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**FILED**

**APR 17 2013**

**THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK**

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

**ARCHIE MITCHELL and STORMIE MITCHELL,  
husband and wife,**

No. **13201539-5**

**Plaintiffs,**

**COMPLAINT**

**v.**

**GREG DURHEIM and JANE DOE DURHEIM,  
husband and wife; CAROL GROVES and JOHN  
DOE GROVES, wife and husband; and  
WINDERMERE/MANITO, LLC, a Washington  
limited liability company; and PAUL SOLERNO  
and JANE DOE SOLERNO, husband and wife.**

**Defendants.**

**Plaintiffs, Archie Mitchell and Stormie Mitchell, by and through their undersigned  
attorneys, for their causes of action against the above-named defendants allege as follows:**

**I. PARTIES**

**1.1 Plaintiffs, Archie Mitchell and Stormie Mitchell, husband and wife, are residents  
of Spokane County, State of Washington.**

**1.2 Defendant Greg Durheim is a licensed real estate agent in the State of  
Washington, and does business in Spokane County, Washington.**

**1.3 Defendant Carol Groves is a licensed real estate agent in the State of Washington,  
and does business in Spokane County, Washington.**

**COMPLAINT -- 1**

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1 1.4 Windermere/Manito, LLC is a Washington Limited Liability Company, doing  
2 business in Spokane County, Washington.

3 1.5 Paul Solerno and Jane Doe Solerno are a married couple residing in Spokane  
4 County.

## 5 II. VENUE AND JURISDICTION

6 2.1 Venue and jurisdiction are proper in Spokane County Superior Court pursuant to  
7 RCW 4.12.010 as the property which is the subject matter of the lawsuit is located there, and  
8 RCW 4.12.020 as this is the county where the cause of action arose.

## 9 III. OPERATIVE FACTS

10 3.1 In or around June of 2011, Plaintiffs Archie and Stormie Mitchell ("the  
11 Mitchells") entered into an agreement with defendants Greg Durham and Carol Groves  
12 ("Durheim and Groves") and their employer/principal, defendant Windermere/Manito, LLC  
13 ("Windermere"). The agreement was for Durham and Groves to represent the Mitchells as real  
14 estate buyer's agents, and for Windermere to act as buyer's real estate broker.

15 3.2 The Mitchells informed Durham and Groves that they needed to purchase  
16 property to satisfy a very specific purpose: a residence that could also operate as a commercial  
17 dog kennel for the Mitchells' dog breeding business of high value, pure breed German Shepards.  
18 Durham and Groves also knew that the Mitchells were currently living in Alaska, and therefore  
19 the Mitchells' reliance would be even greater than that of the average client.

20 3.3 Durham and Groves found a piece of property with a residence located at 3508  
21 W. Hallett Lane in Spokane, Washington ("the Hallett Property"). However, that land was not  
22 big enough to meet Spokane County requirements for the operation of a commercial dog kennel.  
23 Rather than searching for a completely different property, Durham and Groves contacted an  
24 adjacent property owner, defendant Paul Solerno ("Solerno") and inquired if he would be willing  
25 to sell a portion of his property ("the Solerno Property") to the Mitchells, and participate in a  
26 boundary line adjustment in order to give the Mitchells a large enough parcel of property to  
27 operate the commercial dog kennel. Solerno responded affirmatively.

1           3.4     With Durham and Groves acting as their agents, in July 2011 the Mitchells  
2 entered into a written purchase and sale agreement with the owners of the Hallett Property. That  
3 agreement contained a contingency on the closing of the Hallett Property, which was that the  
4 Solerno Property sale had to close before or simultaneously with the Hallett Property.

5           3.5     The Mitchells also entered a purchase and sale agreement with Solerno for the  
6 purchase of a half acre of the Solerno Property. As part of that agreement, the Mitchells paid  
7 \$1,000.00 to Solerno in earnest money, and put another \$19,000.00 in escrow.

8           3.6     By September 2011, the Solerno Property sale was no closer to closing than it had  
9 been in July, and the Hallett Property owners were anxious to get the Hallett Property sold.  
10 Sometime in the fall of 2011, Solerno told Durham and Groves that his mortgage lender would  
11 not agree to a partial release of his property and that the closing on the Solerno property could  
12 not happen. Durham and Groves told Solerno not to inform the Mitchells of this fact.

13           3.7     In September of 2011, worried about losing the sale of the Hallett Property,  
14 Durham and Groves advised the Mitchells to forgo the contingency in the purchase and sale  
15 agreement for the Hallett Property and to go ahead with the Hallett Property closing. Durham  
16 and Groves encouraged the Mitchells to just complete the Hallett Lane closing and told the  
17 Mitchells that the Solerno Property closing wouldn't be any problem, that it would just take more  
18 time.

19           3.8     Relying on the representations and assurances of Durham and Groves, the  
20 Mitchells eliminated the contingency in the purchase and sale agreement for the Hallett Property,  
21 and went ahead with the closing of the Hallett Property in late September of 2011.

22           3.9     Durham and Groves never told the Mitchells that the Solerno Property sale could  
23 not close. Instead, Solerno informed the Mitchells of the problem in early 2012. At that point,  
24 Durham and Groves ceased communications with the Mitchells, and unilaterally, without  
25 informing the Mitchells, cancelled the boundary line adjustment process that the Parties had  
26 initiated with the County.

27           3.10    Durham and Groves also made other representations and assurances to the  
28 Mitchells that the Hallett Property would meet the Spokane County requirements of running a

29           **COMPLAINT -- 3**

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1 commercial dog kennel. After the Hallett Property closed, the Mitchells learned from Spokane  
2 County officials that the Hallett Property would not meet County requirements and additional  
3 changes would have to be made in order to bring the Hallett Property into conformance with  
4 those requirements.

5 3.11 Though the Mitchells have continued to try to work with Solerno and his  
6 mortgage lender, to date the Solerno Property sale has never closed. As a result, the Mitchells  
7 have not been able to operate their dog kennel business, and they have had to keep their dogs on  
8 the inside of their house at most times, because the property is not large enough to allow them  
9 outside. This has resulted in damages to their home.

#### 10 IV. FIRST CAUSE OF ACTION – BREACH OF CONTRACT (Groves/Durheim/Windermere)

11 4.1 Plaintiffs contracted with defendants for defendants to find them property suitable  
12 to their needs. Defendants failed to find appropriate property, and ceased trying to aid the  
13 plaintiffs after defendants received their commission for the sale of the Hallett Property. This  
14 breach has directly and proximately caused plaintiffs to suffer damages in amounts to be proven  
15 at time of trial.

#### 16 V. SECOND CAUSE OF ACTION – BREACH OF STATUTORY DUTIES

17 (Groves/Durheim/Windermere)

18 5.1 RCW § 18.86.030 and § 18.86.050 impose certain duties on real estate agents and  
19 brokers. Based on the above operative facts, the defendants breached their statutory duties,  
20 including but not limited to the duty of loyalty, the duty to exercise reasonable skill and care, the  
21 duty to deal honestly and in good faith, and the duty to disclose all existing material facts.

22 5.2 The defendants' breach of their statutory duties have directly and proximately  
23 caused the plaintiffs to suffer damages in amounts to be proven at the time of trial.

#### 24 VI. THIRD CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION

25 (Groves/Durheim/Windermere)

26 6.1 Though the defendants knew or should have known that the Solerno Property  
27 would not close, the defendants made assurances that the Solerno Property closing would not be  
28 any problem and encouraged the plaintiffs to give up an important contingency in the purchase of  
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COMPLAINT -- 4

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1 the Hallett Property. The plaintiffs reasonably relied on the assurances and representations of the  
2 defendants, and as a result have suffered damages in amounts to be proven at the time of trial.

3 6.2 Though the defendants knew or should have known that Spokane County  
4 regulations would require additional, costly changes to the Hallett Property, the defendants  
5 represented to the plaintiffs that the Hallett Property was in compliance with all regulations, so  
6 that the Hallett Property would appear to better meets the plaintiffs' needs. The plaintiffs  
7 reasonably relied on the assurances and representations of the defendants, and as a result have  
8 suffered damages in amounts to be proven at the time of trial.

9 VII. FOURTH CAUSE OF ACTION – BREACH OF CONTRACT (Solerno)

10 7.1 Solerno's failure to transfer to the Mitchells that portion of his property which he  
11 agreed to transfer in the Purchase and Sale Agreement is a material breach of that agreement.  
12 The Mitchells have been damaged by Solerno's breach of the Purchase and Sale Agreement, and  
13 ask the court to grant specific performance, or if that is not possible, then an award of damages in  
14 amounts to be proven at the time of trial.


15 WHEREFORE, Plaintiffs respectfully pray for judgment as follows:

- 16 a. For a judgment against defendants Groves, Durham and Windermere/Manito,  
17 LLC, jointly and severally, in amounts to be proven at the time of trial;
- 18 b. For an order of specific performance directed at defendant Solerno; or, in the  
19 alternative, a judgment for damages, in amounts to be proven at the time of trial;
- 20 c. For an award of pre- and post- judgment interest in the amount of 12% per  
21 annum;
- 22 d. For an award of plaintiff's reasonable attorney fees and costs;
- 23 e. For all such other and further relief as the court deems just and equitable.
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DATED this 16 day of April, 2013.

FELTMAN, GEBHARDT, GREER  
& ZEIMANTZ, P.S.

By:   
J.P. DIENER, WSBA #36630  
Attorney for Plaintiffs