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Superior Court of California,
County of Orange

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Clerk of the Superior Court
By Sonya Wilson, Deputy Clerk

Attorneys for Plaintiff DAVID OTT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

DAVID OTT, an individual,

Plaintiff

vs.

JAMES MARQUEZ, an individual;
ANDREA MARQUEZ, an individual; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 30-2013-00883429-CU-FR-CJC

VERIFIED COMPLAINT FOR:

- 1) FRAUD;**
- 2) CONVERSION;**
- 3) NEGLIGENCE**

Judge Derek W. Hunt

PARTIES, JURISDICTION AND VENUE

1. At all times mentioned herein, Plaintiff DAVID OTT ("Plaintiff") was and is an individual residing in California.

2. Plaintiff is informed and believes that at all times mentioned herein, defendant JAMES MARQUEZ ("Mr. Marquez") was and is an individual residing in the County of Orange. Plaintiff is further informed and believes that at all times mentioned herein, Mr. Marquez was and is an owner or principal of Windermere Real Estate Socal, Inc. ("Windermere"), as well as an owner or principal of A & L Partners, Inc. ("A & L Partners.")

3. Plaintiff is informed and believes that at all times mentioned herein, defendant ANDREA MARQUEZ (“Mrs. Marquez”) was and is an individual residing in the County of Orange. Plaintiff is further informed and believes that at all times mentioned herein, Mrs. Marquez was and is an owner or principal of Windermere, as well as an owner or principal of A & L Partners.

4. Mr. Marquez and Mrs. Marquez shall be collectively referred to herein as “Defendants.”

5. The true names and capacities, whether individual, corporate, associate or otherwise, of defendants named herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff is informed and believes that each of these fictitiously named defendants is in some manner responsible for the events and damages alleged herein and will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained. Each reference in this complaint to “defendant,” “defendants,” or a specifically named defendant refers also to all defendants sued under fictitious names.

6. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein, each of the defendants, as well as DOES 1 through 100, was the principal, agent, representative, partner, joint venturer, co-conspirator, alter ego or employee of each of the other defendants, as well as DOES 1 through 100, and in doing the things alleged herein was acting within the course and scope of such relationship with the full knowledge, consent, authority and/or ratification of each of the other defendants and DOES 1 through 100.

7. Jurisdiction in the State of California is proper because Plaintiff is informed and believes that Defendants reside there.

8. Venue in Orange County is proper as the conduct giving rise to this action substantially occurred there.

BACKGROUND FACTS

9. Plaintiff is a real estate agent duly licensed under the laws of the State of California. At all times relevant herein up until on or about October 21, 2011, Plaintiff was a successful real estate agent and independent contractor for Windermere.

1 10. On August 18, 2011, through no fault of Plaintiff, the buyer of one of the properties
2 for which Plaintiff was the listing agent and Windermere was the broker (the "Flower Street
3 Property") filed legal proceedings in Orange County Superior Court, case number 30-2011-
4 00501187-SC-SC-CJC, arising out of that sale and naming, among others, Plaintiff, Defendants, and
5 A & L Partners as defendants (the "Flower Street Property Litigation.")

6 11. Plaintiff is informed and believes and thereon alleges that Defendants resent Plaintiff
7 for referring the Flower Street Property listing to them and, unfairly and without justification, blame
8 him for causing them to enter into a transaction in which they, separately and independently of
9 Plaintiff, ultimately acted unlawfully.

10 12. On August 5, 2011, Plaintiff entered into a written exclusive right to sell listing
11 agreement (the "Listing Agreement") for 21436 Chirping Sparrow Road in Diamond Bar, California
12 91765 (the "Property") with the owner of the Property, Mark Palmer (the "Seller"), at a list price of
13 \$499,999. A true and correct copy of the Listing Agreement is attached hereto as Exhibit "A."

14 13. Pursuant to the terms of the Listing Agreement, Windermere was the broker for the
15 sale of the Property and Plaintiff, as the listing agent, was entitled to a commission of 3.5% of the
16 sale price of the Property (the "Commission.")

17 14. On September 26, 2011, Plaintiff entered into a written referral agreement (the
18 "Referral Agreement") which entitled Plaintiff to an additional 25% of the Maritza Jimenez's, the
19 selling agent's, commission if Plaintiff procured the ultimate buyer for the Property (the "Referral
20 Fee.") A true and correct copy of the Referral Agreement is attached hereto as Exhibit "B."

21 15. Plaintiff did in fact procure the buyer for the Property, and as such is entitled to the
22 Referral Fee.

23 16. The sales transaction for the Property was submitted to escrow on August 30, 2011 at
24 a sales price of \$543,000. The sale of the Property was ready to be closed on or about October 15,
25 2011. However, Plaintiff is informed and believes that Defendants intentionally delayed the close of
26 escrow on the Property until December 28, 2011, because they wanted to wait until the Flower Street
27 Litigation was concluded and use that litigation as an excuse to deprive Plaintiff of his Commission
28 and Referral Fee.

1 17. On or about September 2, 2011, A & L Partners submitted instructions to Seller to pay
2 a commission of \$19,005.00 to Plaintiff at Windermere, and a commission of \$13,575.00 to Maritza
3 Jimenez, the selling agent for the Property at Windermere.

4 18. On or about October 21, 2011, Plaintiff was scheduled to testify in the Flower Street
5 Litigation. However, in advance of that testimony, Defendants instructed Plaintiff to commit perjury
6 when he testified. Rather than doing as Defendants requested, Plaintiff refused to testify and on that
7 very same day, Plaintiff resigned from Windermere and became an agent and independent contractor
8 for a new real estate company, Keller Williams Pacific Estates ("Keller Williams.")

9 19. As part of Plaintiff's resignation, Defendants agreed that the listing for the Property,
10 among other properties, would be transferred to Keller Williams for continued service by Plaintiff,
11 and Plaintiff would still be entitled to the Commission and Referral Fee. Defendants later tried,
12 unsuccessfully, to renegotiate the terms of the Commission to be less favorable to Plaintiff.

13 20. This transfer was in the best interest of all parties involved, including Defendants,
14 because if the Property remained listed with Windermere, the sale of the Property would be in
15 violation of the arms-length transaction requirement for short sales, since Seller was an agent for
16 Windermere at the time of the listing. Prior to Plaintiff's resignation, Plaintiff vocalized his concerns
17 to Defendants regarding the propriety of the short sale of the Property with Windermere as the broker.

18 21. Nonetheless, on October 28, 2011, Plaintiff is informed and believes and thereon
19 alleges that Defendants falsified a document signed by Seller in order to revoke Plaintiff's
20 authorization to discuss the sale of the Property with Bank of America, the financial institution
21 associated with the short sale of the Property.

22 22. Thereafter, Defendants refused to transfer the listing for the Property to Keller
23 Williams or allow Plaintiff to communicate with Bank of America or any other parties related to the
24 sale of the Property.

25 23. Plaintiff is entitled to a Commission of \$19,005 and a Referral Fee of \$3,393.75, equal
26 to 25 percent of Maritza Jimenez's commission, but Defendants have refused to pay Plaintiff this
27 Commission and Referral Fee.

28 //

1 **FIRST CAUSE OF ACTION**

2 **FRAUD**

3 **(Against All Defendants)**

4 24. Plaintiff refers to each of the foregoing paragraphs in their entirety, and hereby
5 incorporates them by reference as though fully set forth herein.

6 25. Plaintiff is informed and believes that as a result of the Flower Street Property
7 Litigation, Defendants sought to injure Plaintiff personally and professionally because they blamed
8 Plaintiff for the ensuing litigation and for refusing to perjure himself in that litigation at the request of
9 Defendants. Plaintiff is further informed and believes Defendants did so because Plaintiff vocalized
10 his concerns regarding the arms-length transaction requirement for the short sale of the Property, and
11 Defendants' imminent violation thereof.

12 26. On or about October 20, 2011, Defendants represented to Plaintiff that he would
13 receive a "short sale negotiation fee" for the Property, even after his resignation from Windermere.
14 Mr. Marquez confirmed this representation in writing in an email dated October 21, 2011.

15 27. On or about October 21, 2011, Defendants represented to Plaintiff that the listing for
16 the Property would be transferred to Keller Williams and that he was allowed to continue to service
17 the Property. Christine Haynes, a sales manager for Windermere, confirmed this representation in
18 writing in an email dated October 27, 2011.

19 28. However, Plaintiff is informed and believes that at the time Defendants made these
20 representations, they knew that they were false, and that they would not transfer the listing for the
21 Property to Keller Williams, that they would not allow Plaintiff to continue to service the Property,
22 and that they would not pay Plaintiff his Commission or Referral fee. Plaintiff is informed and
23 believes that Defendants never had any intention of following through on their promises and
24 contractual obligations because they resented Plaintiff for bringing them the Flower Property, a
25 transaction which ultimately resulted in litigation, and for vocalizing his concerns regarding
26 Defendants' unethical and unprofessional conduct.

27 29. Plaintiff is informed and believes that Defendants made these representations to
28 deceive Plaintiff, because they intended to delay the close of escrow on the Property until after the

1 Flower Street Property Litigation concluded and use that litigation as an excuse to deprive Plaintiff of
2 his Commission and Referral Fee.

3 30. Plaintiff justifiably relied on these misrepresentations by completing his transition
4 from Windermere to Keller Williams without first waiting for escrow to close on the Property and
5 receiving his Commission and Referral Fee. Defendants' misrepresentations lulled Plaintiff into a
6 false sense of security that he would be able to resign from Windermere, work at Keller Williams,
7 continue to service the Property, and receive his Commission and Referral Fee without any problems.

8 31. On October 28, 2011, Seller signed a form authorizing Maribel Cabrera at the Bank of
9 America HELOC Short Sale Department to discuss his account with his realtor. Plaintiff is informed
10 and believes that, in furtherance of his deceit, Mr. Marquez altered this document after Seller signed
11 the authorization and without Seller's knowledge to include a typewritten "Special Note" that stated
12 "Please be advised that DAVID OTT with Windermere Preferred Living is NO LONGER
13 AUTHORIZED to negotiate this short sale on my behalf. Any further contact with him on my behalf
14 is strictly prohibited. Please contact my new negotiator as listed above."

15 32. Plaintiff is informed and believes that Mr. Marquez made this alteration in order to
16 cause injury to Plaintiff professionally, again because of his resentment of Plaintiff for the Flower
17 Property Litigation and for Plaintiff's vocalization of his concerns regarding Defendant's unethical
18 and unprofessional conduct. Plaintiff is further informed and believes that Mr. Marquez did so in
19 order to purposely delay the close of escrow on the Property until after the Flower Street Litigation
20 had been concluded so that he could use that litigation as an excuse to deprive Plaintiff of his
21 Commission and Referral Fee.

22 33. Each of the Defendants engaged in the aforementioned conduct for his or her own
23 personal benefit and advantage, rather than solely on behalf of and at the direction of Windermere.
24 Plaintiff is informed and believes that each of the Defendants attempted to gain personally from
25 defrauding Plaintiff in at least the following ways:

- 26 a. Defendants engaged in the aforementioned conduct in order to induce Plaintiff to leave
27 Windermere so they could more easily abscond with his Commission and Referral
28

1 Fee, and with the hope that Plaintiff would no longer call attention to their personal
2 unprofessional and unethical actions;

3 b. Defendants engaged in the aforementioned conduct in order to personally receive the
4 Commission and Referral Fee owed to Plaintiff. By not having to pay Plaintiff his
5 Commission, Mr. Marquez was able to receive a higher commission as the broker for
6 the sale of the Property. As such, Defendants put their own personal financial interests
7 ahead of Plaintiff's interests; and

8 c. Defendants knew that causing Plaintiff to leave Windermere would make it harder for
9 Plaintiff to witness their continued unethical conduct and therefore better protect them
10 personally from liability for that conduct.

11 34. As a result of Defendants' fraud, Plaintiff has suffered damages including, but not
12 limited to, the amounts of the Commission and the Referral Fee.

13 35. Plaintiff is informed and believes that the aforementioned conduct of Defendants, and
14 each of them, was carried out as part of a deliberate scheme to fraudulently induce Plaintiff into
15 resigning from Windermere Property with the conscious goal of maximizing Defendants'
16 profitability. Such conduct was oppressive, fraudulent, and malicious, and subjected Plaintiff to cruel
17 and unjust hardship in a willful and conscious disregard of his rights, warranting exemplary and
18 punitive damages pursuant to Civil Code section 3294, for the reasons set forth herein and for at least
19 the following reasons:

20 a. It was done with the purposeful and intentional design of putting Defendants' own
21 business and pecuniary interests ahead of Plaintiff's rights and interests;

22 b. It was done with the purpose and intent of deceiving and fraudulently inducing Plaintiff
23 into believing he was going to receive the Commission and Referral Fee to which he was
24 entitled for his diligent work in selling the Property and ultimately saving Seller from
25 foreclosure, while Defendants knowingly concealed and failed to disclose their true
26 intentions of never paying Plaintiff the Commission and Referral Fee; and
27
28

1 c. It was done with the purpose and intent of maximizing Defendants' profit on the sale of
2 the Property, without any regard to their obligations to not intentionally delay the close of
3 escrow of the Property or to honor their contractual obligations to Plaintiff.

4 **SECOND CAUSE OF ACTION**

5 **CONVERSION**

6 **(Against All Defendants)**

7 36. Plaintiff refers to each of the foregoing paragraphs in their entirety, and hereby
8 incorporates them by reference as though fully set forth herein.

9 37. Since the close of escrow on the Property on or about December 28, 2011, and
10 pursuant to the written Listing Agreement and written Referral Agreement, Plaintiff was, and still is,
11 entitled to the \$19,005 Commission and the \$3,393.75 Referral Fee.

12 38. On or about December 28, 2011, Defendants converted the Commission and the
13 Referral Fee by keeping the monies for themselves and not paying them to Plaintiff.

14 39. As a result of Defendants' conversion, Plaintiff has suffered damages, including, but
15 not limited to, the amounts of the Commission and Referral Fee, and the interest Plaintiff would have
16 otherwise received thereon from December 28, 2011 to present.

17 40. Each of the Defendants engaged in the aforementioned conversion for his or her own
18 personal benefit and advantage, rather than solely on behalf of and at the direction of Windermere.
19 Plaintiff is informed and believes that each of the Defendants attempted to gain personally from
20 converting the Commission and Referral Fee in at least the following way:

21 a. Defendants engaged in the aforementioned conduct in order to personally receive the
22 Commission and Referral Fee owed to Plaintiff. By not having to pay Plaintiff his
23 Commission, Mr. Marquez was able to receive a higher commission as the broker for
24 the sale of the Property. As such, Defendants put their own personal financial interests
25 ahead of Plaintiff's interests.

26 41. Plaintiff is informed and believes that the aforementioned conduct of Defendants, and
27 each of them, was carried out as part of a deliberate scheme to maximize Defendants' profitability.
28 Such conduct was oppressive, fraudulent, and malicious, and subjected Plaintiff to cruel and unjust

1 hardship in a willful and conscious disregard of his rights, warranting exemplary and punitive
2 damages pursuant to Civil Code section 3294, for the reasons set forth herein and for at least the
3 following reasons:

- 4 a. It was done with the purposeful and intentional design of putting Defendants' own
5 business and pecuniary interests ahead of Plaintiff's rights and interests; and
- 6 b. It was done with the purpose and intent of maximizing Defendants' profit on the sale of
7 the Property, without any regard to their obligations to not intentionally delay the close of
8 escrow of the Property or to honor their contractual obligations to Plaintiff.

9 **THIRD CAUSE OF ACTION**

10 **NEGLIGENCE**

11 **(Against All Defendants)**

12 42. Plaintiff refers to each of the foregoing paragraphs in their entirety, and hereby
13 incorporates them by reference as though fully set forth herein.

14 43. Defendants owed Plaintiff a duty to act in compliance with the standards of reasonable
15 care imposed upon them, including, but not limited to, paying Plaintiff the Commission and Referral
16 Fee to which he was entitled within a reasonable time after the close of escrow on the Property and
17 not taking affirmative steps to interfere with Plaintiff's service of the Property.

18 44. Defendants breached their duty of care by engaging in at least the following conduct:

- 19 a. Delaying the close of escrow on the Property to December 28, 2011, when the closing
20 was otherwise ready to be completed on October 15, 2011; and
- 21 b. Refusing to pay Plaintiff the Commission and Referral Fee to which he was entitled,
22 and then using the Flower Property Litigation as an excuse for not doing so.

23 45. As a result of Defendants' breaches, Plaintiff has suffered damages including, but not
24 limited to, the amounts of the Commission and the Referral Fee.

25 46. Each of the Defendants engaged in the aforementioned negligent acts for his or her
26 own personal benefit and advantage, rather than solely on behalf of and at the direction of
27 Windermere. Plaintiff is informed and believes that each of the Defendants attempted to gain
28 personally in the following way:

- 1 a. Defendants engaged in the aforementioned conduct in order to personally receive the
2 Commission and Referral Fee owed to Plaintiff. By not having to pay Plaintiff his
3 Commission, Mr. Marquez was able to receive a higher commission as the broker for
4 the sale of the Property. As such, Defendants put their own personal financial interests
5 ahead of Plaintiff's interests.

6 **PRAYER**

7 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

8 **ON THE FIRST AND SECOND CAUSES OF ACTION:**

- 9 1. For general, special and consequential damages according to proof; and
10 2. For exemplary and punitive damages in amounts that are yet to be ascertained;

11 **ON THE THIRD CAUSE OF ACTION:**

- 12 1. For general, special and consequential damages according to proof;

13 **ON ALL CAUSES OF ACTION:**

- 14 1. For prejudgment interest as allowed by law and according to proof;
15 2. For recovery of costs and expenses of suit as allowed by law; and
16 3. For such other and further relief as the Court deems just and proper.
17

18 Dated: July 18, 2013

19 WILSON HARVEY BROWNDORF LLP

20
21 By:

22 
23 MAPC LAZO
24 Attorneys for Plaintiff
25
26
27
28



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:** _____ Mark Palmer, ("Seller")
hereby employs and grants _____ Windermere Preferred ("Broker")
beginning (date) August 5, 2011 and ending at 11:59 P.M. on (date) December 5, 2011 ("Listing Period")
the exclusive and irrevocable right to sell or exchange the real property in the City of _____ Diamond Bar,
County of _____ Los Angeles, Assessor's Parcel No. _____ 8714022008,
California, described as: _____ 21436 Chirping Sparrow ("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: _____

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: Four Hundred Ninety-Nine Thousand, Nine Hundred Ninety-Nine Dollars (\$ 499,999.00).

B. Additional Terms: _____

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 ☒ 6.000 percent of the listing price (or if a purchase agreement is entered into, of the purchase price), or ☐ \$ _____, AND _____, as follows:

(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.

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RLA REVISED 12/10 (PAGE 1 OF 4)

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

Seller's Initials MP

Reviewed by _____ Date _____



Agent: David Ott

Phone: 562.400.0526

Fax: 562.685.0100

Prepared using zipForm® software

Broker: Windermere Preferred 135 S State College Blvd #110 Brea, CA 92821

5. **OWNERSHIP, TITLE AND AUTHORITY:** Seller warrants that: (i) Seller is the owner of the Property; (ii) no other persons or entities have title to the Property; and (iii) Seller has the authority to both execute this Agreement and sell the Property. Exceptions to ownership, title and authority are as follows: _____
6. **MULTIPLE LISTING SERVICE:** All terms of the transaction, including financing, if applicable, will be provided to the selected MLS for publication, dissemination and use by persons and entities on terms approved by the MLS. Seller acknowledges that Broker is required to comply with all applicable MLS rules as a condition of entry of the listing into the MLS and Seller authorizes Broker to comply with all applicable MLS rules. MLS rules require that the listing sales price be reported to the MLS. MLS rules allow MLS data to be made available by the MLS to additional Internet sites unless Broker gives the MLS instructions to the contrary. MLS rules generally provide that residential real property and vacant lot listings be submitted to the MLS within 48 hours or some other period of time after all necessary signatures have been obtained on the listing agreement. However, Broker will not have to submit this listing to the MLS if, within that time, Broker submits to the MLS a form signed by Seller (C.A.R. Form SEL or the locally required form).
- Information that can be excluded:**
- A. Internet Display;**
- (1) Seller can instruct Broker to have the MLS not display the Property on the Internet. Seller understands that this would mean consumers searching for listings on the Internet may not see information about the Property in response to their search; (2) Seller can instruct Broker to have the MLS not display the Property address on the Internet. Seller understands that this would mean consumers searching for listings on the Internet may not see the Property's address in response to their search.
- B. Features on MLS Participant and Subscriber Websites;**
- (1) Seller can instruct Broker to advise the MLS that Seller does not want visitors to MLS Participant or Subscriber Websites that display the Property listing to have (i) the ability to write comments or reviews about the Property on those sites; or (ii) the ability to hyperlink to another site containing such comments or reviews if the hyperlink is in immediate conjunction with the Property. Seller understands (i) that this opt-out applies only to Websites of MLS Participants and Subscribers who are real estate broker and agent members of the MLS; (ii) that other Internet sites may or may not have the features set forth herein; and (iii) that neither Broker nor the MLS may have the ability to control or block such features on other Internet sites: that this would mean the consumers searching for listings on the Internet will not see the Property's address in response to their search.
- (2) Seller can instruct Broker to advise the MLS that Seller does not want MLS Participant or Subscriber Websites that display the Property listing to operate (i) an automated estimate of the market value of the Property; or (ii) have the ability to hyperlink to another site containing such automated estimate of value if the hyperlink is in immediate conjunction with the Property. Seller understands (i) that this opt-out applies only to Websites of MLS Participants and Subscribers who are real estate brokers and agent members of the MLS; (ii) that other Internet sites may or may not have the features set forth herein; and (iii) that neither Broker nor the MLS may have the ability to control or block such features on other Internet sites: that this would mean the consumers searching for listings on the Internet will not see the Property's address in response to their search.
- Seller acknowledges that for any of the above opt-out instructions to be effective, Seller must make them on a separate instruction to Broker signed by Seller (C.A.R. Form SEL or the locally required form). Information about this listing will be provided to the MLS of Broker's selection unless a form instructing Broker to withhold the listing from the MLS is attached to this listing Agreement.
7. **SELLER REPRESENTATIONS:** Seller represents that, unless otherwise specified in writing, Seller is unaware of: (i) any Notice of Default recorded against the Property; (ii) any delinquent amounts due under any loan secured by, or other obligation affecting, the Property; (iii) any bankruptcy, insolvency or similar proceeding affecting the Property; (iv) any litigation, arbitration, administrative action, government investigation or other pending or threatened action that affects or may affect the Property or Seller's ability to transfer it; and (v) any current, pending or proposed special assessments affecting the Property. Seller shall promptly notify Broker in writing if Seller becomes aware of any of these items during the Listing Period or any extension thereof.
8. **BROKER'S AND SELLER'S DUTIES:** Broker agrees to exercise reasonable effort and due diligence to achieve the purposes of this Agreement. Unless Seller gives Broker written instructions to the contrary, Broker is authorized to order reports and disclosures as appropriate or necessary and advertise and market the Property by any method and in any medium selected by Broker, including MLS and the Internet, and, to the extent permitted by these media, control the dissemination of the information submitted to any medium. Seller agrees to consider offers presented by Broker, and to act in good faith to accomplish the sale of the Property by, among other things, making the Property available for showing at reasonable times and referring to Broker all inquiries of any party interested in the Property. Seller is responsible for determining at what price to list and sell the Property. **Seller further agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments and attorney fees arising from any incorrect information supplied by Seller, or from any material facts that Seller knows but fails to disclose.**
9. **DEPOSIT:** Broker is authorized to accept and hold on Seller's behalf any deposits to be applied toward the purchase price.
10. **AGENCY RELATIONSHIPS:**
- A. Disclosure:** If the Property includes residential property with one-to-four dwelling units, Seller shall receive a "Disclosure Regarding Agency Relationships" form prior to entering into this Agreement.
- B. Seller Representation:** Broker shall represent Seller in any resulting transaction, except as specified in paragraph 4F.
- C. Possible Dual Agency With Buyer:** Depending upon the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Seller and Buyer, exchange party, or one or more additional parties ("Buyer"). Broker shall, as soon as practicable, disclose to Seller any election to act as a dual agent representing both Seller and Buyer. If a Buyer is procured directly by Broker or an associate licensee in Broker's firm, Seller hereby consents to Broker acting as a dual agent for Seller and such Buyer. In the event of an exchange, Seller hereby consents to Broker collecting compensation from additional parties for services rendered, provided there is disclosure to all parties of such agency and compensation. Seller understands and agrees that: (i) Broker, without the prior written consent of Seller, will not disclose to Buyer that Seller is willing to sell the Property at a price less than the listing price; (ii) Broker, without the prior written consent of Buyer, will not disclose to Seller that Buyer is willing to pay a price greater than the offered price; and (iii) except for (i) and (ii) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.

Seller's Initials (XP) ()

Reviewed by _____ Date _____



- 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 keysafe/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 keysafe/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 keysafe/lockbox. Seller does (or if checked ☐ does not) authorize Broker to install a keysafe/lockbox. If Seller does not occupy the Property, Seller shall be responsible for obtaining occupant(s)' written permission for use of a keysafe/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 MPBroker's Initials DSSeller's Initials (MP) ()

Reviewed by _____ Date _____



Mark Palmer

21436 Chirping Sparrow

Property Address: Diamond Bar, CA 91765

Date: August 5, 2011

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 SSIA)

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 X Mark Palmer Date 08/05/2011
Address 21436 Chirping Sparrow City Diamond Bar State CA Zip 91765
Telephone _____ Fax _____ E-mail _____

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

Real Estate Broker (Firm) Windermere Preferred DRE Lic. # _____
By (Agent) David Ott DRE Lic. # 01718117 Date 08/05/2011
Address 135 S State College Blvd City Brea State CA Zip 92821
Telephone (562) 400-0526 Fax _____ E-mail davidpatrickott@live.com

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RLA REVISED 12/10 (PAGE 4 OF 4)

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

Mark Palmer



SELLER'S ADVISORY

(C.A.R. Form SA, Revised 11/10)

Property Address: 21436 Chirping Sparrow, Diamond Bar CA 91765 ("Property")

1. INTRODUCTION: Selling property in California is a process that involves many steps. From start to finish, it could take anywhere from a few weeks to many months, depending upon the condition of your Property, local market conditions and other factors. You have already taken an important first step by listing your Property for sale with a licensed real estate broker. Your broker will help guide you through the process and may refer you to other professionals as needed. This advisory addresses many things you may need to think about and do as you market your Property. Some of these things are requirements imposed upon you, either by law or by the listing or sale contract. Others are simply practical matters that may arise during the process. Please read this document carefully and, if you have any questions, ask your broker or appropriate legal or tax advisor for help.

2. DISCLOSURES:

A. General Disclosure Duties: You must affirmatively disclose to the buyer, in writing, any and all known facts that materially affect the value or desirability of your Property. You must disclose these facts whether or not asked about such matters by the buyer, any broker, or anyone else. This duty to disclose applies even if the buyer agrees to purchase your Property in its present condition without requiring you to make any repairs. If the Property you are selling is a residence with one to four units, your broker also has a duty to conduct a reasonably competent and diligent visual inspection of the accessible areas and to disclose to a buyer all adverse material facts that the inspection reveals. If your broker discovers something that could indicate a problem, your broker must advise the buyer.

B. Statutory Duties: (For one-to-four Residential Units):

(1) You must timely prepare and deliver to the buyer, among other things, a Real Estate Transfer Disclosure Statement ("TDS"), and a Natural Hazard Disclosure Statement ("NHD"). You have a legal obligation to honestly and completely fill out the TDS form in its entirety. (Many local entities or organizations have their own supplement to the TDS that you may also be asked to complete.) The NHD is a statement indicating whether your Property is in certain designated flood, fire or earthquake/seismic hazard zones. Third-party professional companies can help you with this task.

(2) Depending upon the age and type of construction of your Property, you may also be required to provide and, in certain cases you can receive limited legal protection by providing, the buyer with booklets entitled "The Homeowner's Guide to Earthquake Safety," "The Commercial Property Owner's Guide to Earthquake Safety," "Protect Your Family From Lead in Your Home" and "Environmental Hazards: A Guide For Homeowners and Buyers." Some of these booklets may be packaged together for your convenience. The earthquake guides ask you to answer specific questions about your Property's structure and preparedness for an earthquake. If you are required to supply the booklet about lead, you will also be required to disclose to the buyer any known lead-based paint and lead-based paint hazards on a separate form. The environmental hazards guide informs the buyer of common environmental hazards that may be found in properties.

(3) If you know that your property is: (i) located within one mile of a former military ordinance location; or (ii) in or affected by a zone or district allowing manufacturing, commercial or airport use, you must disclose this to the buyer. You are also required to make a good faith effort to obtain and deliver to the buyer a disclosure notice from the appropriate local agency(ies) about any special tax levied on your Property pursuant to the Mello-Roos Community Facilities Act.

(4) If the TDS, NHD, or lead, military ordinance, commercial zone or Mello-Roos disclosures are provided to a buyer after you accept that buyer's offer, the buyer will have 3 days after delivery (or 5 days if mailed) to terminate the offer, which is why it is extremely important to complete these disclosures as soon as possible. There are certain exemptions from these statutory requirements; however, if you have actual knowledge of any of these items, you may still be required to make a disclosure as the items can be considered material facts.

C. Death and Other Disclosures: Many buyers consider death on real property to be a material fact in the purchase of property. In some situations, it is advisable to disclose that a death occurred or the manner of death; however, California Civil Code Section 1710.2 provides that you have no disclosure duty "where the death has occurred more than three years prior to the date the transferee offers to purchase, lease, or rent the real property, or [regardless of the date of occurrence] that an occupant of that property was afflicted with, or died from, Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus." This law does not "immunize an owner or his or her agent from making an intentional misrepresentation in response to a direct inquiry from a transferee or a prospective transferee of real property, concerning deaths on the real property."

D. Condominiums and Other Common Interest Subdivisions: If the Property is a condominium, townhouse, or other property in a common interest subdivision, you must provide to the buyer copies of the governing documents, the most recent financial statements distributed, and other documents required by law or contract. If you do not have a current version of these documents, you can request them from the management of your homeowner's association. To avoid delays, you are encouraged to obtain these documents as soon as possible, even if you have not yet entered into a purchase agreement to sell your Property.

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SA REVISED 11/10 (PAGE 1 OF 2)

Seller's Initials (*MDP*) ()

Reviewed by Date



SELLER'S ADVISORY (SA PAGE 1 OF 2)

Agent: David Ott	Phone: 562.400.0526	Fax: 562.685.0100	Prepared using zipForm® software
Broker: Windermere Preferred 135 S State College Blvd #110 Brea, CA 92821			

3. CONTRACT TERMS AND LEGAL REQUIREMENTS:

- A. Contract Terms and Conditions:** A buyer may request, as part of the contract for the sale of your Property, that you pay for repairs to the Property and other items. Your decision on whether or not to comply with a buyer's requests may affect your ability to sell your Property at a specified price.
- B. Withholding Taxes:** Under federal and California tax laws, a buyer is required to withhold a portion of the purchase price from your sale proceeds for tax purposes unless you sign an affidavit of non-foreign status and California residency, or some other exemption applies and is documented.
- C. Prohibition Against Discrimination:** Discriminatory conduct in the sale of real property against individuals belonging to legally protected classes is a violation of the law.
- D. Government Retrofit Standards:** Unless exempt, you must comply with government retrofit standards, including, but not limited to, installing operable smoke detectors, bracing water heaters, and providing the buyer with corresponding written statements of compliance. Some city and county governments may impose additional retrofit standards, including, but not limited to, installing low-flow toilets and showerheads, gas shut-off valves, tempered glass, and barriers around swimming pools and spas. You should consult with the appropriate governmental agencies, inspectors, and other professionals to determine the retrofit standards for your Property, the extent to which your Property complies with such standards, and the costs, if any, of compliance.
- E. EPA's LEAD-BASED PAINT RENOVATION, REPAIR AND PAINTING RULE:** The new rule requires that contractors and maintenance professionals working in pre-1978 housing, child care facilities, and schools with lead-based paint be certified; that their employees be trained; and that they follow protective work practice standards. The rule applies to renovation, repair, or painting activities affecting more than six square feet of lead-based paint in a room or more than 20 square feet of lead-based paint on the exterior. Enforcement of the rule begins October 1, 2010. See the EPA website at www.epa.gov/lead for more information.
- F. Legal, Tax and Other Implications:** Selling your Property may have legal, tax, insurance, title or other implications. You should consult an appropriate professional for advice on these matters.

4. MARKETING CONSIDERATIONS:

- A. Pre-Sale Considerations:** You should consider doing what you can to prepare your Property for sale, such as correcting any defects or other problems. Many people are not aware of defects in or problems with their own Property. One way to make yourself aware is to obtain professional home inspections prior to sale, both generally, and for wood destroying pests and organisms, such as termites. By doing this, you then have an opportunity to make repairs before your Property is offered for sale, which may enhance its marketability. Keep in mind, however, that any problems revealed by such inspection reports should be disclosed to the buyer (see "Disclosures" in paragraph 2 above). This is true even if the buyer gets his/her own inspections covering the same area. Obtaining inspection reports may also assist you during contract negotiations with the buyer. For example, if a pest control report has both a primary and secondary recommendation for clearance, you may want to specify in the purchase agreement those recommendations, if any, for which you are going to pay.
- B. Post-Sale Protections:** It is often helpful to provide the buyer with, among other things, a home protection/warranty plan for the Property. These plans will generally cover problems, not deemed to be pre-existing, that occur after your sale is completed. In the event something does go wrong after the sale, and it is covered by the plan, the buyer may be able to resolve the concern by contacting the home protection company.
- C. Safety Precautions:** Advertising and marketing your Property for sale, including, but not limited to, holding open houses, placing a key safe/lockbox, erecting FOR SALE signs, and disseminating photographs, video tapes, and virtual tours of the premises, may jeopardize your personal safety and that of your Property. You are strongly encouraged to maintain insurance, and to take any and all possible precautions and safeguards to protect yourself, other occupants, visitors, your Property, and your belongings, including cash, jewelry, drugs, firearms and other valuables located on the Property, against injury, theft, loss, vandalism, damage, and other harm.
- D. Expenses:** You are advised that you, not the Broker, are responsible for the fees and costs, if any, to comply with your duties and obligations to the buyer of your Property.

5. OTHER ITEMS:

Seller has read and understands this Advisory. By signing below, Seller acknowledges receipt of a copy of this document.

Seller X Mark Palmer Date 08/05/2011
 Print Name Mark Palmer

Seller _____ Date _____
 Print Name _____

Real Estate Broker Windermere Preferred By David Ott
 (Agent) David Ott

Address 135 S State College Blvd City Brea State CA Zip 92821

Telephone (562) 400-0526 Fax _____ E-mail davidpatrickott@live.com

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CALIFORNIA
ASSOCIATION
OF REALTORS®

REFERRAL FEE AGREEMENT

IDENTIFICATION OF PERSONS AND ENTITIES:

REFERRING BROKER: Windermere Preferred Living (Brokerage firm name)

REFERRING AGENT (if any): David Ott (Associate-Licensee)

Address 135 State College Brea

Phone _____ Fax _____ E-mail _____

RECIPIENT BROKER: Windermere Preferred Living (Brokerage firm name)

RECIPIENT AGENT (if any): Maritza Jimenez (Associate-Licensee)

Address 135 State College Brea

Phone _____ Fax _____ E-mail _____

PRINCIPAL: Alvina Ku (Client or Customer name)

Address _____

Phone _____ Fax _____ E-mail _____

AGREEMENT:

In consideration for receipt of the referral of Principal from Referring Broker, Recipient Broker agrees to pay Referring Broker as follows:
25.000 % of the total gross compensation earned by Recipient Broker (based upon the Principal's side of the transaction), OR
 \$ _____, payable (through escrow, if used in Principal's transaction) upon recordation of deed or other evidence of
 transfer, if within 12 months (or ☐ _____) from the date of this Agreement, Principal:

- ☒ Buys _____
☐ Sells _____
☐ Leases _____
☐ Other _____

Other terms: _____

Date: 9/26/2011

Date: 9/26/2011

DocuSigned by:
REFERRING BROKER:
David Ott
 (Brokerage firm name)

DocuSigned by:
RECIPIENT BROKER:
Maritza Jimenez
 (Brokerage firm name)

By _____
☐ Its Broker ☐ Office Manager (check one)
 (Print Name)

By _____
☐ Its Broker ☐ Office Manager (check one)
 (Print Name)

Referring Broker

Tax ID # _____

California real estate law prohibits (a) a broker from paying compensation for licensed activity to anyone other than (i) a broker, (ii) a salesperson who is licensed under the compensating broker or (iii) a broker of another State and (b) a salesperson from paying compensation to another licensee for licensed activity, except through the employing broker. Federal law prohibits giving or accepting a fee or other thing of value for a referral involving a federally related mortgage loan (most residential one to four property transactions) unless pursuant to a cooperative brokerage arrangement.

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REVISED 10/98

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Reviewed by Broker
 or Designee _____
 Date _____



REFERRAL FEE AGREEMENT (RFA-11 PAGE 1 OF 1)

Agent: David Ott Phone: 562.400.0526 Fax: 562.685.0100
 Broker: Windermere Preferred 135 S State College Bld #110 Brea, CA 92821

Prepared using zipForm® software

VERIFICATION

I have read the foregoing Verified Complaint for 1) Fraud; 2) Conversion; and 3) Negligence and know its contents.

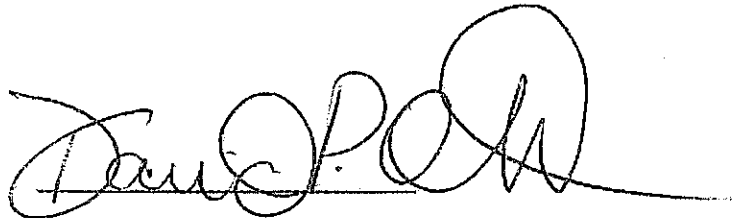
XXX I am a party to this action. The matters stated in the foregoing document are true of my knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

— I am an authorized agent of _____, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

— I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on July 18, 2013, at Long Beach, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "David P. Ott", written over a horizontal line.

DAVID OTT