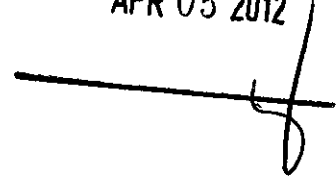


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COUNTY OF RIVERSIDE

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TWENTY-NINE PALMS BAND OF  
6 MISSION INDIANS OF CALIFORNIA,  
TWENTY-NINE PALMS  
7 ENTERPRISES CORPORATION, and,  
ECHO TRAIL HOLDINGS, LLC  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF RIVERSIDE

11 TWENTY-NINE PALMS BAND OF  
12 MISSION INDIANS OF CALIFORNIA;  
TWENTY-NINE PALMS ENTERPRISES  
13 CORPORATION; and ECHO TRAIL  
14 HOLDINGS, LLC, a limited liability  
company,

15 Plaintiffs,

16 vs.

17 DAVID ALAN HESLOP, an individual,  
DIVERSIFICATION RESOURCES, LLC,  
18 a limited liability company, NATIONAL  
DEMOGRAPICS, Inc., a corporation,  
19 PEGGY SHAMBAUGH, an individual,  
BENNION & DEVILLE FINE HOMES,  
20 INC., doing business as WINDERMERE  
REAL ESTATE COACHELLA  
21 VALLEY, a corporation, and Does 1  
through 100,

22 Defendants.  
23

Case No. RIC10006101

Honorable John Vineyard, Dept. 7

FOURTH AMENDED COMPLAINT  
FOR:

- (1) BREACH OF CONTRACT;
- (2) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- (3) BREACH OF FIDUCIARY DUTY;
- (4) BREACH OF CONTRACT;
- (5) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- (6) BREACH OF FIDUCIARY DUTY;
- (7) PROFESSIONAL NEGLIGENCE; and
- (8) UNFAIR TRADE PRACTICES

24  
25  
26 Plaintiffs Twenty-Nine Palms Band of Mission Indians of California, Twenty-Nine  
27 Palms Enterprises Corporation, and Echo Trail Holdings, LLC (sometimes collectively  
28 referred to herein as "Plaintiffs") allege, as follows:

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**GENERAL ALLEGATIONS**

1  
2 1. At all times relevant to the events alleged in this action, Plaintiff Twenty-Nine  
3 Palms Band of Mission Indians of California was and is a Sovereign Native American  
4 Nation duly recognized by the government of the United States of America. At all times  
5 relevant to the events alleged in this action, Plaintiff Twenty-Nine Palms Enterprises  
6 Corporation was and is a federally chartered corporation duly organized and existing under  
7 the laws of the government of the United States of America, and was and is wholly owned  
8 by Plaintiff Twenty-Nine Palms Band of Mission Indians of California. Together, these two  
9 entities are sometimes hereinafter collectively referred to as the "Tribe."

10 2. At some of the times relevant to the events alleged in this action, Plaintiff  
11 Echo Trail Holdings, LLC ("Echo Trail Holdings") was and is a limited liability company  
12 organized and existing under the laws of the State of California and was and is wholly  
13 owned by the Tribe.

14 3. At all times relevant to the events alleged in this action, defendant David Alan  
15 Heslop ("Heslop") was and is an individual and, on information and belief, a resident of the  
16 County of San Luis Obispo.

17 4. Plaintiffs are informed and believe that Defendant Diversification Resources,  
18 LLC, a Nevada limited liability company ("DRL-NV") is a limited liability company  
19 organized under the laws of the State of Nevada. Plaintiffs are informed and believe that in  
20 or about August 2006, Heslop formed DRL-NV. On information and belief, Heslop was,  
21 and is, the sole member and manager of DRL-NV; and its business affairs were, and are,  
22 controlled by Heslop. Plaintiffs are further informed and believe and thereon allege that in  
23 or about August 2007, a conversion was filed with the California Secretary of State,  
24 whereby Defendant DRL-NV was purportedly converted to Defendant Diversification  
25 Resources, LLC, a California limited liability company ("DRL-CA"). Assuming that the  
26 conversion was lawfully effected, all debts, liabilities and obligations of DRL-NV continue  
27 as debts, liabilities and obligations of DRL-CA, and all rights of creditors, including  
28

1 Plaintiffs, were preserved unimpaired against DRL-CA, as if the alleged conversion had not  
2 occurred.

3 5. As a result of Heslop's failure and refusal to respond to any discovery to date,  
4 Plaintiffs are currently unable to determine the precise legal status of DRL-NV or the legal  
5 effectiveness of the alleged conversion. Plaintiffs are informed and believe and thereon  
6 allege that DRL-CA and Heslop failed to notify creditors of DRL-NV of the alleged  
7 conversion. Plaintiffs are further informed and believe and thereon allege that DRL-NV  
8 failed to transfer its assets (including possible insurance coverage) to DRL-CA in  
9 connection with the alleged conversion, and instead, transferred such assets to Heslop, with  
10 the intent to defraud its creditors and to escape liability for its debts. Accordingly, the  
11 purported "conversion" has no effect on Plaintiffs' claims against DRL-NV.

12 6. Plaintiffs are informed and believe and thereon alleged that DRL-NV and  
13 Heslop knowingly and willfully conspired and agreed among themselves, and with Paul P.  
14 Bardos, to defraud Plaintiffs out of hundreds of thousands of dollars by charging Plaintiffs  
15 spurious consulting fees for construction and construction management. Defendants Heslop  
16 and DRL-NV did the acts and things here and alleged pursuant to, and in furtherance of, the  
17 conspiracy and the above-alleged agreement.

18 7. In the alternative, since DRL-NV contends that it is a "dissolved" limited  
19 liability company, pursuant to California Corporations Code § 17355, this action may be  
20 maintained against DRL-NV to the extent of its undistributed assets, including, without  
21 limitation, any insurance assets held by DRL-NV that may be available to satisfy claims.  
22 (DRL-NV and DRL-CA are hereinafter collectively referred as "DRL.")

23 8. On information and belief, at all times relevant to the events alleged in this  
24 action defendant National Demographics, Inc. ("NDI") was and is a corporation doing  
25 business in the States of Nevada and/or California. Further, on information and belief, NDI  
26 was formed by Heslop on or about July 12, 1979; Heslop was and is one of the owners of  
27 stock in NDI; and, at various times referred to in this action, Heslop was an officer and  
28

1 director of NDI. On information and belief, NDI has its principal place of business in the  
2 County of Los Angeles, at 1217 Glenwood Road, Glendale, CA 91202.

3 9. On information and belief, in doing or failing to do the things alleged in this  
4 action, Heslop was acting in the course and scope of his responsibilities as the managing  
5 owner and agent of DRL and as a managing officer, director and agent of NDI.

6 10. On information and belief, at all times relevant to the events alleged in this  
7 action, defendant Peggy Shambaugh ("Shambaugh") was and is an individual and a resident  
8 of the County of Riverside. At all times relevant to the events alleged in this action,  
9 Shambaugh was and is a real estate licensee and a real estate agent with defendant Bennion  
10 & Deville Fine Homes, Inc., which does business as Windermere Real Estate Coachella  
11 Valley.

12 11. At all times relevant to the events alleged in this action, defendant Bennion &  
13 Deville Fine Homes, Inc., doing business as Windermere Real Estate Coachella Valley  
14 ("Windermere Coachella") was and is a corporation organized and existing under the laws  
15 of the State of California with various places of business, including one in Palm Desert,  
16 California. Further, at all times relevant to the events alleged in this action, Windermere  
17 Coachella was and is licensed by the State of California as a real estate broker, doing  
18 business as a real estate broker and operating an unlawful franchise arrangement with  
19 defendant Windermere Real Estate Services Company ("Windermere Services") from  
20 which both Windermere Coachella and Windermere Services have unlawfully split over a  
21 million dollars in commissions from real estate transactions within the State of California.

22 12. On information and belief, at all times relevant to the events alleged in this  
23 action, defendant Windermere Services was and is a corporation organized and existing  
24 under the laws of the State of Washington with its principal place of business in Seattle,  
25 Washington and offices in various states including, but not limited to, the offices of  
26 Windermere Coachella in California. On further information and belief, Windermere  
27 Services managed and controlled Windermere Coachella through defendant Bob Deville  
28

1 (“Deville”) and others in, among other matters, the events alleged in this action, so as to  
2 render Windermere Services legally responsible in some manner for not only its own  
3 wrongful conduct but also the wrongful conduct of Windermere Coachella and certain  
4 others alleged below. On further information and belief, at all times relevant Windermere  
5 Services had an unlawful franchise arrangement with Windermere Coachella, operated as a  
6 real estate broker without a license and unlawfully split over a million dollars in  
7 commissions with Windermere Coachella from real estate transactions within the State of  
8 California.

9 13. On information and belief, at all times relevant to the events alleged in this  
10 action, defendant Deville was and is an individual residing in Southern California, an  
11 owner, operator, officer, manager and alter ego of Windermere Coachella, a member of  
12 Windermere Services’ management team, and a supervisor of Windermere Services’  
13 franchise operation, including an unlawful franchise arrangement with Windermere  
14 Coachella.

15 14. Plaintiffs are unaware of the true names and capacities, whether individual,  
16 corporate, associate, or otherwise, of Defendants sued herein as Does 1 through 100,  
17 inclusive, and therefore sue said Defendants by such fictitious names. On information and  
18 belief, Plaintiffs allege that each fictitiously named Defendant is legally responsible in some  
19 manner for the wrongful conduct described below, and is therefore legally responsible for  
20 the injury and damage to Plaintiffs alleged in this action. Plaintiffs will amend this  
21 Complaint to allege the true names and capacities of these fictitiously named Defendants  
22 when the same have been ascertained.

23 15. On information and belief, Plaintiffs allege that the Defendants, and each of  
24 them, were the duly authorized and acting agents, employees, partners, joint venturers, co-  
25 conspirators and/or the alter egos of each of the other Defendants, and in doing the things  
26 alleged in this action, each Defendant was acting within the course and scope of his, her or  
27  
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1 its employment and authority from the other Defendants and/or the other Defendants have  
2 approved and/or ratified all such conduct.

3 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

4 16. At some time before the events alleged in this Complaint, Heslop was  
5 associated with the Claremont McKenna College as a professor and/or an administrator. At  
6 all times relevant to the events alleged in this action, Heslop was associated with the Rose  
7 Institute ("Rose"), as an officer, director and/or sponsor of some sort. Rose holds itself out  
8 to the public as being capable of providing services, including survey research, fiscal  
9 analysis, and database development and as the author of studies of political and  
10 demographic trends.

11 17. While at Claremont McKenna College or through Rose, Heslop became  
12 acquainted with Gary E. Kovall ("Kovall").

13 18. From and after about 1997, Kovall represented the Tribe and its related  
14 entities, first as an attorney with his own office and subsequently through a series of law  
15 partnerships and/or affiliations. Beginning in or about 2002, Kovall continued to represent  
16 the Tribe and also to provide advice and counsel to the Plaintiffs of a type generally  
17 provided by an entity's general counsel pursuant to an oral agreement. However, Kovall  
18 submitted written invoices for all of his services and was paid for all of his services by the  
19 Tribe. In this capacity, Kovall became an integral part of the Tribe's management and the  
20 operations of the Tribe's business endeavors. Beginning in or about 2007, and continuing to  
21 in or about 2009, Heslop convinced representatives of the Tribe, including, Kovall and Gene  
22 Gambale, the predecessor of Kovall as the Tribe's legal advisor, that he had special  
23 knowledge, training and skill in business affairs, including the acquisition of business  
24 opportunities, the acquisition of real estate and the management of construction. In  
25 addition, Heslop knew of Kovall's relationship with the Tribe and took steps to endear  
26 himself to Kovall and the Tribe so as to be able to influence and control the business  
27 decisions made by the Tribe.

1           19.     The Tribe hired Heslop and at his recommendation DRL and NDI to, among  
2 other things, advise the Tribe with respect to a variety of matters, including, without  
3 limitation, all phases of real estate investment (such as, for example, the acquisition and  
4 valuation of real property and the retention of real estate lawyers, appraisers, and brokers),  
5 all phases of construction matters involving the Tribe (such as the retention and oversight of  
6 consultants, owner-representatives, contractors, and sub-contractors), and in connection  
7 with the negotiation of agreements with each such type of construction person and entity in  
8 connection with construction work proposed or undertaken by the Tribe. During such times  
9 the Tribe also utilized the legal service of Kovall to advise it with respect to such matters.  
10 Kovall also represented the Tribe in mediations and litigation matters in which the Tribe  
11 was a party, including matters pertaining to the Tribe's business operations. Kovall also  
12 represented the Tribe with respect to political matters affecting the Tribe's business  
13 operations, and with respect to investments and other business transactions which were of  
14 potential benefit to the Tribe, including, without limitation, recyclables and solar product  
15 ventures. Heslop and his entities also advised the Tribe with respect to such matters. In the  
16 course of such representation, Kovall and Heslop gained considerable and intimate  
17 knowledge regarding the Tribe's assets and business operations, as well as its organizational  
18 and social structure, its chain of command, and its manner of doing things.

19           20.     In or about 1998, the Plaintiffs retained Heslop, who thereafter, began to  
20 advise the Tribe on various business ventures, including those described below, for which  
21 Heslop was paid as the Tribe's trusted advisor. In addition, based on the recommendation of  
22 Heslop, the Tribe entered into special consulting arrangements with various persons and  
23 entities, including DRL, NDI and Paul P. Bardos and his related entities, and the Tribe paid  
24 Heslop and these other consultants hundreds of thousands of dollars for their services.

25           **The Total Tire Venture**

26           21.     On information and belief, beginning in or about 1997 as a result of the  
27 recommendation of Heslop and Kovall, the Tribe invested over \$5 million in a "recycling"  
28

1 venture in the Sacramento, California area, known as the "Total Tire" venture. The Tribe  
2 did not understand or appreciate that Heslop and Kovall arranged for the ownership of the  
3 Total Tire venture to be set up so that they each acquired an ownership interest in the  
4 venture without investing any money of their own. Thus, the Tribe took all of the financial  
5 risk, which resulted in a total financial loss to the Tribe of over \$5 million. In or about  
6 2001, Kovall and Heslop conspired together to convince the Tribe to invest more money in  
7 this venture when it was clear, or should have been clear, to them that any further  
8 investment by the Tribe would be lost. As a result, the Tribe lost additional sums in the  
9 Total Tire venture in excess of \$1.5 million. Kovall submitted invoices for the legal work he  
10 did on the Total Tire venture and was paid for that work by the Tribe. Kovall and Heslop  
11 failed to properly disclose the ownership interest they took in the Total Tire venture and  
12 failed to obtain the informed consent of the Tribe to the taking of this interest. Kovall and  
13 Heslop conspired together to convince the Tribe to invest these additional funds in the Total  
14 Tire venture knowing those funds would probably be lost because Kovall and Heslop  
15 believed this was the only means available to them to protect their ownership interests in the  
16 deal. In so doing and despite the fiduciary relationship they each had with the Tribe, they  
17 sacrificed the interests of the Tribe in favor of protecting their own ownership interests.

18 **Bardos and Kickbacks**

19 22. While Heslop was advising the Tribe as described above, in connection with  
20 various business matters, including construction and remodeling issues, Heslop, acting  
21 individually and through DRL, purported to advise the Tribe on construction issues  
22 involving the Tribe. Heslop and DRL used Paul P. Bardos to provide these services. Later,  
23 Kovall and Heslop convinced the Tribe that it needed someone to manage or control its  
24 construction work and convinced the Tribe to retain Paul P. Bardos and his company to  
25 provide these services. Kovall and Heslop also recommended Paul P. Bardos, Bardos  
26 Construction, Inc., Bardos Construction Company and/or Cadmus Construction, Inc.  
27 ("Cadmus") (a Bardos company) (collectively "Bardos") for various positions and  
28



1 relationships with the Tribe without revealing (and, indeed, concealing) the nature and  
2 extent of their relationships with Bardos. In addition, on information and belief, Bardos  
3 compensated Heslop and Kovall, for their recommendation of Bardos to the Tribe, and  
4 Kovall and Heslop failed to disclose this benefit to the Tribe. Moreover, Heslop did not  
5 obtain the consent of the Tribe to his (Heslop's) receipt of these benefits from Bardos. In  
6 addition, Kovall and Heslop hired for the Tribe, or recommended for hire by the Tribe,  
7 Bardos in connection with construction work related to the Tribe's casino operations  
8 without recommending a competitive bid process for the selection of a contractor.  
9 Moreover, Heslop did so at a time when Heslop knew or should have known the agreements  
10 proposed for Bardos for the construction work were inadequate and insufficient to protect  
11 the interests of the Tribe in that they allowed Bardos to charge excessive and unreasonable  
12 fees to the Tribe. Heslop also knew or should have known that Cadmus, an entity Bardos  
13 used to provide services to the Tribe, lacked experience in construction of the types of  
14 projects for which it was hired by the Tribe, and was undercapitalized and unlicensed.

15         23. Between May 2007 and June 2008, Bardos paid Heslop approximately  
16 \$683,000 from the millions of dollars he received from the Tribe as a kickback for contracts  
17 he was able to acquire from the Tribe due to the recommendation of Heslop and Kovall. On  
18 information and belief, Heslop, in turn, paid some portion of those funds to Kovall or to  
19 Shambaugh for Kovall's benefit, or to someone identified by Kovall. The Tribe did not  
20 know of the foregoing described payments of kickbacks and did not approve them. In  
21 addition, while Heslop purported to advise the Tribe in connection with its dealings with  
22 Bardos, Bardos was supplying work and materials to Kovall at little or no cost in connection  
23 with the construction or remodeling of property owned by Kovall in the Big Bear area,  
24 thereby creating a clear conflict of interest for Kovall. Heslop knew Bardos was providing  
25 his service to Kovall but never disclosed these facts to the Tribe. Heslop and Kovall  
26 concealed Kovall's receipt of these other benefits from Bardos from the Tribe. On  
27 information and belief, Bardos also provided similar undisclosed benefits to Heslop in  
28

1 connection with personal construction work done by Bardos for Heslop while Heslop  
2 purported to provide independent advice to the Tribe.

### 3 **The Moskow Action**

4 24. In August 2003, the Tribe sold certain real property located in the City of  
5 Laguna Beach, California to Dr. and Mrs. Lonnie Moskow (the "Moskows"). In June 2004,  
6 the Moskows filed a construction defect case in Orange County Superior Court against the  
7 Tribe and certain of its members, and Mrs. Moskow claimed injury (bodily injury) from  
8 exposure to mold.

9 25. In or about 2004, Kovall retained attorneys Nada L Edwards, Robert Rosette  
10 and Monteau & Peebles ("M & P") to represent the Tribe and others in the defense of the  
11 Moskow action. On information and belief, Rosette was, at the time, a partner in the firm of  
12 M & P. Later, while still representing the Tribe in the Moskow action, M & P reorganized  
13 itself and became Fredericks & Peebles ("F & P"), but continued to represent the Tribe in  
14 the Moskow action. In 2007, F & P reorganized itself into Fredericks Peebles & Morgan  
15 ("FP & M"), but continued to represent the Tribe in the Moskow action.

16 26. At the recommendation of Kovall and/or Heslop, the attorneys representing  
17 the Tribe in the Moskow action retained various consultants and/or experts in connection  
18 with the defense of the Moskow action, including Bardos and Peggy Shambaugh  
19 ("Shambaugh"). Shambaugh at the time was the girlfriend of Kovall. Later, in 2008, she  
20 became his wife. As described above, Bardos paid Kovall and/or Heslop for recommending  
21 him and his companies to the Tribe.

### 22 **The 47 Acres**

23 27. Beginning in about 2005 and continuing into 2008, Kovall represented the  
24 Tribe with respect to the acquisition of approximately 47 acres of real property known as  
25 the "Echo Trail" property (hereafter the "Echo Trail property" or "the 47 acres"), from its  
26 then owner Dillon Road Associates, LLC, and other matters related to the Tribe's  
27 acquisition of the property. The Echo Trail property is located in the City of Coachella,  
28

1 County of Riverside. The Tribe also used the services of Heslop and, at his  
2 recommendation, NDI, in connection with its evaluation of the transaction by which it  
3 acquired the 47 acres. Ultimately, Heslop, acting for himself and for DRL and NDI, and  
4 Kovall persuaded the Tribe to purchase the 47 acres. In addition, Kovall persuaded the Tribe  
5 to utilize the services of Windermere Coachella as the buyer's broker in the transaction, with  
6 Shambaugh as the responsible individual salesperson. On information and belief,  
7 Windermere Coachella, Windermere Services, Deville and Shambaugh were brought into  
8 this transaction less than two months before it closed, at a point when negotiations between  
9 the Tribe and the then-owner of the land were at an end or near an end. Further, on  
10 information and belief, the services provided by Windermere Coachella, Windermere  
11 Services, Deville and Shambaugh in connection with the Plaintiffs' acquisition of the 47  
12 acres were of little or no value to the Tribe.

13 28. Unbeknownst to the Tribe, at the time Kovall represented the Tribe in  
14 connection with the acquisition of the Echo Trail property, Kovall was in a romantic  
15 relationship with Shambaugh, in which the two, at the time of the purchase of the 47 acres,  
16 lived together and held themselves out as being husband and wife. In July 2008, following  
17 his divorce from his then-wife in 2007, Kovall and Shambaugh were formally married. On  
18 information and belief, Heslop, individually and on behalf of DRL and NDI, knew of the  
19 romantic relationship between Kovall and Shambaugh at the time Shambaugh and  
20 Windermere Coachella were hired by the Tribe to represent it in connection with the  
21 acquisition of the 47 acres and throughout the time Windermere Coachella, Windermere  
22 Services, Deville and Shambaugh represented the Tribe. At no time did Heslop or Kovall  
23 ever disclose to the Tribe Kovall's relationship to Shambaugh, or the conflict of interest  
24 created thereby. Instead, Heslop, Kovall and Shambaugh actively concealed this  
25 relationship, as a means of personally benefiting from the purchase of the 47 acres. For  
26 Kovall, he was able to secure a portion of the commission. For Heslop, he was able to,  
27 among other things, secure the position as the first manager of Echo Trail Holdings and fees  
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1 for acting in that capacity and as the advisor to the Tribe in making its decision to purchase  
2 the 47 acres for himself as well as fees for DRL and NDI and fees he anticipated he would  
3 receive from the Tribe in the future for development of the 47 acres. Such concealment and  
4 relationship between Kovall and Shambaugh created a clear conflict of interest for Kovall  
5 and Heslop, who, as noted above, represented the Tribe and Echo Trail Holdings, an entity  
6 formed by the Tribe to take title to parcels of real property, including the Echo Trail  
7 property.

8 29. Kovall, ostensibly on behalf of the Tribe, negotiated a sales price of \$29  
9 million, which was to include a 3.5% commission to Windermere Coachella and their  
10 licensed salesperson, Shambaugh. On information and belief, Kovall, Heslop, Shambaugh,  
11 Deville, Windermere Coachella and Windermere Services knew or should have known the  
12 Echo Trail property had a market value of no more than \$20 million. On information and  
13 belief, beginning in 2006 and continuing into 2008, Heslop directed NDI to make various  
14 payments to Kovall, totaling many thousands of dollars. On further information and belief,  
15 these payments by NDI to Kovall represent a portion of Kovall's share of the kickbacks  
16 Heslop received from Bardos, and/or kickbacks for recommending NDI to assist with the  
17 acquisition of the 47 acres and were never disclosed by Kovall, Heslop or NDI to the Tribe.

18 30. Later, as a result of negotiations conducted by Kovall, ostensibly on behalf of  
19 the Tribe, the commission for Windermere Coachella and Shambaugh was reduced from  
20 3.5% to 3.0%, but the purchase price was raised to \$31 million, apparently to compensate  
21 for the reduction in the percentage of the commission to Windermere Coachella,  
22 Shambaugh and Windermere Services. At the time of the increase in purchase price, with  
23 the knowledge and/or consent of Windermere Coachella, Windermere Services, Deville and  
24 Shambaugh, Kovall told the Tribe that the increase was the result of "some people from  
25 New York," who were supposedly interested in the property, and therefore constituted  
26 potential competitors for the property for the Tribe.  
27  
28

1           31. While acting on behalf of Windermere Coachella and Windermere Services,  
2 Deville was actively involved in the 47 acres transaction. Deville oversaw the 47 acres  
3 transaction and communicated with Windermere Coachella and its employees regarding the  
4 acquisition of the 47 acres. Windermere Coachella and Windermere Services, through their  
5 agent and/or alter ego Deville, knew or should have known that certain of the individuals  
6 assigned to act on behalf of Plaintiffs in connection with the 47 acres transaction were  
7 grossly lacking the commercial real estate experience and knowledge necessary to  
8 adequately represent Plaintiffs in this \$30 million plus deal. As a manager of Windermere  
9 Coachella in the 47 acres transaction, Deville knew that the individuals assigned to  
10 represent Plaintiffs were incompetent and inexperienced but did nothing to rectify the  
11 situation, despite the fact that he was “supervising” and following the transaction with bated  
12 breath.

13           32. The negotiations resulted in a September 19, 2007 option agreement between  
14 the seller and the purchaser Echo Trail property. Ultimately, the property sold to Echo Trail  
15 Holdings for \$31 million, which amount was paid by the Tribe. The escrow for the  
16 purchase of the property took place in or about November 2007. Shambaugh, Windermere  
17 Coachella and Windermere Services received a total commission of approximately \$1  
18 million on the sale and Heslop, as stated above, became the first Manager of Echo Trail  
19 Holdings, the entity taking title to the 47 acres. Naturally, as an owner, operator, officer,  
20 manager and alter ego of Windermere Coachella, a member of Windermere Services’  
21 management team, and a supervisor of Windermere Services’ franchise operation, including  
22 an unlawful franchise arrangement with Windermere Coachella, Deville benefited from the  
23 unlawfully split commission.

24           33. The Tribe hired and paid Heslop to review the proposed acquisition of the 47  
25 acres and make a recommendation to the Tribe. As part of Heslop’s review, and at Heslop’s  
26 recommendation, the Tribe hired NDI and paid it tens of thousands of dollars in or about  
27 early 2006 and in 2007 to conduct valueless studies to justify Heslop’s recommendations  
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1 with respect to the acquisition of the 47 acres. Heslop reviewed the transaction and  
2 recommended to the Tribe that it acquire the 47 acres for a price that exceeded \$30 million.  
3 On information and belief, the 47 acres was worth no more than \$20 million at that time of  
4 Heslop's recommendation. Part of the reason for Heslop's recommendation was his  
5 relationship with Kovall and Bardos and the financial benefits he received from them. On  
6 information and belief, Heslop and Kovall recommended to the Tribe that Echo Trail  
7 Holdings be formed as a Limited Liability Company to take title to the Echo Trail property,  
8 and that Heslop be appointed as the sole manager of Echo Trail Holdings. As a result of the  
9 recommendations of Heslop and Kovall, the Tribe formed Echo Trail Holdings with Heslop  
10 as the only manager of the company and its business, and arranged for Echo Trail Holdings  
11 to take title to the 47 acres. In his capacity as advisor to the Tribe, Heslop occupied a special  
12 position of trust and confidence. On information and belief, Heslop knew of the relationship  
13 between Kovall, on the one hand, and Shambaugh, on the other, and deliberately did not  
14 disclose such information to the Tribe. In his June 24, 2008 letter of resignation, Heslop  
15 stated, "You will remember that the Tribe instructed me to keep all transactions strictly  
16 confidential: I have done this and believe that the Tribe's position has been effectively  
17 protected and its secrets maintained."

18         34. In his position of leadership in NDI, Heslop repeatedly stated knowledge of  
19 the importance of the confidentiality and secrecy of the Tribe's interests. For example, in a  
20 July 2007 document entitled, "Development of 47 acre site", Heslop stated, "In order to  
21 preserve the absolute secrecy of the Tribe's possible interest in the site and its plans, needed  
22 contacts have not been made with professionals in the entertainment field. Thus, the  
23 recommendations are based primarily on this consultant's past experience and knowledge of  
24 the entertainment industry." As a further example, NDI's 29 Palms Market Study Proposal,  
25 dated November 7, 2007 includes the following language: "First and foremost, all  
26 information, data, analysis and report will be treated in the strictest confidence. This report  
27 will be a vital resource for the tribe and the Spotlight 29 Casino in planning their future  
28

1 business strategy, and NDI will ensure that every aspect of this study is conducted with the  
2 utmost in secrecy and discretion.” NDI made payments to Kovall after the preparation of  
3 this report. On information and belief, Heslop directed NDI to make these payments to  
4 Kovall.

5 35. The Tribe is further informed and believes that Kovall arranged for  
6 Shambaugh to provide other real property related services for the Tribe in connection with  
7 other matters, including litigation, in which the Tribe was involved and for which  
8 Shambaugh received payment from the Tribe. The value of these services by Shambaugh  
9 was worth little or nothing to the Tribe in that it could not rely on Shambaugh to provide  
10 independent expert advice on tribal matters.

11 **FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT**

12 **(By All Plaintiffs Against Heslop, DRL, NDL and Does 1-25)**

13 36. Plaintiffs re-allege and incorporate here by this reference paragraphs 1  
14 through 35, above, as though fully set forth at length.

15 37. Heslop agreed to provide expert consulting services to the Tribe, individually  
16 and through DRL and NDI, beginning in or about 1998 and continuing up to approximately  
17 June of 2008, for which the Tribe paid Heslop and these defendants hundreds of thousands  
18 of dollars. Heslop and the other defendants provided these services in connection with  
19 various transactions, including construction and construction management, the Total Tire  
20 venture, the Moskow action and the acquisition of the 47 acres. The agreements between  
21 Heslop, DRL and NDI, on the one hand, and the Tribe, on the other, were both verbal and in  
22 writing. Heslop, individually, and on behalf of DRL and NDI continued to represent the  
23 Plaintiffs in these matters up to at least June of 2008 when Heslop resigned as Manager of  
24 Plaintiff Echo Trail Holdings, and NDI’s last known payment to Kovall was made in April,  
25 2008.

1 38. Plaintiffs performed all of the things required of them under the various  
2 agreements described above, and there is no condition to their right to full performance of  
3 the agreements from the Defendants.

4 39. In doing or failing to do the things described, the defendants breached the  
5 agreements they had with the Plaintiffs, together with obligations imposed by law. As a  
6 direct and proximate breach by the Defendants, Plaintiffs have suffered damages in the form  
7 of overpayments of fees, payments for useless services, payments for advice tainted by  
8 kickbacks and undisclosed benefits from persons and/or entities with whom Plaintiffs dealt  
9 in matters in which Defendants provided services to Plaintiffs, erroneous advice and  
10 recommendations, and other errors and malfeasance in an amount which is presently  
11 unknown but which exceeds the jurisdictional minimum of this Court.

12 40. In addition, Heslop has received benefits and/or kickbacks as described above  
13 for business received by others from the Tribe and Heslop has been unjustly enriched by the  
14 receipt of such benefits and kickbacks. Heslop should be made to pay over those benefits to  
15 the Tribe and, where those funds or benefits have been invested in other property by Heslop,  
16 a constructive trust should be imposed on Kovall's interest in any such property.

17 **SECOND CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT**  
18 **OF GOOD FAITH AND FAIR DEALING**

19 **(By All Plaintiffs Against Heslop, DRL, NDL and Does 1-25)**

20 41. Plaintiffs re-allege and incorporate here by this reference paragraphs 36  
21 through 40, above, as though fully set forth at length.

22 42. In every contract entered into or to be performed in this State, there is an  
23 implied covenant of good faith and fair dealing which requires each of the parties to the  
24 contract to take no action to prevent the other party to the contract from realizing the benefit  
25 of same.

26 43. To the extent they do not represent breaches of the express contract,  
27 Defendants, in doing the things described above, breached the covenant of good faith and  
28



1 fair dealing and deprived the Tribe and Echo Trail Holdings of the benefits of their  
2 agreements with the Defendants in connection with each of the matters identified above and  
3 as to other matters as yet unidentified. As a direct and proximate result of the breach by the  
4 Defendants, Plaintiffs have suffered the damages described above in an amount which is  
5 presently unknown, but which exceeds the jurisdictional minimum of this Court.

6 **THIRD CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY**

7 **(By All Plaintiffs Against Heslop, DRL, NDL and Does 1-25)**

8 44. Plaintiffs re-allege and incorporate here by this reference paragraphs 41  
9 through 43 as though fully set forth at length.

10 45. At all times relevant to the events alleged above, Heslop, individually and on  
11 behalf of DRL and NDI, occupied a position of trust and confidence with the Plaintiffs. In  
12 that position Heslop was provided access to information about the Plaintiffs' business  
13 operations, inner workings and plans for the future. Indeed, Heslop was consulted for his  
14 advice, for which the Plaintiffs paid him, on various projects, ventures and strategies for the  
15 use of the Plaintiffs' property and property rights. For example, Heslop advised the Tribe to  
16 invest in the Total Tire venture and to continue to invest money in the Total Tire venture  
17 when he knew or should have known that the additional investment would result in  
18 additional loss to the Tribe. Heslop did so, in part, because he had a personal financial  
19 interest in this venture that was not properly disclosed. Heslop also advised the Tribe to use  
20 the services of Bardos, as described above, when he knew or should have known that  
21 Bardos was not qualified to provide these services to the Tribe. Part of the reason Heslop  
22 recommended Bardos to the Tribe was the kickbacks that Bardos was providing to Heslop.  
23 Heslop also advised the Tribe to hire DRL and NDI in connection with services that neither  
24 organization was qualified to provide, or under circumstances where the services were  
25 valueless, at least in part because Heslop owned or managed these entities. On information  
26 and belief, Heslop benefited financially from the services he arranged for DRL and NDI to  
27 provide to the Tribe. Heslop was also hired by the Tribe to provide a confidential analysis  
28

1 and recommendation with respect to whether the Plaintiffs should purchase the 47 acres, the  
2 correct price to pay for the 47 acres, and how the property might be developed beneficially  
3 by the Plaintiffs after it was acquired. In these positions Heslop, individually and on behalf  
4 of DRL and NDI, and the other Defendants acquired confidential information about the  
5 Tribe's business plans; indeed, they were responsible for many of the Tribe's business  
6 decisions and plans and arrangements. Given Heslop's position and given the nature of the  
7 services he, DRL and NDI provided to Plaintiffs, Heslop, DRL and NDI occupied a position  
8 as fiduciaries in their dealings with Plaintiffs.

9 46. In doing the things described above, including, without limitation, setting up  
10 or continuing to recommend ventures to profit themselves at the expense of the Plaintiffs,  
11 and taking undisclosed benefits from persons and entities with whom the Plaintiffs dealt, the  
12 Defendants breached their fiduciary duties to Plaintiffs. As a direct and proximate result of  
13 such breach by the Defendants, Plaintiffs have suffered the damages described above in an  
14 amount which is presently unknown but which exceeds the jurisdictional minimum of this  
15 Court.

16 47. In doing or failing to do the things described above, Defendants acted with  
17 malice, fraud or oppression as those terms are defined by California law by, among other  
18 things:

19 (a) Accepting kickbacks as described above from persons and entities with  
20 whom Plaintiffs dealt in exchange for causing the Plaintiffs to enter into agreements  
21 with these persons and entities;

22 (b) Taking ownership interests in business ventures with Plaintiffs without  
23 properly disclosing to Plaintiffs the ownership interest and inherent conflicts of  
24 interest involved with these ventures; and

25 (c) Concealing material information from the Plaintiffs about certain  
26 business ventures in connection with which Defendants provided consulting and  
27 expert services, including, without limitation, the relationship between Kovall and  
28

1 Shambaugh and Windermere in connection with the Plaintiffs' acquisition of the 47  
2 acres.

3 Accordingly, in addition to any other relief awarded to the Plaintiffs against the  
4 Defendants, Plaintiffs are entitled to the imposition of punitive damages.

5 **FOURTH CAUSE OF ACTION FOR BREACH OF CONTRACT**

6 **(By All Plaintiffs Against Shambaugh, Deville, Windermere Coachella and Does 28-50)**

7 48. Plaintiffs re-allege and incorporate here by this reference paragraphs 1  
8 through 35, above, as though fully set forth at length.

9 49. Shambaugh and Windermere Coachella provided real estate brokerage and/or  
10 expert or consulting services to the Plaintiffs for which the Tribe paid them over \$1 million.  
11 The agreements between Plaintiffs, on the one hand, and Shambaugh and Windermere  
12 Coachella, on the other, were both verbal and in writing.

13 50. Attached hereto as Exhibit "A" is a true and correct copy of the written  
14 agreement between Echo Trail Holdings, on the one hand, and Windermere Coachella and  
15 Shambaugh, on the other, for broker services in connection with the acquisition of the Echo  
16 Trail property. Exhibit "A" relates to the Plaintiffs' purchase of the Echo Trail property, the  
17 escrow for which closed on November 7, 2007. The funds for the purchase of the Echo Trail  
18 property came from the Tribe.

19 51. Attached hereto as Exhibit "B" is a true and correct copy of the Disclosure  
20 Regarding Real Estate Agency Relationships form filled out and provided to Echo Trail  
21 Holdings by Defendants in connection with the Plaintiffs' acquisition of the Echo Trail  
22 property. In Exhibit "B," there is an acknowledgement by Defendants of the existence of a  
23 fiduciary relationship, and concomitant duty of honesty and full disclosure. Despite the  
24 recognition and acknowledgement of this relationship, neither Windermere Coachella nor  
25 Deville or Shambaugh ever disclosed the relationship between Kovall and Shambaugh as  
26 described above, or the fact that the Tribe was paying more than the market value of the  
27 Echo Trail property.

28

1 52. Plaintiffs performed all of the things required of them under the agreements  
2 described above, and there is no condition to their right to full performance of the  
3 agreements from Defendants.

4 53. In doing or failing to do the things described above, Windermere Coachella  
5 and Shambaugh, and Deville as an alter ego of Windermere Coachella, breached the  
6 agreements they had with Plaintiffs, together with obligations imposed by law, by among  
7 other things, failing to disclose the romantic relationship that existed between Shambaugh  
8 and Kovall, by failing to disclose the market value of the Echo Trail property, and by failing  
9 to disclose the fact that Defendants were providing little or no services to Plaintiffs in  
10 connection with the acquisition of the 47 acres. As a direct and proximate breach by  
11 Defendants, Plaintiffs have suffered the damages described above in an amount which is  
12 presently unknown, but which exceeds the jurisdictional minimum of this Court.

13 54. In addition, Shambaugh and Windermere Coachella (and Deville as an alter  
14 ego, owner, operator, officer and manager of Windermere Coachella) have received benefits  
15 and compensation as described above for which they did little or nothing under  
16 circumstances where their ability to provide such services was the direct result of the  
17 undisclosed romantic relationship between Shambaugh and Kovall. As a result, they have  
18 been unjustly enriched by the receipt of such benefits and compensation. Shambaugh,  
19 Deville and Windermere Coachella should be made to pay over those benefits to the Tribe  
20 and, where those funds or benefits have been invested in other property by them, a  
21 constructive trust should be imposed on their interest in any such property.

22 **FIFTH CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF**  
23 **GOOD FAITH AND FAIR DEALING**

24 **(By All Plaintiffs Against Shambaugh, Deville, Windermere Coachella and Does 28-50)**

25 55. Plaintiffs re-allege and incorporate here by this reference paragraphs 48  
26 through 54, above, as though fully set forth at length.  
27  
28



1           61. In doing or failing to do the things described above, Defendants acted with  
2 malice, fraud or oppression as those terms are defined by California law by, among other  
3 things:

4                   (a) Concealing the relationship between Shambaugh and Kovall;

5                   (b) Accepting commissions for non-existent services;

6                   (c) Placing their financial interests above those of Plaintiffs;

7                   (d) Knowingly advising Plaintiffs to purchase the 47 acres despite  
8 Defendants' knowledge that the transaction would cause Plaintiffs to suffer  
9 significant financial loss so that Defendants would receive the benefit of a \$1 million  
10 commission; and

11                   (e) Entering into an unlawful agreement to share a commission of  
12 approximately \$1 million among Windermere Coachella and Windermere Services  
13 (an unlicensed entity) and Kovall (an unlicensed individual).

14 Accordingly, in addition to any other relief awarded to Plaintiffs against Defendants,  
15 Plaintiffs are entitled to the imposition of punitive damages.

16                   **SEVENTH CAUSE OF ACTION FOR PROFESSIONAL NEGLIGENCE**

17                   **(By All Plaintiffs Against Shambaugh, Deville, Windermere Coachella , Windermere**  
18                   **Services and Does 28-50)**

19           62. Plaintiffs re-allege and incorporate here by this reference paragraphs 10  
20 through 15, 27 through 35 and 36 through 61, above, as though fully set forth at length.

21           63. Shambaugh, Deville, Windermere Coachella and Windermere Services  
22 negligently represented Plaintiffs in connection with the acquisition of the Echo Trail  
23 property, and/or negligently negotiated agreements for Plaintiffs, and/or negligently  
24 supervised agents, representatives and/or employees, as described above, in connection with  
25 the business affairs of Plaintiffs for which Defendants were paid by Plaintiffs to represent  
26 them.

1           64. While acting on behalf of Windermere Coachella and Windermere Services,  
2 Deville was actively involved in the 47 acres transaction. Deville oversaw the 47 acres  
3 transaction and communicated with Windermere Coachella and its employees regarding the  
4 acquisition of the 47 acres. Windermere Coachella and Windermere Services, through their  
5 agent and/or alter ego Deville, knew or should have known that certain of the individuals  
6 assigned to act on behalf of Plaintiffs in connection with the 47 acres transaction were  
7 grossly lacking the commercial real estate experience and knowledge necessary to  
8 adequately represent Plaintiffs in this \$30 million plus deal. As a manager of Windermere  
9 Coachella in the 47 acres transaction, Deville knew that the individuals assigned to  
10 represent Plaintiffs were incompetent and inexperienced but did nothing to rectify the  
11 situation, despite the fact that he was “supervising” and following the transaction.

12           65. As a proximate result of the negligence of Defendants, Plaintiffs have  
13 sustained loss and injury, the precise amount of which is presently unknown, but which  
14 exceeds the jurisdictional minimum of this Court. Further, Defendants have profited from  
15 their wrongful conduct by among other things, collecting and/or benefiting from  
16 commissions and fees which they would not have received in the absence of such wrongful  
17 conduct. Accordingly, Defendants should disgorge to Plaintiffs the funds they have  
18 wrongfully acquired, together with interest thereon.

19           **EIGHTH CAUSE OF ACTION FOR UNFAIR TRADE PRACTICES**

20           **(By All Plaintiffs Against Windermere Coachella, Windermere Services, Deville and**  
21           **Does 28-50)**

22           66. Plaintiffs re-allege and incorporate here by this reference paragraphs 62  
23 through 65, above, as though fully set forth at length.

24           67. On information and belief, at all times relevant to the events alleged in this  
25 action, Windermere Services and Windermere Coachella have held themselves out to  
26 Plaintiffs and the general public as franchisor and franchisee, respectively; when, in fact,  
27 their relationship is that of licensor and licensee as defined in the only document produced  
28

1 by Windermere Coachella as to the relationship between the parties – a trademark licensing  
2 agreement. Also on information and belief, no valid and lawful franchise agreement has  
3 ever existed between Windermere Services and Windermere Coachella. On further  
4 information and belief, Windermere Services was not licensed as a real estate broker in the  
5 State of California.

6 68. At all times relevant to the events alleged in this action, Windermere  
7 Coachella (and its owner, operator, manager and alter ego Deville) and Windermere  
8 Services engaged in the following acts, each of which constitute unlawful, unfair and/or  
9 fraudulent business practices within the meaning of California Business and Professions  
10 Code Section 17200:

11 (a) Failing to disclose the fact that Heslop had a preexisting and ongoing  
12 financial arrangement with Windermere Coachella, through Shambaugh and her then  
13 boyfriend, now husband, Kovall, or the fact that Plaintiffs were paying substantially  
14 more than market value for the Echo Trail property;

15 (b) Concealing the fact that Heslop had a preexisting and ongoing financial  
16 arrangement with Windermere Coachella, through Shambaugh and Kovall, or the  
17 fact that Plaintiffs were paying substantially more than market value for the Echo  
18 Trail property;

19 (c) Accepting commissions for non-existent services, or for services  
20 performed without the requisite disclosures and/or due diligence, as hereinabove  
21 alleged; and

22 (d) Windermere Coachella's unlawfully sharing real estate commissions  
23 with Windermere Services, an unlicensed entity, on not only the Echo Trail property  
24 transaction but also, on information and belief, various other real estate transactions  
25 with consumers other than Plaintiffs throughout the State of California, all in  
26 violation of California law.



1 On information and belief, Windermere Coachella (and its owner, operator, manager  
2 and alter ego Deville) and Windermere Services engaged in the above-mentioned acts for  
3 the purpose of injuring Plaintiffs and other prospective purchasers of real property similarly  
4 situated. By virtue of the conduct alleged herein, there is a likelihood of actual and  
5 pernicious confusion and an unfair and inequitable advantage for any real estate broker  
6 employing the aforementioned business model or device, and based on the unlawful, unfair  
7 and fraudulent practices of these Defendants, a permanent injunction should issue to prevent  
8 these Defendants from engaging in such unlawful and fraudulent conduct and restitution  
9 should be ordered from these Defendants of all unlawful commissions derived from the real  
10 estate transactions involving Plaintiffs.

11 WHEREFORE, Plaintiffs pray for relief as follows:

12 On the First Cause of Action by All Plaintiffs for Breach of Contract against Heslop,  
13 DRL, NDL and Does 1-25:

- 14 1. For compensatory damages in an amount according to proof;
- 15 2. For orders requiring restitution and a disgorgement of all profits, benefits and  
16 other compensation obtained as a result of the conduct alleged herein;
- 17 3. For an order imposing a constructive trust;

18 On the Second Cause of Action by All Plaintiffs for Breach of Implied Covenant of  
19 Good Faith and Fair Dealing against Heslop, DRL, NDL and Does 1-25:

- 20 4. For compensatory damages in an amount according to proof;
- 21 5. For orders requiring restitution and a disgorgement of all profits, benefits and  
22 other compensation obtained as a result of the conduct alleged herein;
- 23 6. For an order imposing a constructive trust;

24 On the Third Cause of Action by All Plaintiffs for Breach of Fiduciary Duty against  
25 Heslop, DRL, NDL and Does 1-25:

- 26 7. For compensatory damages in an amount according to proof;

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Los Angeles, CA 90028  
(310) 586-2400

1 8. For orders requiring restitution and a disgorgement of all profits, benefits and  
2 other compensation obtained as a result of the conduct alleged herein;

3 9. For an order imposing a constructive trust;

4 10. For punitive and exemplary damages in an amount according to proof;

5 On the Fourth Cause of Action by All Plaintiffs for Breach of Contract against  
6 Shambaugh, Deville, Windermere Coachella, and Does 28-50:

7 11. For compensatory damages in an amount according to proof;

8 12. For orders requiring restitution and a disgorgement of all profits, benefits and  
9 other compensation obtained as a result of the conduct alleged herein;

10 13. For an order imposing a constructive trust;

11 On the Fifth Cause of Action by All Plaintiffs for Breach of Implied Covenant of  
12 Good Faith and Fair Dealing against Shambaugh, Deville, Windermere Coachella and Does  
13 28-50:

14 14. For compensatory damages in an amount according to proof;

15 15. For orders requiring restitution and a disgorgement of all profits, benefits and  
16 other compensation obtained as a result of the conduct alleged herein;

17 16. For an order imposing a constructive trust;

18 On the Sixth Cause of Action by All Plaintiffs for Breach of Fiduciary Duty against  
19 Shambaugh, Deville, Windermere Coachella, Windermere Services and Does 28-50:

20 17. For compensatory damages in an amount according to proof;

21 18. For orders requiring restitution and a disgorgement of all profits, benefits and  
22 other compensation obtained as a result of the conduct alleged herein;

23 19. For an order imposing a constructive trust;

24 20. For punitive and exemplary damages according to proof;

25 On the Seventh Cause of Action by All Plaintiffs for Professional Negligence against  
26 Shambaugh, Deville, Windermere Coachella, Windermere Services and Does 28-50:

27 21. For compensatory damages in an amount according to proof;

28

1           22. For orders requiring restitution and a disgorgement of all profits, benefits and  
2 other compensation obtained as a result of the conduct alleged herein;

3           23. For an order imposing a constructive trust;

4           On the Eighth Cause of Action for Unfair Trade Practices against Windermere  
5 Coachella, Windermere Services, Deville and Does 28-50:

6           24. For an order requiring restitution and disgorgement of all profits, benefits and  
7 other compensation obtained as a result of the conduct alleged herein in favor of Plaintiffs  
8 as to those real estate transactions involving Plaintiffs;

9           25. For a permanent injunction barring Defendants from engaging in the unlawful,  
10 fraudulent and unfair practices as real estate brokers as alleged herein;

11           On All Causes of Action by All Plaintiffs Against All Defendants:

12           26. For costs of suit;

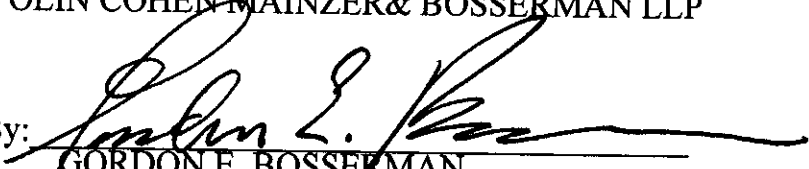
13           27. For interest at the maximum allowable by law;

14           28. For such other and further relief as the Court deems just and proper.

15 Dated: April 4, 2012

SPOLIN COHEN MAINZER & BOSSERMAN LLP

16  
17  
18 By:

  
GORDON E. BOSSEMAN  
Attorneys for Plaintiffs

...



A



CALIFORNIA  
ASSOCIATION  
OF REALTORS®

**BUYER BROKER AGREEMENT**  
Non-Exclusive/Not for Compensation  
(C.A.R. Form BBNN, Revised 10/04)

1. **RIGHT TO REPRESENT:** ECOWD TRAIL HOLDINGS LLC ("Buyer")  
grants Windermere Real Estate ("Broker")  
beginning on (date) 8/19/07 and ending: (i) upon written notice by either party, (ii) upon completion of a  
resulting transaction, or (iii) one year (or 1 YR. 31. 2007) from the beginning date, whichever occurs first  
("Representation Period"), the non-exclusive and revocable right, on the terms specified in this Agreement, to represent Buyer in  
acquiring real property or a manufactured home. Broker agrees to exercise due diligence and reasonable efforts to fulfill the  
following authorizations and obligations. Broker will perform its obligations under this Agreement through the individual signing for  
Broker below, who is either Broker individually or an associate-licensee (an individual licensed as a real estate salesperson or  
broker who works under Broker's real estate license). Buyer agrees that Broker's duties are limited by the terms of this Agreement,  
including those limitations set forth in paragraphs 3 and 4.

2. **AGENCY RELATIONSHIPS:**  
A. **DISCLOSURE:** If the property being sought includes residential property with one-to-four dwelling units, Buyer acknowledges  
receipt of the "Disclosure Regarding Real Estate Agency Relationships" form prior to entering into this Agreement.  
B. **BUYER REPRESENTATION:** Broker will represent, as described in this Agreement, Buyer in any resulting transaction.  
C. **(1) POSSIBLE DUAL AGENCY WITH SELLER:** (C(1) APPLIES UNLESS C(2)(i) or (ii) is checked below.)  
Depending on the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Buyer and a seller,  
exchange party, or one or more additional parties ("Seller"). Broker shall, as soon as practicable, disclose to Buyer any election  
to act as a dual agent representing both Buyer and Seller. If Buyer is shown property listed with Broker, Buyer consents to  
Broker becoming a dual agent representing both Buyer and Seller with respect to those properties. In event of dual agency,  
Buyer agrees that: (a) Broker, without the prior written consent of Buyer, will not disclose to Seller that Buyer is willing to pay a  
price greater than the price offered; (b) Broker, without the prior written consent of Seller, will not disclose to Buyer that Seller is  
willing to sell property at a price less than the listing price; and (c) other than as set forth in (a) and (b) above, a dual agent is  
obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.  
OR (2) **SINGLE AGENCY ONLY:** (APPLIES ONLY IF (i) or (ii) is checked below.)  
 (i) Broker's firm lists properties for sale; Buyer understands that this election will prevent Broker from showing Buyer  
those properties that are listed with Broker's firm or from representing Buyer in connection with those properties. In any  
resulting transaction in which Seller's property is not listed with Broker's firm, Broker will be the exclusive agent of Buyer and  
not a dual agent also representing Seller.  
OR  (ii) Broker's firm DOES NOT list property; Entire brokerage firm only represents buyers and does not list property. In any  
resulting transaction, Broker will be the exclusive agent of Buyer and not a dual agent also representing Seller.  
D. **OTHER POTENTIAL BUYERS:** Buyer understands that other potential buyers may, through Broker, consider, make offers on  
or acquire the same or similar properties as those Buyer is seeking to acquire. Buyer consents to Broker's representation of  
such other potential buyers before, during and after the term of this Agreement, or any extension thereof.  
E. **CONFIRMATION:** If the Property includes residential property with one-to-four dwelling units, Broker shall confirm the agency  
relationship described above, or as modified, in writing, prior to or coincident with Buyer's execution of a Property Contract.

3. **BROKER AUTHORIZATIONS AND OBLIGATIONS:**  
A. Buyer authorizes Broker to: (i) locate and present selected properties to Buyer, present offers authorized by Buyer, and assist  
Buyer in negotiating for acceptance of such offers; (ii) assist Buyer with the financing process, including obtaining loan  
pre-qualification; (iii) upon request, provide Buyer with a list of professionals or vendors who perform the services described in  
the attached Buyer's Inspection Advisory; (iv) order reports, and schedule and attend meetings and appointments with  
professionals chosen by Buyer; (v) provide guidance to help Buyer with the acquisition of property; and (vi) obtain a credit  
report on Buyer.  
B. For property transactions of which Broker is aware and not precluded from participating in by Buyer, Broker shall provide and  
review forms to create a property contract ("Property Contract") for the acquisition of a specific property ("Property"). With  
respect to such Property, Broker shall: (i) if the Property contains residential property with one-to-four dwelling units, conduct a  
reasonably competent and diligent on-site visual inspection of the accessible areas of the Property (excluding any common  
areas), and disclose to Buyer all facts materially affecting the value or desirability of such Property that are revealed by this  
inspection; (ii) deliver or communicate to Buyer any disclosures, materials or information received by, in the personal  
possession of or personally known to the individual signing for Broker below during the Representation Period; and (iii) facilitate  
the escrow process, including assisting Buyer in negotiating with Seller. Unless otherwise specified in writing, any information  
provided through Broker in the course of representing Buyer has not been and will not be verified by Broker. Broker's services  
are performed in compliance with federal, state and local anti-discrimination laws.

4. **SCOPE OF BROKER DUTY:**  
A. While Broker will perform the duties described in paragraph 3B, Broker recommends that Buyer select other professionals, as  
described in the attached Buyer's Inspection Advisory, to investigate the Property through inspections, investigations, tests,  
surveys, reports, studies and other available information ("Inspections") during the transaction. Buyer agrees that these  
inspections, to the extent they exceed the obligations described in paragraph 3B, are not within the scope of Broker's agency  
duties. Broker informs Buyer that it is in Buyer's best interest to obtain such inspections.

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BBNN REVISED 10/04 (PAGE 1 OF 2)

Buyer's Initials: [Signature]  
Broker's Initials: [Signature]  
Reviewed by: [Signature] Date: 11/2/07



**BUYER BROKER AGREEMENT NON-EXCLUSIVE/NOT FOR COMPENSATION (BBNN PAGE 1 OF 2)**  
Agent: \_\_\_\_\_ Phone: (780) 327-3000 Fax: (780) 327-3001 Prepared using WINForm® software  
Broker: Windermere Real Estate 850 N Palm Cyn Drive, Palm Springs CA 92262

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

- B. Buyer acknowledges and agrees that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or offsite areas of the property; (v) Shall not be responsible for identifying defects on the Property, in common areas or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items effecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (x) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
- C. Broker owes no duty to inspect for common environmental hazards, earthquake weaknesses, or geologic and seismic hazards. If Buyer receives the booklets titled "Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants," "The Homeowner's Guide to Earthquake Safety," or "The Commercial Property Owner's Guide to Earthquake Safety," the booklets are deemed adequate to inform Buyer regarding the information contained in the booklets and, other than as specified in 3B above, Broker is not required to provide Buyer with additional information about the matters described in the booklets.
5. **BUYER OBLIGATIONS:**
- A. Buyer agrees to timely view and consider properties selected by Broker and to negotiate in good faith to acquire a property. Buyer further agrees to act in good faith toward the completion of any Property Contract entered into in furtherance of this Agreement. Within 5 (or  \_\_\_\_\_) calendar days from the execution of this Agreement, Buyer shall provide relevant personal and financial information to Broker to assure Buyer's ability to acquire Property. If Buyer fails to provide such information, or if Buyer does not qualify financially to acquire Property, then Broker may cancel this Agreement in writing. Buyer has an affirmative duty to take steps to protect him/herself, including discovery of the legal, practical and technical implications of discovered or disclosed facts, and investigation of information and facts which are known to Buyer or are within the diligent attention and observation of Buyer. Buyer is obligated to and agrees to read all documents provided to Buyer. Buyer agrees to seek desired assistance from appropriate professionals, selected by Buyer, such as those referenced in the attached Buyer's Inspection Advisory.
- B. Buyer shall notify Broker in writing (C.A.R. form BMI) of any material issue to Buyer, such as, but not limited to, Buyer requests for information on, or concerns regarding, any particular area of interest or importance to Buyer ("Material Issues").
- C. Buyer agrees to: (i) indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments, costs and attorney fees arising from any incorrect information supplied by Buyer, or from any Material Issues that Buyer fails to disclose in writing to Broker, and (ii) pay for reports, inspections and meetings arranged by Broker on Buyer's behalf.
- D. Buyer is advised to read the attached Buyer's Inspection Advisory for a list of items and other concerns that typically warrant inspections or investigation by Buyer or other professionals.
- E. Other Brokers: Buyer represents that Buyer has not entered into an exclusive representation agreement with another broker to represent Buyer in acquiring real property or manufactured home except \_\_\_\_\_
6. **TIME TO BRING LEGAL ACTION:** Legal action for breach of this Agreement, or any obligation arising therefrom, shall be brought no more than two years from the expiration of the Representation Period or the date such cause of action arises, whichever occurs first.
7. **OTHER TERMS AND CONDITIONS, including ATTACHED SUPPLEMENTS:**  Buyer's Inspection Advisory (C.A.R. Form BIA)
8. **ENTIRE AGREEMENT:** All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This Agreement may not be extended, amended, modified, altered or changed, except in writing signed by Buyer and Broker. In the event that any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This Agreement and any supplement, addendum or modification, including any copy, whether by paper, facsimile, NCR or electronic, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

Buyer acknowledges that Buyer has read, understands, accepts and has received a copy of this Agreement.

Buyer [Signature] Date \_\_\_\_\_  
 Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_  
 Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Real Estate Broker (Firm) W. J. [Signature] Real Estate Conchella Valley  
 By (Agent) [Signature] Date 9/18/07  
 Address 13355 Obispo, 111 City Indian Wells State CA Zip 92210  
 Telephone 714-345-4000 Fax 714-345-4000 E-mail peggy@peggyshambaugh.com

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