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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 LU LAWRENCE, an Individual,

10 Plaintiff,

11 v.  
12

13 PAUL CLARK, an individual, dba  
14 WALKTHROUGH MEDIA; OSCAR F.  
15 NOHRE, an individual; JANE DOE NOHRE, an  
16 individual; and the marital community  
17 comprised of JANE DOE NOHRE and OSCAR  
18 F. NOHRE; GRAPHICALDATA, Incorporated,  
19 a Washington corporation; DEBBIE NITSCHKE,  
20 an individual; and WINDERMERE REAL  
ESTATE /BI, Incorporated, a Washington  
corporation; and JANE DOE and JOHN DOE,  
unknown realtors A through Z,

Defendants.

No.

COMPLAINT FOR COPYRIGHT  
INFRINGEMENT AND UNFAIR  
COMPETITION

**JURY DEMAND**

21 Plaintiff Lu Lawrence alleges and seeks relief as follows:

22 **I. PARTIES.**

23 1. Plaintiff Lu Lawrence ("Lawrence") is an individual who resides at Bainbridge  
24 Island, Kitsap County, Washington.

25 2. Defendant Paul Clark is an individual who, on information and belief resides in  
26 Seattle, Washington, and does business as Walkthrough Media, a Seattle-based virtual tour  
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1 company. Defendant Clark resides and/or does business at 13322 Greenwood Ave. N.,  
2 Suite 405, Seattle, Washington 98133.

3 3. Defendant Oscar F. ("Ozzie") Nohre is an individual who upon information and  
4 belief is married to Jane Doe Nohre. Ozzie Nohre is the Vice President of GraphicalData,  
5 Incorporated a Washington corporation and defendant herein. All of Defendant Ozzie Nohre's  
6 acts as alleged herein were on behalf of and for the benefit of the marital community comprised  
7 of Defendants Ozzie Nohre and Jane Doe Nohre (collectively referred to hereinafter as  
8 "Defendants Nohre"). Upon information and belief, Defendants Nohre reside at 25865 Canyon  
9 Road NW, Poulsbo, Washington 98370-9752. Defendants Nohre did business as the Agent  
10 Support Center.  
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12 4. Defendant GraphicalData, Incorporated ("GraphicalData") is a Washington  
13 corporation with a principal place of business at 11875 Silverdale Way NW, Suite 205,  
14 Silverdale, Washington. Upon information and belief, Shelly Nohre and Oscar F. Nohre are  
15 shareholders of GraphicalData. Shelly Nohre is president and COO of GraphicalData and  
16 Ozzie Nohre is Vice President of GraphicalData.  
17

18 5. Debbie Nitsche is an individual who upon information and belief resides in  
19 Bainbridge Island, Washington, and does business as a realtor at Windermere Real Estate/BI,  
20 Inc., 840 Madison Ave. North, Bainbridge Island, Washington 98110. Defendant Nitsche is an  
21 associate broker who does business through Defendant Windermere Real Estate/BI, Inc. and  
22 owns the website, "Bainbridge Island and Poulsbo Real Estate Presented by Debbie Nitsche" at  
23 PoulsboRealEstate.com and Bainbridge HomeSearch.com."  
24

25 6. Windermere Real Estate/BI, Inc. is a Washington Corporation with a principal  
26 place of business in Bainbridge Island, Washington.  
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1           7.       Defendants Jane Does and John Does A through Z are unknown realtors who do  
2 business in and around Bainbridge Island, Washington, who purchased and displayed on the  
3 World Wide Web a video that incorporated Plaintiff's photograph as alleged herein.

4 **II.     JURISDICTION.**

5           8.       The Court has original and exclusive subject matter jurisdiction of Plaintiff's  
6 copyright infringement claims herein under 17 U.S.C. § 501 and 28 U.S.C. §§ 1331 and 1338(a).

7           9.       This Court has jurisdiction of the unfair competition claim herein under  
8 28 U.S.C. § 1338(b), as this claim is substantially related to the claims under the copyright laws  
9 of the United States.

10 **III.    VENUE.**

11           10.      Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and  
12 1400(a). Defendants reside in, have transacted business in and have had continuous and  
13 systematic contacts with the Western District of Washington. A substantial part of the events or  
14 omissions giving rise to the claims occurred in this district and a substantial part of the property  
15 that is the subject of the action is situated in Kitsap County and in the Western District of  
16 Washington.

17 **IV.    FACTS.**

18           11.      Plaintiff Lu Lawrence is an accomplished photographer engaged in the  
19 photography business. She has published three books of aerial photographs of Bainbridge  
20 Island, Washington. Her images have been featured in marketing and advertising campaigns in a  
21 variety of contexts, including as advertisements for realtors.

22           12.      Plaintiff Lawrence created an aerial photograph of Eagle Harbor, Bainbridge  
23 Island, Washington (#BI 9500). A true and correct copy of an 8 ½ x 11 inch print of the  
24 photograph is attached hereto as Exhibit A.

1           13.     Plaintiff Lawrence obtained a copyright registration for her aerial image,  
2     Registration Number VA 866-157, effective as of December 10, 1997. A true and correct copy  
3     of Plaintiff's registration certificate is attached hereto as Exhibit B.

4           14.     Plaintiff Lawrence has not licensed her BI 9500 aerial photograph to any  
5     defendant herein.

6           15.     Without the permission of Plaintiff Lawrence, Defendants selected, modified and  
7     placed Plaintiff's photograph as modified in the "Walkthrough Media" video. True and correct  
8     screenshot prints of this "Walkthrough Media" video, which incorporates Ms. Lawrence's  
9     photograph as the concluding scene of the video, are attached hereto as Exhibit C. These  
10    screenshots are individual frames representative of each of the video clips and photographs  
11    incorporated in the "Walkthrough Media" video and were printed using Windows Media Player.  
12    Plaintiff also has a true and correct copy of the actual video [as a Windows Media Audio/Video  
13    file] and plans to apply for the Court's permission to submit it for the Court's review when  
14    appropriate.  
15    appropriate.

16           16.     As part of their video and/or website services, Defendants Clark, Nohre and/or  
17     GraphicalData sold and distributed the video to various real estate agents, including without  
18     limitation, Debbie Nitsche, Windermere Real Estate/BI, Inc. and unknown real estate agents  
19     Jane Does and John Does A through Z, and such Defendants purchased and/or publicly displayed  
20     the photograph on the World Wide Web as part of the video.  
21     the photograph on the World Wide Web as part of the video.

22           17.     Upon information and belief, Defendants sold, distributed and publicly displayed  
23     Plaintiff's photograph for a period of at least five years and since at least as early as 2001 or  
24     2002.  
25     2002.

26           18.     Plaintiff learned of the unauthorized use of her photograph by Defendants on or  
27     about January 27, 2009.  
28     about January 27, 2009.

19. Plaintiff demanded that Defendants remove the photograph from the video and websites immediately, cease using her photograph, and compensate her for the unauthorized uses of it. Plaintiff also advised Defendants that her claim of copyright in her photograph was registered and that her copyright protected against unauthorized use. A true and complete copy of Plaintiff's initial demand is attached hereto as Exhibit D.

20. Defendants' unauthorized use or uses of Plaintiff's photograph were willful and without regard for Plaintiff's rights.

21. In their uses, Defendants failed to give Plaintiff Lawrence credit for and to attribute the work to her, and passed off Plaintiff's work as their own.

22. Defendants wrongfully claimed copyright in Plaintiff's work and suggested that they had the right to authorize its use.

23. Defendants have removed the photograph from at least some websites, but have refused to compensate Plaintiff for the unauthorized uses.

## FIRST CLAIM

## Copyright Infringement

24. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 23 as if fully set forth herein.

25. By copying, modifying and creating one or more derivative works, displaying and distributing Plaintiff's photograph, Defendants have infringed Plaintiff Lawrence's copyrights in her work.

26. Defendants have facilitated possible infringement by others by failure to display Plaintiff's work with a credit and copyright notice attached and by displaying the photograph on the World Wide Web.

27. Defendants and each of them have profited from incorporating Plaintiff's

1 photograph in the video and displaying Plaintiff's work on the World Wide Web.

2 28. As a result of Defendants' willfully infringing acts, Plaintiff has been injured and  
3 has suffered damages in an amount to be proved at trial.

4 29. In addition to Plaintiff's actual damages, Plaintiff claims such other remedies as  
5 to which she may be entitled by law, including Defendants' revenues and profits pursuant to  
6 17 U.S.C. § 504(b); at Plaintiff's election and in the alternative, statutory damages up to  
7 \$150,000.00 pursuant to 17 U.S.C. § 504(c); injunctive relief pursuant to 17 U.S.C. § 502;  
8 impounding and destruction of infringing articles pursuant to 17 U.S.C. § 503; and attorneys'  
9 fees and costs pursuant to 17 U.S.C. § 505 and as otherwise allowed by law.  
10

## 11 **SECOND CLAIM**

### 12 **Violation of the Lanham Act and Unfair Competition**

13 30. Plaintiff realleges and incorporates by reference the allegations of paragraphs  
14 1 through 29 as if fully set forth herein.

15 31. In connection with Defendants' marketing activities, Defendants have used a false  
16 designation of origin, false or misleading description of fact or false or misleading representation  
17 of fact and have advertised and offered services using copies of the work of Plaintiff Lawrence  
18 without giving Plaintiff Lawrence credit, and instead have passed off Plaintiff's work as  
19 Defendants' own or as the work of third parties, all in violation of 15 U.S.C. § 1125(a).  
20

21 32. Defendants' acts as alleged herein are likely to cause confusion or to cause  
22 mistake or to deceive as to affiliation, connection or association or as to the origin, sponsorship  
23 or approval of Plaintiff's work.  
24

25 33. As a result of Defendants' violation of 15 U.S.C. § 1125(a), Plaintiff has been  
26 injured and suffered damages in an amount to be proved at trial.  
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1  
2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff respectfully requests judgment and other relief against  
4 Defendants as follows:

5 1. Declaring that:

- 6 (a) Plaintiff Lawrence owns all copyrights and ownership rights in the  
7 photograph that is a subject of this action;  
8  
9 (b) Defendants have:  
10 (1) willfully infringed the rights of Plaintiff in Plaintiff's federally  
11 registered copyrights under 17 U.S.C. § 501;  
12 (2) committed and are committing acts of false designation of origin,  
13 false or misleading description of fact, and false or misleading  
14 representations against Plaintiff as defined in 15 U.S.C. § 1125(a);  
15 (3) otherwise injured the business reputation and business of Plaintiff  
16 by Defendants' acts, conduct and omissions as set forth in this  
17 Complaint;  
18

19 2. Granting temporary, preliminary and permanent injunctive relief against  
20 Defendants, and that Defendants, its officers, agents, representatives, servants, employees,  
21 attorneys, successors and assigns, and all others in active concert or participation with  
22 Defendants, enjoining and restraining them from:

- 23 (a) Imitating, copying, or making any other unauthorized use or unauthorized  
24 distribution of material protected by Plaintiff's registered copyrights;  
25  
26 (b) Engaging in any other activity constituting an infringement of Plaintiff's  
27 copyrights, or right to use or to exploit said copyrights;  
28

- 1 (c) Disposing of or destroying any documents or related materials that show,  
2 indicate, reference, or otherwise document that Defendants have installed,  
3 marketed, manufactured, distributed, advertised, or duplicated counterfeit  
4 or infringing material products which use, incorporate or adopt Plaintiff's  
5 copyrighted material or other creative material;  
6 (d) Engaging in acts of false designation of origin, false or misleading  
7 description of fact, and false or misleading representation against Plaintiff  
8 as defined in 15 U.S.C. § 1125(a); and  
9 (e) Assisting, aiding, or abetting any other person or business entity in  
10 engaging in or performing any of the activities referred to in  
11 subparagraphs (a) through (d) above.  
12

13 3. Impounding all copies made or used in violation of Plaintiff's exclusive rights,  
14 and all transparencies, film, film negatives or other articles by means of which such copies may  
15 be reproduced;  
16

17 4. Ordering destruction of all copies found to have been made or used in violation of  
18 Plaintiff's rights and of all film, transparencies, film negatives or other articles by means of  
19 which such copies may be reproduced;  
20

21 5. Requiring Defendants to account to Plaintiff for any and all uses and any and all  
22 profits derived by Defendants from the sale and use of Plaintiff's work and for all damages  
23 sustained by Plaintiff by reason of said acts of infringement and unfair competition;  
24

25 6. Awarding Plaintiff damages as well as Defendants' revenues and profits  
26 attributable to the infringements under 17 U.S.C. § 504(b) and 15 U.S.C. § 1117(a), or, in the  
27 alternative, as Plaintiff may elect, the maximum allowable statutory damages for each infringing  
28 act under 17 U.S.C. § 504(c);



7. Awarding Plaintiff damages under 15 U.S.C. § 1117, together with Defendants' profits, the costs of the action and reasonable attorneys' fees.

8. Awarding Plaintiff her costs, prejudgment interest and post-judgment interest, and her reasonable attorneys' fees incurred in prosecuting this action;

9. Awarding treble damages as a result of Defendants' willful, intentional and bad faith conduct; and

10. Such other and additional relief as is just and proper.

## JURY DEMAND

Plaintiff respectfully demands a trial by jury of all issues so triable in this matter, under the provisions of Rule 38(b) of the Federal Rules of Civil Procedure.

DATED this 26<sup>th</sup> day of June, 2009.

Respectfully submitted,

HENDRICKS &amp; LEWIS

By:

Katherine Hendricks  
WSBA No. 14040  
901 Fifth Avenue, Suite 4100  
Seattle, Washington 98164  
Email: kh@hllaw.com  
Telephone: (206) 624-1933  
Facsimile: (206) 583-2716