

1 John O. Pinkney, Esq., SBN 162586
2 Charles L. Gallagher, Esq., SBN 167093
3 Tory J. Christensen, Esq. SBN 245744
4 SLOVAK BARON EMPEY MURPHY & PINKNEY LLP
5 1800 East Tahquitz Canyon Way
6 Palm Springs, California 92262
7 Telephone (760) 322-2275 / Facsimile (760) 322-2107
8 pinkney@sbemp.com

9 Attorneys for Plaintiff Dr. George Glancz

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JAN 23 2014

C. REGALADO

SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE, PALM SPRINGS COURTHOUSE

10 GEORGE GLANCZ, individually, and as
11 Trustee of the Glancz Family Trust U/T/D
12 April 21, 2005,

13 Plaintiff,

14 v.

15 WINDERMERE REAL ESTATE SOCAL,
16 INC., a California corporation; and FAITH
17 MESSENGER, an individual,

18 Defendants.

Case No. PSC 1400430

[Action Filed: _____
Case Assigned For All Purposes to Dept. _____, the
Hon. _____]

COMPLAINT FOR:

- 1) Breach of Fiduciary Duty
- 2) Fraud and Deceit;
- 3) Negligence;
- 4) Negligent Misrepresentation;
- 5) Financial Elder Abuse;
- 6) Intentional Infliction of Emotional Distress;
- 7) Negligent Infliction of Emotional Distress; and
- 8) Breach of Contract

22 Plaintiff GEORGE GLANCZ, individually, and as Trustee of the Glancz Family Trust
23 U/T/D April 21, 2005 ("**Plaintiff**" or "**Dr. Glancz**") alleges as follows:

24 **PRELIMINARY ALLEGATIONS**

25 1. Plaintiff Dr. George Glancz is, and at all times herein mentioned was, an
26 individual residing in the State of California, County of Riverside, City of Palm Desert, and is
27 also the Trustee of the Glancz Family Trust u/d/t April 21, 2005. Dr. Glancz is sixty-nine (69)
28

1 years old. At all times relevant hereto, Dr. Glancz resided at 21 Avenida Andra, Palm Desert,
2 California, 92211 (hereinafter, the "**Property**").

3 2. Dr. Glancz is informed and believes and thereon alleges that Defendant
4 Windermere Real Estate Socal, Inc. (hereinafter "**Windermere**") is a corporation duly
5 incorporated in the State of California with its primary place of business located at 71-691
6 Highway 111, Rancho Mirage, California. Dr. Glancz is informed and believes and thereon
7 alleges that Windermere is a real estate company that offers brokerage and related services in
8 connection with the purchase and sale of real estate in Riverside County and elsewhere.

9 3. Dr. Glancz is informed and believes and thereon alleges that Defendant Faith
10 Messenger (hereinafter "**Messenger**") is an individual residing in the County of Riverside, State
11 of California. Dr. Glancz is informed and believes that at all times herein mentioned Messenger
12 was and is employed by, or associated with, Windermere in her capacity as a real estate agent
13 licensed by the State of California, and at all times acted as Windermere's representative,
14 employee, and/or agent such that Messenger's conduct at issue herein was and is imputed to
15 Windermere under general principles of agency and employment. Messenger and Windermere
16 are hereinafter sometimes referred to collectively as "**Defendants.**"

17 **ALLEGATIONS RELEVANT TO ALL CAUSES OF ACTION**

18 4. On or about April 24, 2012, Dr. Glancz, as seller, and Windermere, as broker,
19 entered into a written Residential Listing Agreement dated April 24, 2012 (the "**Listing**
20 **Agreement**"). A true and correct copy of the Listing Agreement is attached hereto as **Exhibit**
21 **"1"** and incorporated herein. The Listing Agreement granted Windermere the exclusive right to
22 act as the broker for the sale of the Property for a six month term. Dr. Glancz is informed and
23 believes that the parties to the Listing Agreement thereafter executed an extension or extensions
24 to the Listing Agreement continuing Windermere's exclusive right to sell the Property through
25 all relevant times herein mentioned. The Listing Agreement is signed on behalf of Windermere
26 by Defendant Faith Messenger, who acted at all times herein mentioned as Dr. Glancz's real
27 estate agent on behalf of Windermere.

1 5. The initial listing price for the Property in the Listing Agreement is
2 \$2,095,000.00.

3 6. On or about February 18, 2013, Messenger contacted Dr. Glancz to inform him
4 that she had received an offer for the purchase of the Property from a person named Harold
5 Rothman ("**Rothman**" or "**Buyer**"). The offer stated as follows: "The Purchase Price offered is
6 One Million, Five Hundred Fifty Thousand (Dollars \$ 1550000.00)." Under Finance Terms, the
7 offer stated, "Initial Deposit: Deposit shall be made in the amount of \$52,500.00Balance of
8 Purchase Price or Down Payment: In the amount of \$1,497,500.00 to be deposited with Escrow
9 Holder within sufficient time to close escrow." A true and correct copy of the written California
10 Residential Purchase Agreement and Joint Escrow Instructions dated February 18, 2013,
11 including Counter-Offer One through Six described below, (collectively, the "**Purchase**
12 **Agreement**") is attached hereto as **Exhibit "2"**, and incorporated herein in full by this reference.
13 Dr. Glancz is informed and believes that Messenger represented Rothman as his agent in this
14 transaction at the time the aforementioned offer was conveyed, however, Messenger did not
15 provide written disclosure or seek to obtain written consent from Dr. Glancz for the joint
16 representation at that time.

17 7. Dr. Glancz is informed and believes that on or about February 20, 2013,
18 Messenger, on behalf of Dr. Glancz, presented a written counter-offer ("**Counter-Offer One**")
19 to Rothman which included the following stated terms: "(1) Sale Price \$1,900,000; (2) Seller to
20 carry back \$450,000 at 5% for 5 year term - no prepayment penalty after the first 2 years; (3)
21 Escrow to be 60 days; (4) Furnished per inventory list; (5) Possible 30-day lease back after
22 COE." Messenger was informed and was aware that Dr. Glancz, who is nearly seventy (70)
23 years old, desired and would only agree to terms of financing which would allow him to receive
24 the funds from the sale no later than 5 years after the close of escrow as Dr. Glancz had specific
25 plans for the use of the funds as he nears retirement.

26 8. On or about February 21, 2013, Messenger telephoned Dr. Glancz and informed
27 Dr. Glancz that Rothman had signed another counter offer ("**Counter-Offer Two**") which
28 Messenger stated included a purchase price of \$1,650,000.00, the Property subject to an

1 appraisal, with seller financing in the amount of \$1,050,000.00 at 5% interest, monthly
2 payments only, a sixty-day escrow with a seller lease back for thirty-days. Messenger did not
3 immediately provide Counter-Offer Two to Dr. Glancz, but further informed Dr. Glancz that,
4 aside from these terms she stated, there were no other material changes to the previous terms
5 Dr. Glancz had offered.

6 9. Messenger failed to inform Dr. Glancz and he was, therefore, unaware that
7 Counter-Offer Two provided for the seller to carry back a note and deed of trust with a fifteen
8 year term, rather than the five year term in counter-offer one. Counter-Offer Two further
9 provided for no prepayment penalty after the first five years. Counter-Offer Two stated as
10 follows: "1. Sale Price to be \$1,650,000. 2. Seller to carry \$1,050,000.00 (or more) for 15 years
11 at 5% Interest only with no pre-payment penalty after the first 5 years. . 3. Buyer to put down
12 \$600,000.00. 4. Property to be subject to appraisal. 5. Escrow to be 60 days with an option for
13 seller to lease back after the COE for additional 30 days. 6. All other terms and conditions in
14 original offer remain." Messenger was well aware of Dr. Glancz' desires and knew he would
15 not and could not agree to terms of seller financing in which he would receive only interest
16 payments for fifteen years, and thereby not receive the majority of the purchase price or have
17 access to those funds until he was nearly eighty-five (85) years old. Despite that knowledge and
18 the knowledge that the funds could serve Dr. Glancz's intended purposes only if the balance of
19 the purchase price were paid no later than five years after the close of escrow, Messenger either
20 intentionally or negligently, omitted those essential terms from her explanation of the offer to
21 Dr. Glancz.

22 10. On or about February 21, 2013, relying on Messenger's representations and
23 without knowledge of the actual changed terms of the seller financing provided in Counter-
24 Offer Two, Dr. Glancz signed another counter offer ("**Counter-Offer Three**") to be transmitted
25 by Messenger to Rothman, which included the following stated terms: "(1) Sale Price to be
26 \$1,725,000 - (2) Seller to carry First Trust Deed of \$1,050,000 (or less)(or more) (3) Buyer to
27 put minimum of \$600,000 down payment (4) Seller to pay \$5,000 after COE for additional 30
28 days (5) Seller to have attorney draft terms and conditions of First Trust Deed within 17 days of

1 acceptance.” After Dr. Glancz had explained his situation, needs and desires, Messenger had
2 suggested including the language in parenthesis “or more – or less” regarding the amount of the
3 trust deed to allow Dr. Glancz the ability to adjust the amount of the note depending on the
4 funds Dr. Glancz would need. Dr. Glancz had explained to Messenger his need to acquire a
5 replacement home at a cost then unknown to Dr. Glancz, and to assist Dr. Glancz’s son and
6 daughter-in-law who were then expecting the birth of another child and were themselves
7 looking to purchase a new home. At that time, and repeatedly thereafter, Messenger informed
8 Dr. Glancz that this arrangement – in which Dr. Glancz could adjust the respective amounts of
9 the cash due at closing and the amount of seller financing – was acceptable to Rothman because
10 Rothman had more than sufficient immediately available funds to pay whatever final allocation
11 Dr. Glancz decided upon.

12 11. On or about February 22, 2013, Messenger came to Dr. Glancz’s home with
13 another counter offer from Rothman (“*Counter-Offer Four*”) which Messenger again explained
14 to Dr. Glancz. Messenger informed Dr. Glancz that Counter-Offer Four included the following
15 terms: Dr. Glancz could either (1) accept Counter-Offer Two (i.e., purchase price of
16 \$1,650,000.00, seller financing of \$1,050,000.00 at 5% interest), with an appraisal contingency
17 on value of \$1,725,000.00; or (2) agree to a purchase price of \$1,725,000.00, with an appraisal
18 contingency, and the seller carrying back a First Trust Deed at 3.5% interest per annum for the
19 terms negotiated in Counter Offers Two and Three. However, Dr. Glancz understood the terms
20 and conditions of the prior counter-offers to be as explained to him by Messenger and described
21 above (i.e., either option including a five-year note). With that understanding, Dr. Glancz
22 instructed Faith Messenger to prepare another counter offer (“*Counter-Offer Five*”), which
23 stated as follows: “Seller agrees to sell using either Option #1 or Option #2 as outlined in
24 Counter-Offer Four. Decision will be made after discussion with Accountant by Monday, 2-25-
25 2013 on or before 5:00 p.m.”

26 12. Messenger later informed Dr. Glancz that Rothman was agreeable to the
27 proposal set forth in Counter-Offer Five. Therefore, Dr. Glancz decided to go with the second
28 option described in the preceding paragraph, as Dr. Glancz understood those terms to be.

1 Messenger prepared a further counter offer ("**Counter-Offer Six**") which Dr. Glancz signed on
2 February 26, 2013, and which Messenger was to provide to Rothman. Counter-Offer Six stated,
3 "Seller has chosen Option #2 as described in Counter-Offer #5... Sale price to be \$1,725,000.00
4 with seller carry of First Trust Deed at 3.5% for terms and conditions negotiated in Counter-
5 Offers #2 and #3." Counter-Offer Six further provides that it is revoked if not accepted in
6 writing by the buyer and received by the seller by 5:00 p.m. on the third day after it is made.
7 Consequently, Rothman had until 5:00 p.m. on March 1, 2013, to deliver to Dr. Glancz or
8 Messenger a signed Counter-Offer Six. At the time Dr. Glancz provided Messenger with the
9 signed Counter-Offer Six, Messenger told Dr. Glancz that she believed Rothman would sign all
10 the counter offers and that the sale was essentially a done deal.

11 13. On February 26, 2013, Dr. Glancz's attorney, Robert Patterson, telephoned
12 Messenger at Windermere to request copies of all the contractual documents so that he could
13 prepare the note and first trust deed. Messenger responded defensively and evasively insisting
14 that the escrow company was "perfectly capable of preparing the note and deed of trust."
15 Attorney Patterson insisted that Messenger forward him the contractual documents and further
16 informed Messenger that the documents he would prepare would be identical to those normally
17 used for his clients and assured Messenger that he had no intention of making the transaction
18 any more difficult than necessary. Although Messenger remained defensive, she agreed to have
19 all offers and counter offers forwarded to Mr. Patterson shortly. That morning, Dr. Glancz'
20 attorney, Patterson, sent Messenger an email confirming his request that Messenger fax or email
21 him the offers and counter offers for the sale of Dr. Glancz's home and confirming that he
22 would then draft a standard note and deed of trust, a true and correct copy of which email is
23 attached hereto as **Exhibit "3"**.

24 14. On February 27, 2013, Messenger emailed Dr. Glancz falsely telling him that
25 "[w]e have a fully executed agreement..." A true and correct copy of the February 27 email is
26 attached hereto as **Exhibit "4"**.

27 15. Despite Messenger's promise to attorney Patterson on February 26th that she
28 would forward all the contractual documents to him shortly, more than a week later no

documents had been forwarded. Consequently, on Wednesday, March 6, 2013, attorney Patterson again emailed Messenger asking her to send him all the documents concerning the sale of the Property and requesting that she confirm receipt of the email. At 9:57 a.m., Messenger responded by email confirming that she did receive Patterson's email and stating that: "I waited until we passed a challenge." Messenger did not explain what "challenge" she referred to. Messenger further wrote that she was on jury duty but would have her assistant email him the documents "before the end of the week." Patterson responded by email at 10:00 a.m. "Thank you...the sooner the better." A true and correct copy of the email string between Messenger and Patterson of March 6, 2013, is attached hereto as **Exhibit "5"**.

16. It was also not until March 6, 2013, that Messenger first presented Dr. Glancz with the C.A.R. form entitled "Disclosure and Consent for Representation of More Than One Buyer or Seller" for Dr. Glancz's signature. Thus, the first written disclosure of Messenger's dual agent status, representing both Dr. Glancz and the Buyer did not occur until long after the initial offers had been signed and exchanged and weeks after most of the negotiations, misrepresentations by Messenger and her failures to inform Dr. Glancz had all taken place.

17. Messenger was aware that Dr. Glancz had planned a trip to Hawaii starting on March 8, 2013. Consequently, on March 7, 2013, Messenger brought to Dr. Glancz's home two documents which she told Dr. Glancz were the supplemental escrow instructions (collectively, the "*Escrow Instructions*") for the escrow for the sale of the Property to be opened with Foresite Escrow. At that time, Messenger told Dr. Glancz that because Rothman had signed all the papers, Dr. Glancz needed to sign the escrow documents before he left on his trip. At that time, Messenger stated to Dr. Glancz that the Escrow Instructions were the customary instructions that mirrored the terms of the Purchase Agreement and were necessary for Foresite Escrow to carry out those terms and bring the transaction to a close. Messenger further told Dr. Glancz that to the extent, if any, there were any conflicts between the Escrow Instructions and the Purchase Agreement, the Purchase Agreement would control. Based on these representations, and under the belief that a contract with Rothman already existed, Dr. Glancz

1 signed and initialed the Escrow Instructions where Messenger indicated. A true and correct
2 copy of the Escrow Instructions is attached hereto as **Exhibit "6"**.

3 18. While Dr. Glancz was in Hawaii, he contacted Faith Messenger and inquired
4 regarding the status of the sale. It was only at this point that Messenger told him there was "a
5 problem" and that the buyer was now "having second thoughts" about purchasing the Property.
6 However, shortly after Dr. Glancz's return from Hawaii, Messenger told him everything was
7 "now okay with the buyer," or words to that effect. At no time during this conversation did
8 Messenger state to Dr. Glancz that Rothman had not signed the offers and counter offers.

9 19. Despite Messenger's promise to attorney Patterson on March 6th that she would
10 forward the contractual documents to him "before the end of the week," it was only at 4:07
11 p.m., on Monday, March 11, 2013, that Patterson finally received an email from Jacklyn
12 Chaney at Windermere attaching copies of the C.A.R. form Purchase and Sale Agreement and
13 Counter-Offers 1-5. A true and correct copy of Ms. Chaney's email of March 11th (without
14 attachments) is attached hereto as **Exhibit "7"**. Ms. Chaney's email did not include or otherwise
15 reference Counter-Offer Six, signed by Dr. Glancz on February 26, 2013, and purportedly
16 signed by Rothman, according to Messenger, no later than February 27, 2013.

17 20. Contrary to Messenger's representation to Dr. Glancz on February 27, 2013, that
18 the parties had a "fully executed agreement," Counter Offers One through Five attached to Ms.
19 Chaney's email of March 11, 2013, show that there was not a "fully executed agreement"
20 between Dr. Glancz and Rothman on that date. Instead, the counter offers show that they were
21 not signed by Rothman until March 11th. Further, when Windermere finally produced a copy of
22 Counter Offer Six, the document showed that it had not been signed by Rothman until March
23 14, 2013.

24 21. Because the offer and counter offers forwarded to attorney Patterson were
25 extremely convoluted and did not show which of the two "options" constituted the parties
26 supposed agreement, Patterson prepared drafts of the note and deed of trust based upon the
27 terms communicated to him by Dr. Glancz; specifically, that purchase price was to be
28 \$1,725,000.00, the seller to take back a note for \$1 million, with interest payments only at 3.5%

1 for five (5) years, at which time the entire principal would become due, a prepayment penalty
2 for early repayment, and that the seller could require prepayment at any time without penalty.

3 **Events Leading to the Buyer's Lawsuit Against Dr. Glancz**

4 22. On or about March 20, 2013, attorney Patterson forwarded drafts of the note and
5 deed of trust to Messenger at Windermere so that she could forward them to Rothman and/or his
6 attorney for review. On March 22, 2013, Messenger sent an email to attorney Patterson
7 attaching an email from Alex Yoffe, counsel for Rothman. In his March 21, 2013 email to
8 Messenger, Mr. Yoffe states that based on his review of the Note, "there are significant issues,
9 which substantially change the agreement for the purchase of the property." He then notes that
10 "unless changed," several items are "absolute deal breakers." Specifically, Mr. Yoffe wrote:
11 "(1) the Note should be 15 years (not 5 years); (2) The Note should be an interest only note for
12 the entire 15 years, with principal repaid at the end of the 15 years, unless [the] Purchaser
13 chooses to pay early; (3) [the] Note should be for 3.5% for the 15 year term; (4) the prepayment
14 penalty only applies, if the Note is prepaid in the first 5 years; (5) [the] Seller cannot draw
15 down, or call the note at any time during the 15 years, unless there is a default; and (6) default
16 shall require written notice, and at least a two week cure period after notice is received." A true
17 and correct copy of the March 22, 2013, email from Messenger, forwarding Mr. Yoffe's email
18 of March 21, 2013, is attached hereto as **Exhibit "8"**. Subsequent informal attempts to resolve
19 the dispute were not successful.

20 23. On March 29, 2013, Rothman, Zachary P. Rothman, and the Harold B. Rothman
21 Revocable Trust filed a lawsuit against Dr. Glancz in the Riverside County Superior Court as
22 Case Number INC 1302067, captioned as "Complaint for Recording of a Notice of Pendency of
23 Action for Damages for Breach of Contract, Negligent Misrepresentation, Fraud, and Specific
24 Performance," a true and correct copy which is attached hereto as **Exhibit "9"**. Dr. Glancz
25 subsequently filed an answer to the complaint denying the allegations and setting forth
26 numerous applicable affirmative defenses.

27 24. On or about April 2, 2013, attorney Yoffe served a copy of the Notice of
28 Pendency Action recorded in connection with the lawsuit, a true and correct copy of which is

1 attached hereto as **Exhibit "10"**. The Notice of Pendency of Action clouded title to Dr.
2 Glancz's property rendering it impossible for him to sell the Property.

3 25. Rothman's lawsuit was based, not on the Purchase Agreement, but on the signed
4 Escrow Instructions which Rothman alleged formed a binding contract between the parties,
5 even in the absence of a separate purchase agreement. However, Dr. Glancz would never have
6 signed the escrow instructions unless he had been under the mistaken belief that a contract
7 already existed between the parties (i.e., the Purchase Agreement), that the Escrow Instructions
8 accurately reflected the terms of the Purchase Agreement, as those terms were described to Dr.
9 Glancz by Messenger, and that Dr. Glancz was required to sign the Escrow Instructions under
10 the terms of the Purchase Agreement. Accordingly, Dr. Glancz was fraudulently induced to
11 execute the Escrow Instructions by Messenger's misrepresentations, concealments, and/or
12 breaches of fiduciary duty, as described herein.

13 26. In order to resolve the dispute and remove the Notice of Pendency of Action
14 clouding title to Dr. Glancz's Property, Dr. Glancz and Rothman entered into a settlement in
15 which Dr. Glancz was forced to accept a lower purchase price for the Property of
16 \$1,590,000.00, and to incur related costs, including but not limited to, significant legal fees, all
17 as a result of the misrepresentations, concealments, negligence, and breaches of fiduciary duties
18 on the part of Windermere and Messenger.

19 27. Subsequent communications between counsel for Rothman and Plaintiff's
20 counsel revealed other and additional representations which Messenger, purporting to act on
21 behalf of Dr. Glancz, had made to Rothman in the course of the negotiation and execution of the
22 Purchase Agreement that were in direct contradiction to the desires and instructions of Dr.
23 Glancz, such as the inclusion of various fixtures within the sale, which ultimately lead to
24 additional conflict and dispute between Dr. Glancz and Rothman and which forced Dr. Glancz
25 to incur additional related costs to settle the disputes with Rothman caused by Defendants.

26 28. Pursuant to a separate agreement with Dr. Glancz, Defendants have waived any
27 commission or compensation which would have been due Defendants under the Listing
28 Agreement upon sale of the Property and have thereby resolved the dispute regarding the

1 obligation to pay compensation under the Listing Agreement and the total damages suffered by
2 Dr. Glancz have thus been reduced by \$62,940.00.

3 **FIRST CAUSE OF ACTION**

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

5 29. Dr. Glancz realleges and incorporates by reference the allegations of Paragraphs
6 1 through 28, inclusive as though fully set forth herein.

7 30. Dr. Glancz alleges that there existed a fiduciary duty and/or relationship of trust
8 and confidence (hereinafter "*fiduciary duty*") between Dr. Glancz and Defendants arising out of
9 their relationship and Defendants' role as Dr. Glancz's broker and real estate agent in
10 connection with the sale of the Property and, therefore, in connection with the exchange of the
11 offers and counter offers between Dr. Glancz and Rothman, as described above. The agency
12 relationship in the real estate context existing between Dr. Glancz and Defendants was a strict
13 fiduciary relationship that required Defendants to act in Dr. Glancz's best interests at all times.

14 31. Despite the misrepresentations and concealments by Defendants described
15 above, and despite the fact that discovery of the full extent of Defendants' wrongful acts are not
16 fully known and discovery has yet to commence, Dr. Glancz is informed and believes and
17 thereon alleges that Defendants, and each of them, breached their fiduciary duty to Dr. Glancz
18 and took advantage of Dr. Glancz's dependence and trust, engaged in acts of self-dealing and
19 self-profit desiring a "binding" contract between Dr. Glancz and Rothman by any means
20 available so as to secure a double commission, and ignoring the best interests of Dr. Glancz, the
21 various actions constituting breaches include, but are not limited to, the following:

22 A. Misrepresenting and concealing material terms of Rothman's counter-
23 offers to Dr. Glancz, knowing and that Dr. Glancz relied on Defendants to fully, accurately, and
24 faithfully describe the terms of the counter offers to Dr. Glancz, as further described below;

25 B. Misrepresenting and concealing from Dr. Glancz that Rothman's counter-
26 offers included seller financing by means of a promissory note and deed of trust with no
27 payment of principal for fifteen years, as opposed to the five years Defendants knew Dr. Glancz
28

1 understood as being offered and which Defendants knew Dr. Glancz required given his
2 disclosed age and his needs in retirement;

3 C. Misrepresenting and concealing from Dr. Glancz that Rothman's counter-
4 offers did not allow the prepayment penalty intended by Dr. Glancz;

5 D. Misrepresenting to Dr. Glancz on February 27, 2013, that the parties had
6 a "fully executed agreement" while concealing from Dr. Glancz that Rothman had not then
7 signed the Purchase Agreement, including all counter-offers thereto;

8 E. Misrepresenting to Dr. Glancz that the Escrow Instructions contained no
9 terms different from those represented to Dr. Glancz by Defendants;

10 F. Falsely and fraudulently misrepresenting to Dr. Glancz that Dr. Glancz's
11 signature on the Escrow Instructions was a mere formality required by the Purchase Agreement,
12 which Purchase Agreement did not in fact exist, thereby fraudulently inducing Dr. Glancz into
13 signing the Escrow Instructions when Dr. Glancz had no intention of entering into a separate
14 contract at the time he signed the Escrow Instructions;

15 G. Falsely and fraudulently stating to Dr. Glancz that in the event there was
16 a conflict between the Purchase Agreement, which did not yet exist, and the Escrow Instructions
17 that the terms of the Purchase Agreement (as Defendants knew Dr. Glancz understood them to
18 be) would control.

19 H. Initially refusing and then delaying the provision of the Purchase
20 Agreement documents to counsel for Dr. Glancz in furtherance of concealing the fact that the
21 Purchase Agreement was not, in fact, executed at the time Messenger indicated it was complete.

22 I. Failing to timely provide written notice and obtain written approval of the
23 joint representation by Defendants of Dr. Glancz and Rothman in the sales transaction at issue.

24 32. Dr. Glancz is informed and believes that the misrepresentations, concealments,
25 and non-disclosures of Messenger and all other wrongful acts alleged in this complaint were
26 carried out within the course and scope of her duty as an agent for Windermere. Furthermore,
27 Windermere contracted directly with Dr. Glancz and assigned Messenger to work for Dr.
28 Glancz and had a duty and responsibility to oversee Messenger's conduct. As a consequence,

1 Windermere is responsible for Messenger's conduct and is directly liable to Dr. Glancz not only
2 for Windermere's failures, but for Messenger's failures and wrongful conduct under principles
3 of agency and because Messenger's conduct is imputed to Windermere under the doctrine of
4 respondeat superior.

5 33. Dr. Glancz is informed and believes that as a direct and proximate result of the
6 breaches of fiduciary duty and the unlawful conduct of Defendants, Dr. Glancz is entitled to
7 recover all compensable damages under the law in an amount to be determined at trial,
8 including, but not limited to, the difference between the purchase price stated in the Purchase
9 Agreement, \$1,725,000.00, and the amount Dr. Glancz was forced to accept to settle Rothman's
10 lawsuit, \$1,590,000.00, as well as the lost interest, tax benefits, attorney's fees and costs
11 incurred by Dr. Glancz in defending against and settling Rothman's claims in an amount to be
12 determined according to proof at trial.

13 34. Dr. Glancz is informed and believes and thereon alleges that pursuant to Civil
14 Code section 3345, Dr. Glancz is entitled to recover three times the amount of damages
15 otherwise recoverable against Defendants, and each of them.

16 35. Dr. Glancz is further informed and believes and thereon alleges that the
17 aforementioned conduct of Defendants were intentional acts and failures to disclose and
18 breaches of fiduciary duty made with the intention on the part of Defendants of depriving Dr.
19 Glancz of property or legal rights or otherwise causing injury and was despicable conduct that
20 subjected Dr. Glancz to cruel and unjust hardship, in conscious disregard of Dr. Glancz's rights,
21 so as to justify an award of exemplary and punitive damages in an amount according to proof.

22 **SECOND CAUSE OF ACTION**

23 **(Fraud and Deceit Against All Defendants)**

24 36. Dr. Glancz realleges and incorporates by reference the allegations of Paragraphs
25 1 through 35, inclusive as though fully set forth herein.

26 37. Dr. Glancz alleges that at the times herein mentioned with respect to the
27 representations and non-disclosures alleged herein, Defendants committed such acts and made
28 such representations, engaged in non-disclosures and attempted to conceal her

1 misrepresentations and non-disclosures while obligated by law to disclose the true facts kept
2 from Dr. Glancz, with the intent to deceive Dr. Glancz in direct violation of Defendants'
3 representations to the contrary and the duties existing to Dr. Glancz by Defendants under the
4 Listing Agreement and by law, as alleged herein.

5 38. Dr. Glancz is informed and believes and thereon alleges that when Messenger
6 made misrepresentations alleged herein and failed to disclose and concealed the true terms of
7 the counter-offers for the purchase of the Property as well as the fact that there was no contract
8 in effect at the time Messenger coerced Dr. Glancz to execute the escrow instructions, such
9 conduct resulted in reliance by Dr. Glancz thereon and at a time Messenger knew them to be
10 false and were made at the time to deceive and defraud Dr. Glancz and to induce Dr. Glancz to
11 act in reliance on that conduct in the manner herein alleged.

12 39. Dr. Glancz is informed and believes and thereon alleges that at the time of these
13 misrepresentations, deceit, non-disclosures and concealment, Dr. Glancz was ignorant of the
14 falsity of Messenger's representations and believed them to be true and had no reason not to
15 believe in the trustworthiness and honesty of Messenger. In reasonable reliance on the
16 representations of Messenger and the professed and required good faith obligation of
17 Messenger, Dr. Glancz was induced to and did employ Defendants and otherwise allow
18 Defendants to occupy the positions they held and to undertake the duties and services to be
19 rendered on behalf of Dr. Glancz as herein alleged. Had Dr. Glancz known the true facts, Dr.
20 Glancz would not have allowed such action to occur. Dr. Glancz's reliance on Messenger's
21 representations was justified and reasonable under the circumstances given when, how, and by
22 whom they were made.

23 40. Dr. Glancz is informed and believes that the misrepresentations, concealments,
24 and non-disclosures of Messenger and all other wrongful acts alleged in this complaint were
25 carried out within the course and scope of her duty as an agent for Windermere. Furthermore,
26 Windermere contracted directly with Dr. Glancz and assigned Messenger to work for Dr.
27 Glancz and had a duty and responsibility to oversee Messenger's conduct. As a consequence,
28 Windermere is responsible for Messenger's conduct and is directly liable to Dr. Glancz not only

1 for Windermere's failures, but for Messenger's failures and wrongful conduct under principles
2 of agency and because Messenger's conduct is imputed to Windermere under the doctrine of
3 respondeat superior.

4 41. Dr. Glancz is informed and believes that as a direct and proximate result of the
5 fraud and deceit of Defendants, Dr. Glancz is entitled to recover all compensable damages
6 under the law in an amount to be determined at trial, including, but not limited to the difference
7 between the purchase price stated in the Purchase Agreement, \$1,725,000.00, and the amount
8 Dr. Glancz was forced to accept to settle Rothman's lawsuit, \$1,590,000.00, as well as the lost
9 interest, tax benefits, attorney's fees and costs incurred by Dr. Glancz in defending against and
10 settling Rothman's claims in an amount to be determined according to proof at trial.

11 42. Dr. Glancz is informed and believes and thereon alleges that pursuant to Civil
12 Code section 3345, Dr. Glancz is entitled to recover three times the amount of damages
13 otherwise recoverable against Defendants, and each of them.

14 43. Dr. Glancz is further informed and believes and thereon alleges that the
15 aforementioned conduct of Defendants were intentional acts and failures to disclose constituting
16 fraud and/or deceit made with the intention on the part of Defendants of depriving Dr. Glancz of
17 property or legal rights or otherwise causing injury and was despicable conduct that subjected
18 Dr. Glancz to cruel and unjust hardship, in conscious disregard on Dr. Glancz's rights, so as to
19 justify an award of exemplary and punitive damages in an amount according to proof.

20 **THIRD CAUSE OF ACTION**

21 **(For Negligence Against All Defendants.)**

22 44. Dr. Glancz realleges and incorporates by reference the allegations of Paragraphs
23 1 through 35 and 37 through 43, inclusive as though fully set forth herein.

24 45. As the duly hired broker and agent for Dr. Glancz in the attempted sale of his
25 home, Defendants and each of them owed a duty to Dr. Glancz to exercise the caution and care
26 of a reasonable residential real estate broker/agent in all efforts to list and sell the Property.

27 46. In performing the acts alleged herein and engaging in the conduct described
28 herein and, inter alia, failing to make all the proper disclosures, failing to inform and explain to

1 Dr. Glancz all relevant terms of the counter-offers, and failing to keep Dr. Glancz apprised of
2 the actual status of execution of the Purchase Agreement, Defendants and each of them failed to
3 exercise the care and caution expected of a reasonable residential real estate broker/agent.

4 47. As a direct and proximate result of Defendants' negligence as described herein
5 above, Dr. Glancz has incurred damages, losses, costs and fees in an amount to be determined at
6 trial, including, but not limited to the difference between the purchase price stated in the
7 Purchase Agreement, \$1,725,000.00, and the amount Dr. Glancz was forced to accept to settle
8 Rothman's lawsuit, \$1,590,000.00, as well as the lost interest, tax benefits, attorney's fees and
9 costs incurred by Dr. Glancz in defending against and settling Rothman's claims in an amount
10 to be determined according to proof at trial.

11 **FOURTH CAUSE OF ACTION**

12 **(For Negligent Misrepresentation Against All Defendants.)**

13 48. Dr. Glancz realleges and incorporates by reference the allegations of Paragraphs
14 1 through 28, 37 through 43, and 45 through 47, inclusive as though fully set forth herein.

15 49. Dr. Glancz is informed and believes and thereon alleges that the
16 misrepresentations and concealments of Defendants as set forth herein, if not intentional, were
17 negligent in that Defendants had no reasonable ground for believing them to be true or believing
18 that they were not required to disclose the actual facts to Dr. Glancz, and were carried out with
19 reckless disregard for their accuracy and for the well-being of Dr. Glancz.

20 50. Defendants made these representations and concealments with the intention of
21 inducing Dr. Glancz to act in reliance thereon in the manner herein alleged, or with the
22 expectation that Dr. Glancz would do so.

23 51. Dr. Glancz is informed and believes that the misrepresentations, concealments,
24 and non-disclosures of Messenger and all other wrongful acts alleged in this complaint were
25 carried out within the course and scope of her duty as an agent for Windermere. Furthermore,
26 Windermere contracted directly with Dr. Glancz and assigned Messenger to work for Dr.
27 Glancz and had a duty and responsibility to oversee Messenger's conduct. As a consequence,
28 Windermere is responsible for Messenger's conduct and is directly liable to Dr. Glancz not only

1 for Windermere's failures, but for Messenger's failures and wrongful conduct under principles
2 of agency and because Messenger's conduct is imputed to Windermere under the doctrine of
3 respondeat superior.

4 52. Dr. Glancz is informed and believes that as a direct and proximate result of
5 Defendants' negligence, and as a consequence of the fiduciary relationship between the parties,
6 Dr. Glancz is entitled to recover all compensable damages under the law in an amount to be
7 determined at trial, including, but not limited to, the difference between the purchase price
8 stated in the Purchase Agreement, \$1,725,000.00, and the amount Dr. Glancz was forced to
9 accept to settle Rothman's lawsuit, \$1,590,000.00, as well as the lost interest, tax benefits,
10 attorney's fees and costs incurred by Dr. Glancz in defending against and settling Rothman's
11 claims in an amount to be determined according to proof at trial.

12 53. Dr. Glancz is informed and believes and thereon alleges that pursuant to Civil
13 Code section 3345, Dr. Glancz is entitled to recover three times the amount of damages
14 otherwise recoverable against Defendants, and each of them.

15 **FIFTH CAUSE OF ACTION**

16 **(For Financial Elder Abuse Against All Defendants.)**

17 54. Dr. Glancz realleges and incorporates by reference the allegations of Paragraphs
18 1 through 28, 36 through 43, and 45 through 47, inclusive as though fully set forth herein.

19 55. Dr. Glancz is and at all times herein mentioned was a resident of California and
20 an elder within the meaning of California Welfare and Institutions Code section 15610.27.

21 56. Dr. Glancz is informed and believes and thereon alleges that Defendants, and
22 each of them, acted wrongfully and illegally by taking advantage of Dr. Glancz's age and
23 physical condition, his dependence on, and trust and confidence in, Defendants to take, procure,
24 or otherwise obtain control and/or a claim on assets of Dr. Glancz in the form of proceeds from
25 the sale of Dr. Glancz's residence rightfully belonging to Dr. Glancz by means of the false and
26 fraudulent misrepresentations, concealments, non-disclosures, and other wrongful conduct
27 herein alleged, for Defendants' own benefit in a manner completely contrary to the interests of
28 Dr. Glancz and in violation of Defendants' fiduciary duty to Dr. Glancz.

1 57. Dr. Glancz is informed and believes and thereon alleges that Defendants had
2 obtained or sought to obtain the use and benefit of Dr. Glancz's property in the form of
3 proceeds from the sale of Dr. Glancz's residence, and had otherwise deprived Dr. Glancz of the
4 use of his property, with the intent to defraud Dr. Glancz within the meaning of California
5 Welfare and Institutions Code section 15610.30.

6 58. Dr. Glancz is informed and believes and thereon alleges that as a direct and
7 proximate result of Defendants' wrongful conduct, Dr. Glancz has sustained damages in an
8 amount according to proof at the time of trial.

9 59. Dr. Glancz is informed and believes and thereon alleges that in addition to all
10 other remedies provided by law, Dr. Glancz is entitled to recover reasonable attorney's fees and
11 costs for financial abuse pursuant to California Welfare and Institutions Code section 15657.5.

12 60. Dr. Glancz is informed and believes and thereon alleges that Defendants'
13 conduct constituted oppression, fraud, and malice in the commission of financial abuse, and Dr.
14 Glancz is entitled to recover damages for the sake of example and by way of punishing
15 Defendants for financial elder abuse pursuant to California Welfare and Institutions Code
16 section 15657.5 and California Civil Code section 3294.

17 61. Dr. Glancz is informed and believes and thereon alleges that pursuant to Civil
18 Code section 3345, Dr. Glancz is entitled to recover three times the amount of damages
19 otherwise recoverable against Defendants, and each of them.

20 **SIXTH CAUSE OF ACTION**

21 **(For Intentional Infliction of Emotional Distress Against All Defendants.)**

22 62. Dr. Glancz realleges and incorporates by reference the allegations of Paragraphs
23 1 through 35, 36 through 43, 45 through 47, 49 through 53, and 55 through 61, inclusive as
24 though fully set forth herein.

25 63. Dr. Glancz is informed and believes and thereon alleges that based on the
26 allegations that Defendants willfully and maliciously and knowingly engaged in in the actions
27 set forth herein with a conscious design to deprive Dr. Glancz of his rights.

1 64. Dr. Glancz is informed and believes and thereon alleges that Defendants'
2 conduct was intentional, malicious, unprivileged, outrageous and done for the purpose of
3 causing Dr. Glancz to suffer humiliation, anguish and emotional and physical distress.
4 Defendants' conduct as alleged herein, was done with knowledge that Dr. Glancz would suffer
5 mental anguish and emotional and physical distress and Defendants' conduct was wanton and
6 reckless disregard for the consequences of said actions to Dr. Glancz.

7 65. Dr. Glancz is informed and believes and thereon alleges as a direct and
8 proximate result of the actions of Defendants alleged herein, Dr. Glancz has suffered
9 humiliation, mental anguish and emotional and physical injuries, and Dr. Glancz has suffered
10 loss of sleep, severe tension, profound shock and anxiety, all to Dr. Glancz's damage in an
11 amount according to proof, at the time of trial.

12 66. Dr. Glancz is informed and believes and thereon alleges in performing the acts
13 herein alleged, Defendants acted fraudulently, maliciously, and oppressively, within the
14 meaning of Civil Code section 3294, thereby justifying an award of punitive damages in an
15 amount according to proof.

16 67. Dr. Glancz is informed and believes and thereon alleges that pursuant to Civil
17 Code section 3345, Dr. Glancz is entitled to recover three times the amount of damages
18 otherwise recoverable against Defendants, and each of them.

19 SEVENTH CAUSE OF ACTION

20 (For Negligent Infliction of Emotional Distress Against All Defendants.)

21 68. Dr. Glancz realleges and incorporates by reference the allegations of Paragraphs
22 1 through 35, 37 through 43, 45 through 47, 49 through 52, 54 through 62, and 63 through 67,
23 inclusive as though fully set forth herein.

24 69. Dr. Glancz is informed and believes and thereon alleges that the conduct of
25 Defendants alleged herein, if not intentional, was negligent on the part of Defendants and was
26 reckless and without due regard for the health and welfare of Dr. Glancz.

27 70. Dr. Glancz is informed and believes and thereon alleges that Defendants had a
28 duty of care towards Dr. Glancz in light of Defendants' fiduciary duties to Dr. Glancz, as Dr.

1 Glancz's agent and representative, and due to the trust and confidence Dr. Glancz placed in
2 Defendants. Said duties were breached as a result of the conduct herein alleged, which had
3 continued through Defendants' unjustified claim and demand on proceeds from the sale of Dr.
4 Glancz's residence.

5 71. Dr. Glancz is informed and believes and thereon alleges that in their handling of
6 the transaction at issue, Defendants acted negligently, carelessly, and without justification and
7 in carrying out the acts herein alleged have intended to deprive Dr. Glancz of his rights and
8 property. Defendants knew or should have known that Dr. Glancz would suffer severe
9 emotional distress as a direct and proximate result of Defendants' conduct.

10 72. Dr. Glancz is informed and believes and thereon alleges as a direct and
11 proximate result of the actions of Defendants alleged herein, Dr. Glancz has suffered
12 humiliation, mental anguish and emotional and physical injuries, and Dr. Glancz has suffered
13 loss of sleep, severe tension, profound shock and anxiety, all to Dr. Glancz's damage in an
14 amount according to proof, at the time of trial.

15 73. Dr. Glancz is informed and believes and thereon alleges that pursuant to Civil
16 Code section 3345, Dr. Glancz is entitled to recover three times the amount of damages
17 otherwise recoverable against Defendants, and each of them.

18 **EIGHTH CAUSE OF ACTION**

19 **(For Breach of Contract Against All Defendants.)**

20 74. Dr. Glancz realleges and incorporates by reference the allegations of Paragraphs
21 1 through 35, 36 through 43, 45 through 47, 49 through 53, 55 through 61, 63 through 67,
22 and 69 through 73, inclusive as though fully set forth herein.

23 75. Dr. Glancz and Defendants entered into a valid and enforceable contract when
24 the parties executed the Listing Agreement for the Property whereby Defendants agreed to
25 exercise reasonable effort and due diligence to achieve the purposes of the agreement and to
26 confirm the agency relationship existing between Defendants and the parties, *in writing*, prior to
27 or concurrent with Dr. Glancz' execution of a purchase agreement and Dr. Glancz agreed to
28

1 compensate Defendants with a percentage of the purchase price in the event that a buyer was
2 procured during the listing period and Defendants otherwise complied with the contract.

3 76. Dr. Glancz is informed and believes and thereon alleges that Defendants
4 breached the contract by failing to exercise the due diligence required to achieve the purposes of
5 obtaining a buyer for the property on terms agreeable to Dr. Glancz, but instead, worked to
6 obtain a buyer on terms that were knowingly disagreeable to Dr. Glancz thereby exerting efforts
7 contrary to the purposes of the Listing Agreement and failed to confirm the agency relationship
8 existing between Defendants and the parties in writing prior to Dr. Glancz' execution of the
9 Purchase Agreement.

10 77. The Listing Agreement between Dr. Glancz and Defendants additionally
11 contains an implied covenant of good faith and fair dealing. The implied covenant of good faith
12 and fair dealing prohibits Defendants from engaging in any conduct that interferes with Dr.
13 Glancz's ability to perform under the Listing Agreement or under any contract or prospective
14 contract Dr. Glancz might enter into with a prospective purchaser of the Property, or otherwise
15 denies Dr. Glancz the benefits of such contract with a prospective purchaser of the Property,
16 which contract is expressly contemplated in the Listing Agreement.

17 78. Dr. Glancz is informed and believes and thereon alleges that Defendants' efforts
18 to push through an agreement with Rothman as a buyer on terms that were not in accord with
19 what Defendants knew to be the desires of Dr. Glancz and Defendants' failures to notify Dr.
20 Glancz in writing of the dual agency relationship constitute direct breaches of the Listing
21 Agreement and further constitute a breach of the implied covenant of good faith and fair
22 dealing. Defendants' further efforts to conceal Messenger's true motives and to further conceal
23 her deception constitute additional breaches of the covenant of good faith and fair dealing in
24 force under the Listing Agreement.

25 79. As a direct and proximate result of Defendants' breaches as herein alleged, Dr.
26 Glancz has been denied the benefits of the Listing Agreement in that Dr. Glancz has been
27 subjected to potential liability arising from the purported agreement between Dr. Glancz and
28 Rothman, and has further sustained damages in the form of having to accept a lower purchase

1 price for the Property and under less favorable terms than Dr. Glancz was led to believe he had
2 reached and which he would otherwise have received but for the breaches of Defendant herein
3 alleged. Dr. Glancz has sustained further damages by being required to incur significant legal
4 expenses to defend against and settle the various claims of Rothman. The full extent of damages
5 sustained by Dr. Glancz as a result of Defendants' breaches have not yet been ascertained, but
6 are believed to be well in excess of this Court's jurisdictional minimum of \$25,000.00.

7 80. Dr. Glancz requests an award of damages, costs of suit, and attorney fees that he
8 is entitled to recover on this claim as provided by the parties' Listing Agreement.

9 WHEREFORE, Dr. Glancz prays for Judgment as follows:

10 On the First, Second, Fifth and Sixth Causes of Action:

11 1. For general and compensatory damages in the sum of not less than \$800,000.00
12 according to proof;

13 2. For special damages for losses incurred by Dr. Glancz in connection with the
14 sale of Dr. Glancz's residence and resolution of disputes with Rothman;

15 3. For all costs of suit including Dr. Glancz's attorney's fees pursuant to Welfare
16 and Institutions Code section 15657.5, according to proof;

17 4. For exemplary and/or punitive damages in an amount appropriate to punish
18 Defendants, and each of them, and to deter Defendants and others from engaging in similar
19 conduct, according to proof;

20 5. For treble damages pursuant to Civil Code section 3345.

21 On the Third, Fourth, Seventh and Eighth Causes of Action:

22 1. For general and compensatory damages in the sum of not less than \$800,000.00
23 according to proof;

24 2. For special damages for losses incurred by Dr. Glancz in connection with the
25 sale of Dr. Glancz's residence and resolution of disputes with Rothman;

26 3. For all costs of suit including Dr. Glancz's attorney's fees pursuant to Welfare
27 and Institutions Code section 15657.5, according to proof;

28 ///

1 4. For treble damages pursuant to Civil Code section 3345.

2
3 Dated: 1-22, 2013

Respectfully submitted,

4 SLOVAK BARON EMPEY MURPHY & PINKNEY LLP


5
6 By: 
7 JOHN O. PINKNEY
8 CHARLES L. GALLAGHER
9 TORY J. CHRISTENSEN
10 Attorneys Plaintiff GEORGE GLANCZ, individually
11 and as Trustee of the Glancz Family Trust

Exhibit “1”



CALIFORNIA
ASSOCIATION
OF REALTORS®

RESIDENTIAL LISTING AGREEMENT (Exclusive Authorization and Right to Sell) (C.A.R. Form RLA, Revised 12/10)

1. **EXCLUSIVE RIGHT TO SELL:** _____ George Glantz ("Seller")
hereby employs and grants _____ Windemere ("Broker")
beginning (date) 4-24-2012 and ending at 11:59 P.M. on (date) 12/30/2012 ("Listing Period")
the exclusive and irrevocable right to sell or exchange the real property in the City of Palm Desert
County of Riverside, Assessor's Parcel No. 624-300-027
California, described as: 21 Avenida Andra ("Property").
2. **ITEMS EXCLUDED AND INCLUDED:** Unless otherwise specified in a real estate purchase agreement, all fixtures and fittings that are attached to the Property are included, and personal property items are excluded, from the purchase price.
ADDITIONAL ITEMS EXCLUDED: _____
ADDITIONAL ITEMS INCLUDED: All appliances incl. Washer/Dryer
Seller intends that the above items be excluded or included in offering the Property for sale, but understands that: (i) the purchase agreement supersedes any intention expressed above and will ultimately determine which items are excluded and included in the sale; and (ii) Broker is not responsible for and does not guarantee that the above exclusions and/or inclusions will be in the purchase agreement.
3. **LISTING PRICE AND TERMS:**
A. The listing price shall be: Two million seven hundred thousand Dollars (\$ 2,700,000).
B. Additional Terms: Cash, Cash to New Owner, Owner May Carry
1st best offer
4. **COMPENSATION TO BROKER:**
Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Seller and Broker (real estate commissions include all compensation and fees to Broker).
A. Seller agrees to pay to Broker as compensation for services irrespective of agency relationship(s), either ☒ 4 percent of the listing price (or if a purchase agreement is entered into, of the purchase price), or ☐ \$ _____, as follows:
AND
(1) If during the Listing Period, or any extension, Broker, cooperating broker, Seller or any other person procures a buyer(s) who offers to purchase the Property on the above price and terms, or on any price or terms acceptable to Seller. (Broker is entitled to compensation whether any escrow resulting from such offer closes during or after the expiration of the Listing Period, or any extension).
OR (2) If within 90 calendar days (a) after the end of the Listing Period or any extension; or (b) after any cancellation of this Agreement, unless otherwise agreed, Seller enters into a contract to sell, convey, lease or otherwise transfer the Property to anyone ("Prospective Buyer") or that person's related entity: (i) who physically entered and was shown the Property during the Listing Period or any extension by Broker or a cooperating broker; or (ii) for whom Broker or any cooperating broker submitted to Seller a signed, written offer to acquire, lease, exchange or obtain an option on the Property. Seller, however, shall have no obligation to Broker under paragraph 4A(2) unless, not later than 3 calendar days after the end of the Listing Period or any extension or cancellation, Broker has given Seller a written notice of the names of such Prospective Buyers.
OR (3) If, without Broker's prior written consent, the Property is withdrawn from sale, conveyed, leased, rented, otherwise transferred, or made unmarketable by a voluntary act of Seller during the Listing Period, or any extension.
B. If completion of the sale is prevented by a party to the transaction other than Seller, then compensation due under paragraph 4A shall be payable only if and when Seller collects damages by suit, arbitration, settlement or otherwise, and then in an amount equal to the lesser of one-half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any.
C. In addition, Seller agrees to pay Broker: _____
D. Seller has been advised of Broker's policy regarding cooperation with, and the amount of compensation offered to, other brokers.
(1) Broker is authorized to cooperate with and compensate brokers participating through the multiple listing service(s) ("MLS") by offering to MLS brokers out of Broker's compensation specified in 4A, either ☐ _____ percent of the purchase price, or ☐ \$ _____
(2) Broker is authorized to cooperate with and compensate brokers operating outside the MLS as per Broker's policy.
E. Seller hereby irrevocably assigns to Broker the above compensation from Seller's funds and proceeds in escrow. Broker may submit this Agreement, as instructions to compensate Broker pursuant to paragraph 4A, to any escrow regarding the Property involving Seller and a buyer, Prospective Buyer or other transferee.
F. (1) Seller represents that Seller has not previously entered into a listing agreement with another broker regarding the Property, unless specified as follows: _____
(2) Seller warrants that Seller has no obligation to pay compensation to any other broker regarding the Property unless the Property is transferred to any of the following individuals or entities: _____
(3) If the Property is sold to anyone listed above during the time Seller is obligated to compensate another broker: (i) Broker is not entitled to compensation under this Agreement; and (ii) Broker is not obligated to represent Seller in such transaction.

The copyright laws of the United States (Title 17 U.S. Code) forbid the unauthorized reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. Copyright © 1991-2010, CALIFORNIA ASSOCIATION OF REALTORS®, INC. ALL RIGHTS RESERVED.

RLA REVISED 12/10 (PAGE 1 OF 4)

RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 1 OF 4)

Agent: Faith Messenger Phone: 760.346.5593 Fax: 760.346.4078 Prepared using zipForm® software
Broker: First Team Realty, Inc. 44311 Monterey Ave Palm Desert, CA 92260

Seller's Initials ()
Reviewed by () Date ()



21 Avenida Andra

Date: 4/24/12

Property Address: Palm Desert.

- D. **Other Sellers:** Seller understands that Broker may have or obtain listings on other properties, and that potential buyers may consider, make offers on, or purchase through Broker, property the same as or similar to Seller's Property. Seller consents to Broker's representation of sellers and buyers of other properties before, during and after the end of this Agreement.
- 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 concurrent with Seller's execution of a purchase agreement.
11. **SECURITY AND INSURANCE:** Broker is not responsible for loss of or damage to personal or real property, or person, whether attributable to use of a key safe/lockbox, a showing of the Property, or otherwise. Third parties, including, but not limited to, appraisers, inspectors, brokers and prospective buyers, may have access to, and take videos and photographs of, the interior of the Property. Seller agrees: (i) to take reasonable precautions to safeguard and protect valuables that might be accessible during showings of the Property; and (ii) to obtain insurance to protect against these risks. Broker does not maintain insurance to protect Seller.
12. **KEYSAFE/LOCKBOX:** A key safe/lockbox is designed to hold a key to the Property to permit access to the Property by Broker, cooperating brokers, MLS participants, their authorized licensees and representatives, authorized inspectors, and accompanied prospective buyers. Broker, cooperating brokers, MLS and Associations/Boards of REALTORS® are not insurers against injury, theft, loss, vandalism or damage attributed to the use of a key safe/lockbox. Seller does (or if checked ☒ does not) authorize Broker to install a key safe/lockbox. If Seller does not occupy the Property, Seller shall be responsible for obtaining occupant(s)' written permission for use of a key safe/lockbox (C.A.R. Form KLA).
13. **SIGN:** Seller does (or if checked ☐ does not) authorize Broker to install a FOR SALE/SOLD sign on the Property.
14. **DISPUTE RESOLUTION:**
- A. **MEDIATION:** Seller and Broker agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraph 14B(2) below. Paragraph 14B(2) below applies whether or not the arbitration provision is initiated. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.**
- B. **ARBITRATION OF DISPUTES:** (1) Seller and Broker agree that any dispute or claim in law or equity arising between them regarding the obligation to pay compensation under this Agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraph 14B(2) below. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate law experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California law. The parties shall have the right to discovery in accordance with California Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part III of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. Interpretation of this agreement to arbitrate shall be governed by the Federal Arbitration Act.
- (2) **EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in California Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation and arbitration provisions.
- "NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."**
- "WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."**

Seller's Initials

Broker's Initials

Seller's Initials

Reviewed by

Date



George Glantz

21 Avenida Andra
Property Address: Palm Desert

Date: 4/24/12

15. **EQUAL HOUSING OPPORTUNITY:** The Property is offered in compliance with federal, state and local anti-discrimination laws.

16. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon Seller and Seller's successors and assigns.

17. **MANAGEMENT APPROVAL:** If an associate-licensee in Broker's office (salesperson or broker-associate) enters into this Agreement on Broker's behalf, and Broker or Manager does not approve of its terms, Broker or Manager has the right to cancel this Agreement, in writing, within 5 Days After its execution.

18. **ADDITIONAL TERMS:** ☐ REO Advisory Listing (C.A.R. Form REOL) ☐ Short Sale Information and Advisory (C.A.R. Form 651A)
Seller may cancel agreement if in 90 days of 2012
attest

19. **ATTORNEY FEES:** In any action, proceeding or arbitration between Seller and Broker regarding the obligation to pay compensation under this Agreement, the prevailing Seller or Broker shall be entitled to reasonable attorney fees and costs from the non-prevailing Seller or Broker, except as provided in paragraph 14A.

20. **ENTIRE AGREEMENT:** All prior discussions, negotiations and agreements between the parties concerning the subject matter of this Agreement are superseded by this Agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If 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 photocopy or facsimile, may be executed in counterparts.

By signing below, Seller acknowledges that Seller has read, understands, received a copy of and agrees to the terms of this Agreement.

Seller George Glanz Date 4.24.12
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail GGLANZ@AOL.COM

Seller _____ Date _____
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail _____

Real Estate Broker Faith Messenger DRE Lic. # 01094022 Date 04/01/2011
By (Agent) _____
Address 73-939 Highway 111 City Palm Desert State Ca Zip 92260
Telephone (760) 333-5956 Fax _____ E-mail faithmessenger@yahoo.com

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.
This form is available for use by the entire real estate industry. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, INC.
a subsidiary of the California Association of REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020

RLA REVISED 12/10 (PAGE 4 OF 4)

RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 4 OF 4)

Reviewed by _____ Date _____



George Glanz

Exhibit “2”



CALIFORNIA
ASSOCIATION
OF REALTORS®

**CALIFORNIA
RESIDENTIAL PURCHASE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**
For Use With Single Family Residential Property — Attached or Detached
(C.A.R. Form RPA-CA, Revised 4/10)

Date February 18, 2013

1. OFFER:

- A. THIS IS AN OFFER FROM Harold Rothman ("Buyer").
B. THE REAL PROPERTY TO BE ACQUIRED is described as 21 Avenida Andra, Palm Desert, Ca 92260-1621, Assessor's Parcel No. 624-300-027, situated in Palm Desert, County of Riverside, California, ("Property").
C. THE PURCHASE PRICE offered is One Million, Five Hundred Fifty Thousand

D. CLOSE OF ESCROW shall occur on (Dollars \$ 1,550,000.00) (date) (or ☒ 30 Days After Acceptance).

2. AGENCY:

- A. DISCLOSURE: Buyer and Seller each acknowledge prior receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
B. POTENTIALLY COMPETING BUYERS AND SELLERS: Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer representation agreement or separate document (C.A.R. Form DA). Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties of interest to this Buyer.
C. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:
Listing Agent Windermere Real Estate (Print Firm Name) is the agent of (check one): ☐ the Seller exclusively; or ☒ both the Buyer and Seller.
Selling Agent Windermere Real Estate (Print Firm Name) (If not the same as the Listing Agent) is the agent of (check one): ☐ the Buyer exclusively; or ☐ the Seller exclusively; or ☐ both the Buyer and Seller. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.

A. INITIAL DEPOSIT: Deposit shall be in the amount of \$ 52,500.00

- (1) Buyer shall deliver deposit directly to Escrow Holder by personal check, ☐ electronic funds transfer, ☐ Other _____ within 3 business days after acceptance (or ☐ Other _____);
OR (2) (If checked) ☐ Buyer has given the deposit by personal check (or ☐ Other _____) to the agent submitting the offer (or to ☐ _____) made payable to _____ The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder (or ☐ into Broker's trust account) within 3 business days after Acceptance (or ☐ Other _____).

B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of _____ within _____ Days After Acceptance, or ☐ _____ If a liquidated damages clause is incorporated into this Agreement, Buyer and Seller shall sign a separate liquidated damages clause (C.A.R. Form RID) for any increased deposit at the time it is deposited.

C. LOAN(S):

- (1) FIRST LOAN: in the amount of _____ \$
This loan will be conventional financing or, if checked, ☐ FHA, ☐ VA, ☐ Seller (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form PAA), ☐ Other _____. This loan shall be at a fixed rate not to exceed _____ % or, ☐ an adjustable rate loan with initial rate not to exceed _____ %. Regardless of the type of loan, Buyer shall pay points not to exceed _____ % of the loan amount.
(2) ☐ SECOND LOAN: in the amount of _____ \$
This loan will be conventional financing or, if checked, ☐ Seller (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form PAA), ☐ Other _____. This loan shall be at a fixed rate not to exceed _____ % or, ☐ an adjustable rate loan with initial rate not to exceed _____ %. Regardless of the type of loan, Buyer shall pay points not to exceed _____ % of the loan amount.
(3) FHA/VA: For any FHA or VA loan specified above, Buyer has 17 (or ☐ _____) Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or repair. Seller has no obligation to pay for repairs or satisfy lender requirements unless otherwise agreed in writing.

D. ADDITIONAL FINANCING TERMS: _____

E. BALANCE OF PURCHASE PRICE OR DOWN PAYMENT: in the amount of _____ \$ 1,497,500.00 to be deposited with Escrow Holder within sufficient time to close escrow.

F. PURCHASE PRICE (TOTAL): _____ \$ 1,550,000.00

Buyer's Initials (HR) (_____)

Seller's Initials (CO) (_____)

The copyright laws of the United States (Title 17 U.S. Code) forbid the unauthorized reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. Copyright © 1991-2010, CALIFORNIA ASSOCIATION OF REALTORS®, INC. ALL RIGHTS RESERVED.

RPA-CA REVISED 4/10 (PAGE 1 OF 8)

Reviewed by _____ Date _____

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 1 OF 8)

Agent: Faith Messenger Phone: 760.333.6966 Fax: 760.773.4975 Prepared using zipForm® software
Broker: Windermere Real Estate 73-983 Highway 111 Palm Desert, CA 92260