. Each of the individual
13 co-defendants is believed to be a licensed broker and/or real estate agent. However, at all times
14 relevant hereto, Vestus was not a licensed real estate brokerage firm.
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16 3.7 On or about December 6, 2007, Caryl attended a new investor meeting for Vestus at
17 Windermere North, in Spokane, Washington. At that meeting, Caryl signed an agreement with
18 Vestus (also known as/formerly known as The Foreclosure Group). Caryl attended a Vestus
19 investor meeting on or about January 16, 2008. At that meeting, she was required to sign a second
20 agreement with Vestus and so she could continue to utilize the services for which they advertised.
21 Caryl was required to sign a third agreement with Vestus sometime in May 2008. Plaintiff
22 requested a copy of the executed agreement but Defendants refused to provide her with a copy.
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25 3.8 The "Compensation/Confidentiality Client Agreement" in effect at all times relevant
26 hereto provided that as a fee for services rendered, Caryl was to pay Vestus and/or the co-
27 defendants as brokers 3% of her purchase price or of the most recent assessed value, whichever is
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1 higher, of any home purchased by Caryl within six (6) months after receipt of information from
2 Vestus. The minimum commission due on any single property was \$3,000.

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4 3.9 In 2008, Caryl bought and sold one home utilizing the information received from
5 Vestus. Caryl was not a seasoned home purchaser and she was pleased with the information she
6 received. She thanked the brokers for their assistance and paid Vestus and the co-defendants the
7 required commissions.

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9 3.10 On or about February 12, 2009, Caryl attended the 5:30 p.m. Vestus investor
10 meeting, where co-defendant Sandusky discussed a number of homes to be sold the next morning
11 at the foreclosure auction. Mr. Sandusky classified each home into a "fair," "good," or "excellent"
12 category in terms of the homes return on investment. Each home presented was evaluated by
13 presenting the fair market value, or "Comparative Market Analysis," produced by Vestus and its
14 representatives, with the anticipated opening bid and estimated fix-up/repair costs. Aaron
15 Cunningham was also at the meeting.

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18 3.11 At the meeting, co-defendant Brian Sandusky presented 23905 E. First Ave.,
19 Liberty Lake, Washington (hereinafter "Liberty Lake property") as a top pick of the week, giving it
20 an "excellent" rating. Caryl was told by co-defendant Sandusky that the fair market value (or
21 CMA value) for the property, which was obtained through software owned by Spokane Relators
22 Association and is only available to members of the MLS, was \$300,000, and that this was the
23 figure to rely upon when deciding whether she could earn a profit purchasing that home. Caryl
24 was told by Vestus representatives that their information supported a value of \$300,000 for the
25 Liberty Lake property. Caryl was enticed into bidding on the property based on the high fair
26 market value/comparative market analysis. The opening bid on the property was \$192,000.
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1 3.12 Co-defendant Sandusky presented Caryl with a form, which had Vestus listed at the
2 top, with details about the Liberty Lake property. The form included a photo of the property, the
3 property address, and a Vestus identification number. Also included on the form was a box titled
4 "title details," which stated that the minimum opening bid was \$192,000 (however, this was
5 handwritten in) and that the fair market value ("FMV") of the property was \$300,000.
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7 3.13 Caryl attended the trustee sale the next morning at 10 am at the Spokane County
8 Courthouse. One other Vestus client was also prepared to bid on the Liberty Lake property.
9 However, co-defendant Cunningham told Caryl that he requested the other bidder to refrain from
10 his bidding as a "favor" to Caryl.
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12 3.14 Based on the information presented at the Vestus investor meeting, Caryl bid on and
13 acquired the Liberty Lake property for \$192,001. She then proceeded to pay the Defendants
14 \$6,945.00 in commissions, which is 3% of the last assessed value on the home which was
15 \$231,500.
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17 3.15 Only after purchasing the Liberty Lake property did Caryl realize that the fair
18 market value of the property was substantially less than \$300,000 as indicated by the Defendants.
19 Caryl was significantly misled by Vestus and its representatives.
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21 3.16 The CMA value presented to Caryl on February 12, 2009 was patently misleading.
22 The CMA showed four houses as representative of the \$300,000 fair market value presented by
23 Vestus for the Liberty Lake property. However, two of the homes listed were not actual sales, but
24 rather were listings, so they did not support a comparable value. The remaining two homes were
25 sales, however one sale was approximately seven months prior to Vestus' valuation while the other
26 was approximately four months prior and they were both significantly larger in size.
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1 3.17 The CMA report also failed to include three closings that occurred within 2-3
2 months of Caryl's purchase of the Liberty Lake property.

3 3.18 Caryl contacted the Defendants, specifically Aaron Cunningham, to tell him that
4 Vestus overvalued the Liberty Lake property. Caryl sought financial assistance from Vestus to
5 assist in her loss based on their over-valuation. Defendant Cunningham's response was "so what if
6 we are \$20,000 off sometimes." Defendant Cunningham told Caryl that the Defendant's did not
7 have any duty to act in Caryl's best interests because there is no agency relationship between the
8 parties. After this conversation, Caryl was cut off from access to Vestus' website. When Caryl
9 asked why she was cut off from the website, defendant Cunningham responded that "we don't"
10 want you questioning all our values."

11 3.19 Caryl reasonably relied upon the information presented by Vestus and its
12 representatives. Had the Defendant's presented accurate information at the meeting, Caryl would
13 have seen that the property was worth substantially less than \$300,000. Caryl would never had
14 purchased the Liberty Lake property but for the Defendant's unsupported
15 representations/information.

16 3.20 Caryl also discovered that the appraisal report on the Liberty Lake property which
17 was provided by Defendant's was done by co-defendant Sandusky who was unsupervised and was
18 licensed less than two years, both of which appear to be violations of Washington law.

19 3.21 Based on the Defendant's business model, Caryl had no opportunity to research the
20 property on her own. The investor meetings take place at 5:30 p.m. on a Thursday and usually run
21 2-3 hours long. The foreclosure sales are conducted at 10 a.m. the next morning. In addition, only
22 Vestus representatives, licensed realtors, and members of the MLS have access to the MLS service,
23 which the Defendant's used to generate the comparable sales reports. Caryl justifiably relied on
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1 the Defendant's representations that they were the "experts" in this field and that they supply the
2 best, most accurate and up-to-date information on the properties up for sale.

3 3.22 After spending approximately one year remodeling, upgrading, and marketing the
4 Liberty Lake property, Caryl was finally able to sell the home for \$267,000 on February 1, 2010.
5 As part of the sale, Caryl agreed to provide the sellers with approximately \$7,000 as closing costs,
6 making the effective sales price \$260,000 or less. In order to sell the price even at this substantial
7 discount from her expectations, Caryl was required to spend several thousand dollars in
8 improvements. After the cost of labor and materials for the improvements as well as the carrying
9 costs, Caryl lost a significant amount of money in an amount to be proven at trial on her purchase
10 of the Liberty Lake property based on the representations made by Vestus.

11 3.23 Caryl relied upon the advertising and representations made by Vestus and its
12 representatives when she purchased the Liberty Lake property. Caryl's reliance on these
13 representations caused her to lose a significant amount of money in an amount to be proven at trial
14 because said representations were based on false and misleading information.

15 IV. CLASS ACTION ALLEGATIONS

16 4.1 Ms. Heller brings this action on behalf of herself, and all others similarly situated,
17 pursuant to WA CR 23(a) and WA CR 23(b)(2)(3). The Plaintiff provisionally proposes the
18 following class definition:

19 Individuals who paid commissions to Vestus, LLC ("Vestus"), predecessor or
20 successor entities of Vestus, and/or agents or principals of Vestus between February
21 12, 2009 and the date this matter is fully resolved, where the commission was based
22 on a written agreement with one or more provisions that violated the Washington
23 Consumer Protection Act as unfair and/or deceptive.

1 4.2 This is an appropriate class action because the proposed class is so numerous that
2 joinder of all members is impracticable.

3 4.3 There are questions of law and fact common to the class, including whether
4 Defendant's fee/compensation structure was unfair and/or deceptive in violation of Washington's
5 Consumer Protection Act.

6 4.4 Questions of law or fact common to class members predominate over any questions
7 affecting only individual members, and a class action is superior to other available methods for
8 fairly and efficiently adjudicating the controversy.

9 4.5 The claims of the Plaintiff are typical of the claims of the class.

10 4.6 The named Plaintiff will fairly and adequately protect the interests of the class.

11 4.7 The Plaintiff has available competent counsel with experience in Consumer
12 Protection Act claims who are willing and able to protect the interests of the class.

13 4.8 The Defendants have acted or refused to act on grounds generally applicable to the
14 class, thereby making declaratory relief, injunctive relief and an award of monetary damages
15 appropriate, with respect to the class as a whole.

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17 **V. CAUSE OF ACTION – CONSUMER PROTECTION ACT**

18 5.1 Plaintiff alleges all matters set forth in paragraphs 1.1 to 4.8 above.

19 5.2 The actions of the Defendants, as set forth in this Complaint, were conducted in a
20 commercial setting for the general public. These actions constitute clearly established violation of
21 the Consumer Protection Act for consumers to be free from unfair methods of competition and
22 unfair or deceptive acts or practices. The Defendants, both individually and collectively, made
23 false and misleading representations to Plaintiff, upon which she relied. The Defendant's official
24 policy of advertising themselves as "the expert" in their field, but then disclaiming a duty of care as
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1 well as all of the information they provide to consumers, violates Plaintiff's rights under the
2 Consumer Protection Act.

3 5.3 Additional unfair and/or deceptive acts or practices committed by the Defendant's
4 include, but are not limited to, the following:
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- 6 (a) Defendant Vestus, LLC was not a licensed real estate firm at all times
7 relevant hereto;
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9 (b) Defendant Vestus, LLC advertised itself as a real estate licensee, when in
10 fact they were not licensed as advertised;
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12 (c) The Defendant's property appraisal reports were conducted by an individual
13 who was unsupervised and licensed less than two years; and,
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15 (d) Defendants charged an unreasonable fee for foreclosure buying services,
16 while afterwards maintaining that customers should not rely on the
17 information provided as those services.

18 The above acts had, and continue to have, the capacity to deceive a substantial portion of the
19 purchasing public.

20 5.4 The Defendant's deceived Caryl, and other members of the Vestus investor group,
21 by presenting unfounded and inaccurate market values of homes up for foreclosure, including but
22 not limited to the Liberty Lake property. The Defendant's acts and practices induced the Plaintiff
23 into purchasing a home, from which she suffered significant damage. The Defendant's method of
24 advertising and presenting material to its investors had, and continues to have, the capacity to
25 deceive a substantial portion of the public. The Defendant's acts and practices have the potential
26 for repetition if they are not stopped.
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1 5.5 The actions of the Defendants set forth in this Complaint, both collectively and
2 individually, proximately caused Plaintiff to incur significant damages, in an amount to be proven
3 at trial.
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5 5.6 Further, Vestus charges a significant fee for a service and/or information which is
6 misleading and unreliable. In addition Vestus charges a significant fee for a service and/or
7 information and at the same time contracts that they owe their clients no duty of care. The
8 compensation structure implemented by Vestus, LLC is unfair and/or deceptive in violation of
9 Washington's Consumer Protection Act. Victims of these acts are therefore entitled to rescission
10 and refunds of fees paid.
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13 **VI. DAMAGES**

14 6.1 Vestus, LLC's unfair and/or deceptive practices in violation of Washington's
15 Consumer Protection Act proximately caused Plaintiff, and other similarly situated class members,
16 damages in amounts to be proven at trial. Said damages are for commissions paid to Vestus, LLC
17 based on a written agreement with one or more provisions that violated the Washington Consumer
18 Protection Act and other economic damages.
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20 **VII. PRAYER FOR RELIEF**

21
22 **WHEREFORE**, Plaintiffs pray for judgment and relief against the Defendants as follows:

23 1. That the Court adjudge and decree that the Defendants have engaged in illegal
24 conduct complained of herein;
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26 2. That the Court adjudge and decree that the conduct complained of constitutes unfair
27 or deceptive acts and practices and an unfair method of competition and is unlawful in violation of
28 the Consumer Protection Act, RCW 19.86;
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1 3. That Defendants be held liable to Plaintiff for all damages suffered by Plaintiff in
2 amounts to be proven at the time of trial;

3 4. That it be declared that Vestus' fee/compensation structure is unfair and/or deceptive
4 in violation of Washington's Consumer Protection Act;

5 5. That the Court rescind the contracts between Defendant Vestus and Plaintiff and
6 other similarly situated individuals;

7 6. That Defendant Vestus be held liable to Plaintiff and other similarly situated
8 individuals for any commissions or fees paid pursuant to rescinded contracts.

9 7. That Defendants be liable for increased damages pursuant to RCW 19.86.090;

10 8. For costs, disbursements and attorney's fees incurred herein as permitted by RCW
11 19.86.090 and other applicable law;

12 9. For such other and further relief as the court deems just and equitable.
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15 DATED this 11th day of February, 2013.
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20 PAUKERT & TROPPEMAN, PLLC

21 
22 BREEAN BEGGS, WSBA #20795

23 
24 ANDREA L. ASAN, WSBA #35395
25 Attorneys for Plaintiff
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