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IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SONOMA

CLAUDIA OCHOA, CESAR GONZALEZ, MONICA GALLEGOS, and RANDY GALLEGOS, on behalf of themselves and others similarly situated,

Plaintiffs,

vs.

W REAL ESTATE, a California corporation, RANDALL PAUL WALLER, an individual, and DOES 1 through 1,000, inclusive,

Defendants.

Case No.

CLASS ACTION COMPLAINT FOR (1) VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 (UNFAIR COMPETITION), (2) BREACH OF FIDUCIARY DUTY, (3) CONSTRUCTIVE FRAUD, (4) VIOLATION OF THE CARTWRIGHT ACT (CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 16300, ET SEQ.), (5) VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT (CAL. CIV. CODE §§1750, ET SEQ.), (6) CIVIL CONSPIRACY, AND (7) AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

DEMAND FOR JURY TRIAL

Plaintiffs CLAUDIA OCHOA, CESAR GONZALEZ, MONICA GALLEGOS, and RANDY GALLEGOS (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated, complain and allege the following against W REAL ESTATE, a California corporation, RANDALL PAUL WALLER, an individual, and DOES 1 through 1,000, inclusive:

STATEMENT OF THE CASE

1. This case challenges a uniform, deliberate, and coordinated scheme by Defendants W Real Estate ("W Real Estate") and its principal, Defendant Randall Paul Waller ("Waller"), to impose

mandatory, undisclosed **dual agency** on every buyer of a new single-family homes in multiple California residential housing developments.

2. Defendants' scheme violated California's dual-agency statutes, the Real Estate Law, and long-standing fiduciary principles prohibiting brokers from acting for more than one party in a transaction without voluntary, informed, and knowing consent from each principal.

3. Defendants intentionally codified their compulsory dual agency in writing. Every exclusive listing agreement W Real Estate executed with its developer clients contained a clause **mandating** that W Real Estate "**shall represent both buyer and seller in all transactions**," ensuring that dual agency would apply in every sale.

4. The mandatory dual agency clause was hidden from buyers who never saw these agreements, were never informed of their terms, and had no ability to knowingly consent to the pre-determined mandatory dual-agency requirement.

5. California Civil Code §2079.16 requires that dual agency be permitted only "with the knowledge and consent of both the Seller and the Buyer." Business & Professions Code §10176(d) makes it grounds for license revocation for a broker to act "for more than one party in a transaction without the knowledge or consent of all parties thereto." These statutes reflect the common law rule that dual agency must be voluntary, informed, disclosed, and uncoerced. Defendants' mandatory dual-agency clauses made lawful consent impossible and violated these statutes in every transaction.

6. To further ensure that no buyer ever received independent representation or meaningful choice, Defendants, together with their developer clients, implemented a standardized "Broker Referral Program." Under the Program, any outside agent who previously represented a prospective buyer was **required** to (a) withdraw from representation, (b) relinquish their clients to W Real Estate, and (c) accept a 2.5% payoff (falsely labeled a "referral fee") **conditioned on** abandoning their buyers. After "the point of introduction," the outside agent was prohibited from any further involvement, and W Real Estate took over exclusive representation.

7. This payoff structure is the opposite of a lawful new-home cooperating-broker arrangements. In legitimate co-ops, outside agents are encouraged to represent buyers and receive

cooperating commissions for their representation – not bribes falsely labeled "referral fees" to *stop* representing them. Defendants' program was designed to purge independent representation, secure both sides of the commission for Defendants, and force buyers into conflicted and unlawful dual-agency relationships in one of the most significant financial transactions of their lives.

8. Defendants' conduct was compounded by a pattern of both concealment and uniform misrepresentations. In addition to not disclosing the mandatory dual agency clause, that mandatory dual agency without voluntary consent is unlawful, that buyers had the right to independent representation, or that the referral-fee scheme violated California law, W Real Estate's sales agents routinely told buyers and outside real estate agents, both orally and writing, that outside agents were not permitted and that "**Randy Waller and I are the agents for buyers and sellers in this community**."

9. Defendants weaponized CAR Form AD and Form AC, forms intended to protect consumers by informing them of their agency choices, while simultaneously concealing that buyers had no actual choice because dual agency had been predetermined and outside agents had been driven out of the transaction.

10. In addition to violating California's agency and fiduciary laws, Defendants' conduct also restrained competition in the market for buyer-side broker services within each affected development. Acting in concert with its' developer clients and through the referral-fee payoff scheme, Defendants excluded all competing buyer's agents, foreclosed consumer access to independent representation, and allocated the entire buyer-representation market to W Real Estate. This anticompetitive structure deprived buyers of competitive alternatives, negotiation leverage, rebates, and conflict-free advice, further magnifying the harm caused by Defendants' dual-agency misconduct.

11. Hundreds of California homebuyers, many of them first-time purchasers, were deprived of their statutory rights, misled about their right to representation, and forced into a dual-agency relationship predetermined by undisclosed private contracts with wealthy developers.

12. Every Class member paid commissions that Defendants were legally prohibited from collecting by virtue of their forced dual agency and breaches of fiduciary duty and were deprived of the protections that California law guarantees to real-estate consumers.

PARTIES

13. Plaintiff CLAUDIA OCHOA is now, and at all times mentioned was, an individual residing in Sonoma County, California, who purchased a new home in a housing development listed for sale by W Real Estate and was required to retain W Real Estate and/or its associate licensee(s) as dual agents pursuant to W Real Estate's secret mandatory dual agency listing agreement.

14. Plaintiff CESAR GONZALEZ is now, and at all times mentioned was, an individual residing in Sonoma County, California, who purchased a new home in a housing development listed for sale by W Real Estate and was required to retain W Real Estate and/or its associate licensee(s) as dual agents pursuant to W Real Estate's secret mandatory dual agency listing agreement.

15. Plaintiff MONICA GALLEGOS is now, and at all times mentioned was, an individual residing in Sonoma County, California, who purchased a new home in a housing development listed for sale by W Real Estate and was required to retain W Real Estate and/or its associate licensee(s) as dual agents pursuant to W Real Estate's secret mandatory dual agency listing agreement.

16. Plaintiff RANDY GALLEGOS is now, and at all times mentioned was, an individual residing in Sonoma County, California. , who purchased a new home in a housing development listed for sale by W Real Estate and was required to retain W Real Estate and/or its associate licensee(s) as dual agents pursuant to W Real Estate's secret mandatory dual agency listing agreement

17. Defendant W REAL ESTATE ("W REAL ESTATE") is a California corporation with its principal business office and place of business in Sonoma County, California. W Real Estate is now, and at all times mentioned was, licensed with the California Department of Real Estate (Lic. No. 01795950).

18. According to its website, W Real Estate (a) is "Northern California's #1 Independent Real Estate Brokerage in the North Bay", (b) employs 270 agents in 13 offices located in the North Bay and San Francisco, and (3) was named within the top 1,000 real estate brokerage firms in the United States by sales volume.

19. W Real Estate has served as the exclusive listing agent for numerous residential developers in California, including in Sonoma County, including nationally and regionally well-known

developers such as Lennar, City Ventures, Lenox Homes, Christopherson Homes, Synergy Group, Morgan Properties, and APM Homes.

20. W Real Estate has been the exclusive listing agent for at least 730 new home sales (and likely significantly more) across dozens of residential developments in California, including in Sonoma County, including without limitation: Wildflower / Aria (54 homes), Mark West Village (15 homes), Bay Village (12 homes), Kerry Ranch (30 homes), City 44 (44 homes), Riverhouse (8 homes), Carriage Creek (13 homes), Reserves at Skyhawk (35 homes), The Gardens (82 homes), Fountain Grove, Portello Windsor (68 homes), Acacia (5 homes), The Vineyards at Dennis Lane (30 homes), Fountain Grove Vista (3 homes), Hummingbird Lane (24 homes), Veev, Riverbend (27 homes), Paseo Vista (104 homes), Acacia Village (25 homes), Riva Reserve (17 homes), Piner Meadows (52 homes), Village Walk (46 homes), Rincon Place, Alexander Valley View (7 homes), Dvele – Fountaingrove, Portello, West Village Santa Rosa, and Arden Healdsburg (29 homes).

21. Each of the developments where W Real Estate was retained as the exclusive listing broker was marketed as a unique product (i) built by specific developers, (ii) in specific styles (e.g., craftsman, modern, etc.), (iii) in specific choice or convenient locations, and (iv) with specific features, floorplans, designs and/or amenities, each of which, individually and collectively, were custom marketed to specific buyers looking for specific products in specific locations.

22. At all times applicable hereto, California in general, and Sonoma County, in particular, were dealing with a housing shortage which was especially acute in areas where W Real Estate was transacting business as an exclusive listing agent.

23. Defendant RANDALL PAUL WALLER ("WALLER") is now, and at all times mentioned was, an individual residing in Sonoma County, California. Waller is now, and at all times mentioned was, the designated officer for W Real Estate and a licensed real estate broker (Lic. No. 01382348).

24. At all relevant times, Defendant Randall Paul Waller was the managing agent, principal decision-maker, and controlling officer of W Real Estate within the meaning of Civil Code §3294(b). Waller personally authorized, directed, ratified, and implemented the mandatory dual-agency

provisions, the Broker Referral Program, the exclusion of outside agents, and the concealment and misrepresentations alleged herein. Waller exercised substantial discretionary authority over W Real Estate's policies and sales practices and was the driving force behind the unlawful conduct. Waller exercised discretionary authority over corporate policy in addition to day-to-day operations.

25. DOES 1 through 300, inclusive, are individual broker and/or associate and/or salesperson licensees employed by W Real Estate who participated in the mandatory dual agency scheme or who told buyers that outside agents are "not allowed."

26. DOES 301 through 1,000, inclusive, are builders and/or developers of new homes within the State of California who hired W Real Estate to list the new housing units for sale using W Real Estate's standardized exclusive listing agreement with its forced dual agency clause, and were aware of and complicit in W Real Estate's illegal mandatory dual agency scheme.

27. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 1,000, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

28. Plaintiff is informed and believes and thereon alleges that, at all times herein mentioned, each of the defendants sued herein was the agent and/or employee of each of the remaining defendants and was at all times acting within the purpose and scope of such agency and/or employment.

JURISDICTION AND VENUE

29. The Court has personal jurisdiction over Defendants because W Real Estate's principal place of business is in Sonoma County and Randall Waller resides in Sonoma County.

30. Venue is proper in this Court in accordance with California Code of Civil Procedure §394(a) because Sonoma County is the county in which Defendants are situated.

LEGAL BACKGROUND

31. Pursuant to California Business & Professions Code §10176(d), it is unlawful and grounds for revocation of a real estate license for a licensee to act "for more than one party in a transaction without the knowledge or consent of all parties thereto."

32. Although framed in the disjunctive, the California Department of Real Estate mandates that Section 10176(d) be "read in the conjunctive, *i.e.*, to proceed to act with knowledge implies consent and one cannot consent to that which one has no knowledge" (DRE Reference Book, Ch. 10, Agency, p. 166)

33. California Business & Professions Code §10176(d) restates the common law obligations of an agent to disclose all material facts to a principal (DRE Reference Book, Ch. 10, Agency, p. 166).

34. A real estate licensee may not condition a buyer's ability to make an offer on acceptance of dual agency. Any such coercion invalidates consent and renders the dual agency unlawful.

35. Under common law principles, a real estate agent must refrain from dual representation in a sale transaction unless he or she obtains the informed consent of both principals after full disclosure of all facts which the agent knows or should know would reasonably affect the judgment of each principal in permitting such dual agency.

36. It is not enough to disclose only the fact of dual representation. Nor is it sufficient to provide a statutory disclosure form concerning dual agency.

37. Rather, the real estate licensee must also disclose all facts which would reasonably affect the judgment of each party in permitting the dual representation, and it is incumbent upon the agent to explain to the principal the ramifications of the agency relationship selected and how it affects the principal. Moreover, the agent should verify that the principal understands the facts and their ramifications.

38. Unless both parties to a dual agency give their informed knowing consent to the dual agency, including its ramifications, the agent cannot recover a commission. Where such consent is not obtained, it makes no difference that the principal was not in fact injured, or that the agent intended no wrong, or that the agent acted in good faith.

39. A dual agency not knowingly and voluntarily consented to by both principals is a fraud upon the non-consenting principal and as such, the agent is entitled to no compensation for services rendered.

40. Commission forfeiture arises by operation of law where informed consent is absent, irrespective of intent.

FACTUAL ALLEGATIONS

Compulsory Dual Agency Embedded in All Listing Agreements

41. Defendants entered into exclusive listing agreements with developers across California, including Sonoma County. These uniform and standardized written listing agreements contained clauses drafted by W Real Estate which **mandated** that W Real Estate would act as a dual agent in every transaction. Each such listing agreement contained an exhibit drafted specifically by W Real Estate which provided as follows: "**W Real Estate shall represent both buyer and seller in all transactions**."

42. Buyers were never informed of the mandatory dual agency clause, never provided a copy of the exclusive listing agreements, had no ability to negotiate it, and could not consent to a dual-agency relationship predetermined before they entered the development.

43. Because dual agency was contractually imposed and concealed, meaningful, voluntary consent to dual agency by the buyers was impossible in every transaction.

The Broker Referral Program Was a Payoff Scheme to Eliminate Outside Representation

44. To enforce the mandatory dual agency and ensure that outside agents could not represent buyers, Defendants created a uniform and standardized written "Broker Referral Program." Under the program:

a. Outside agents received a "referral fee" (not a commission) only if they withdrew from representation:

b. The Program required outside agents to "refer" their clients to W Real Estate;

c. After registration, W Real Estate "handled all contacts and follow-up";

d. Outside agents were prohibited and barred from further involvement.

45. The program's purpose was to eliminate independent representation so that W Real Estate could monopolize representation and secure dual-agency commissions in every sale.

Misrepresentations That Outside Agents Were "Not Allowed"

46. As part of its training and scripting of its agents and sales people, Defendants uniformly told both buyers and their outside real estate agents – both verbally and in writing – that outside representation was not allowed. One typical written communication, sent in response to a buyer inquiry as to whether he could use his outside real estate agent stated: "**Randy Waller and I are the agents for buyers and sellers in this community**." These statements were false and concealed buyers' statutory and common law rights.

47. These uniform misrepresentations and standardized sales scripts deprived buyers of critical information needed to make informed decisions regarding representation.

Use of CAR Forms to Create the Illusion of Choice

48. Defendants required all buyers to sign California Association of Realtors ("CAR") Form AD and Form AC, which describe buyers' rights to choose representation.

49. CAR Form AD is intended to inform consumers, accurately and transparently, of their options regarding real estate representation and the significant consequences of a dual-agency relationship.

50. The opening paragraph of Form AD tells buyers: "When you enter into a discussion . . . you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction."

51. The form then describes three potential relationships – seller's agent, buyer's agent, and dual agent (but only with the knowledge and consent of both parties).

52. The form frames these as **choices** resting with the consumer. Form AD repeatedly tells buyers to "pay attention" to the confirmation of agency status and to ensure it "accurately reflects [their] understanding." The form admonishes buyers to consider whether the agent is representing them "exclusively" or as a dual agent, implying a meaningful election.

53. Here, however, before the buyers ever received the disclosure, Defendants had already entered into listing agreements with the Developers that required Defendants to act as a dual agent in any resulting sale.

54. Despite the choice presented in CAR Form AD, declining dual agency was not an option: W Real Estate was already the seller's exclusive representative and was already contractually committed to acting as a dual agent for any buyer who wished to make an offer. The form's references to "choosing representation," "with the Buyer's consent," and "what type of agency relationship you wish to have" therefore **communicated a right the buyers did not actually possess**. As such, by the time the buyers were handed CAR Form AD, dual agency was not a topic for discussion or decision – it was an unalterable condition of purchasing the property. The "choices" presented in CAR Form AD were fictional, false and materially misleading.

55. In CAR Form AC, the buyers acknowledged receipt of a copy of the confirmation of the dual agency relationship. In reality, the "confirmation" of the dual agency relationship had long before been codified in Defendants' listing agreements and the buyers **only** choice was to confirm the pre-mandated dual agency required by Defendant's listing agreements, or to not purchase a home within the development.

56. CAR Form AC is materially misleading in that it does not explain or disclose whether the dual agency selected by each and every buyer had already been predetermined by the listing agreements Defendants had with their developer clients. Nothing on Form AC reveals that (a) Defendants were already bound by agreement with the seller to act as a dual agent for any prospective buyer, (b) the buyers' ability to select exclusive representation had been eliminated before they ever viewed the property, or (c) dual agency was not chosen by the buyers but imposed as a condition of writing an offer.

57. CAR Form AC was substantively and procedurally unconscionable because the buyer's purported "acknowledgement" of the dual agency was not voluntarily given but presented as a take-it-or-leave it proposition by virtue of the fact outside representation was not allowed. As such, when the buyer's acknowledged receipt of the confirmation of dual agency in CAR Form AC, it merely memorializes the conclusion of a process that the buyers had no meaningful participation in.

58. Defendants presented these forms as though buyers had meaningful choices, while concealing that dual agency had already been predetermined and outside agents had been eliminated. A

disclosure that frames dual agency as optional while simultaneously concealing a binding, pre-existing dual-agency requirement is not merely incomplete – it is affirmatively misleading**.**

59. CAR Forms AD and AC were misleading, concealed material facts (e.g., the mandatory dual agency in the listing agreement), and created the false impression that buyers voluntarily selected W Real Estate, when, in reality, buyers' rights had been unlawfully extinguished before their first interaction with W Real Estate.

Concealment of Illegality and Fiduciary Breaches

60. Defendants never disclosed that mandatory dual agency is unlawful without voluntary consent, that buyers had the right to independent representation, or that Defendants' referral-fee payoff scheme violated California law.

61. Defendants never provided the buyers with a copy of the listing agreements with the developer clients which contained the forced dual agency clause.

62. Because Defendants acted as dual agents without lawful consent, they were not entitled to any commission collected from Class members' escrow funds.

The Forced Dual Agency Scheme Benefitted W Real Estate and the Developers While Harming the Buyers

63. W Real Estate's forced dual-agency scheme was not designed to increase the stated commission rate on any single transaction. Rather, it was designed to eliminate independent buyer advocacy, suppress competition in buyer-side brokerage services, and consolidate control over the residential sales process. In doing so, the scheme conferred substantial financial and structural benefits on defendants W Real Estate and their developer partners, while imposing concrete, foreseeable, and classwide harm on homebuyers.

64. By contractually pre-ordaining dual agency in exclusive listing agreements and paying outside agents to withdraw from representation, W Real Estate ensured that no independent buyer's agent remained in the transaction.

65. This eliminated the only market participant whose role is to advocate exclusively for the buyer's interests. Independent buyer's agents routinely negotiate purchase-price concessions, closing-

cost credits, repair allowances, design upgrades, extended warranties, inspection contingencies, and other economic benefits. Independent buyer's agents regularly advise buyers regarding inspections, construction quality, disclosures, and risk. Independent buyer's agents likewise counsel buyers when to delay, renegotiate, or walk away from unfavorable transactions. Their participation introduces downward pressure on price, exposes defects and risks, slows sales when appropriate, and forces sellers to compete on terms, quality, and transparency.

66. W Real Estate' scheme was specifically designed to remove that pressure. With no independent buyer advocate present, W Real Estate and their developer partners were able to maintain fixed or inflexible pricing, minimize or eliminate concessions and credits, limit inspection leverage, avoid repair negotiations, and accelerate sales velocity.

67. Even where the nominal commission percentage remained unchanged, the absence of buyer-side negotiation preserved higher net sale prices, reduced post-contract costs, protected developer margins, and ensured that W Real Estate received its commission in every transaction without challenge, reduction, or dilution.

68. The Broker Referral Program further illustrates the economic purpose and effect of the scheme. In a competitive market, cooperating brokers are compensated for representing buyers and adding value through negotiation and advocacy. Here, **outside agents were paid *not* to compete**, but to abandon their clients, relinquish advocacy, and exit the transaction entirely.

69. This arrangement guaranteed W Real Estate one-hundred-percent capture of buyer representation within each development, eliminated commission rebates and service competition, and cemented W Real Estate's exclusive control over buyer access. Across multiple developments and hundreds of transactions, this produced long-term market power, repeat developer business, and insulation from competitive forces, benefits far exceeding any marginal increase in commission on an individual sale.

70. Buyers bore the full cost of this structure. They were denied independent advice in complex transactions involving pricing, inspections, construction quality, disclosures, and risk

allocation. Consequently, the buyers lost the opportunity to negotiate concessions, obtain rebates, demand repairs, or receive candid advice regarding whether to proceed, renegotiate, or walk away.

71. Buyers were affirmatively told that outside representation was "not allowed," while simultaneously being presented with disclosure forms suggesting a choice of representation that had already been secretly eliminated.

72. As a result, buyers purchased homes in a noncompetitive environment, paid commissions Defendants were legally prohibited from collecting, faced inflated or inflexible pricing, absorbed repair and inspection risks that independent agents routinely mitigate, and were forced into conflicted dual-agency relationships without voluntary or informed consent.

Discovery of the Concealed Scheme

73. Plaintiffs and the Class could not, and did not, discover the existence of the illegal mandatory dual agency clause embedded in the listing agreements Defendants signed with the developers at issue until May 2025 when Plaintiffs' counsel, in the course of litigating a different matter, obtained and reviewed a listing agreement that was not provided to Plaintiffs or Class members in connection with their transactions. Plaintiffs and the Class were neither parties to, nor recipients of the listing agreements, which Defendants did not disclose or make available to Plaintiffs and Class members at or after the time of their transactions.

74. While Plaintiffs and the Class signed standard CAR forms purporting to "consent" to the mandatory dual agency, Defendants misleadingly represented that all buyers were required to use W Real Estate as a dual agent and failed to disclose or draw Plaintiffs' attention to the fact (a) mandatory dual agency is not allowed, or (b) that Defendants had already illegally stipulated by contract that they had represent both the seller and the buyers in all transactions.

75. Defendants' concealment and misleading omissions were designed to, and did, prevent Plaintiffs and Class members from discovering the unlawful activity which was not discovered until at least May 2025 when Plaintiff's counsel, in the course of a separate litigation, first learned of the mandatory dual agency requirement and the Broker Referral Program's requirement that all outside agents withdraw their representation of their buyers.

76. By withholding the listing agreement and failing to disclose the illegality of forced dual agency, the agents deprived Plaintiffs and Class members of the information necessary to detect the scheme and to vindicate their rights.

77. As fiduciaries, the agents had a heightened duty to speak and to correct prior statements that were rendered misleading by the omission of material facts. Their failure to do so constitutes fraudulent concealment and equitable estoppel, which tolled any applicable limitations periods until Plaintiffs and the Class discovered, or reasonably could have discovered, the unlawful activity through counsel's review of the listing agreement in May 2025.

78. Defendants' concealment and misrepresentations were a substantial factor in preventing discovery of the claims. Plaintiffs and Class members reasonably relied on their fiduciaries' silence and assurances regarding the legality and propriety of the agents' dual roles, and on the completeness of the documents provided to them.

79. Because the unlawful activity was hidden in a listing agreement that Plaintiffs and Class members never saw and was actively concealed by fiduciaries who had a duty to disclose the illegality of forced dual agency, the discovery rule applies and tolls the statute of limitations until actual discovery by counsel during a different case on.

Plaintiffs' and the Class Paid Commissions Defendants Were Not Entitled To

80. The funds used to pay Defendants' commission were economically generated by the buyer's purchase. Stated differently, the buyer's purchase money was directly used to pay Defendants' commissions.

81. In addition, if a buyer retains a broker, makes an offer which the seller accepts, and then backs out of the transaction without justification, the buyer is liable for the full commission to the real estate agent (*Chan v. Tsang* (1991) 1 Cal.App.4th 1578).

82. Further, the purchase price Plaintiffs' and the Class paid for their homes was structured by the developers, in consultation with Defendants, in anticipation of the cost of the real estate commission and as such, the price of the commission was effectively baked into the purchase price for the homes. A lower commission payable to W Real Estate would have resulted in a lower home price.

83. Plaintiffs suffered economic injury because the commissions paid to Defendants were funded directly from Plaintiffs' purchase money deposited into escrow and were incorporated into the purchase price of the homes. Plaintiffs therefore lost money and property as a result of the forced dual agency scheme.

84. Defendants' commission were therefore not meaningfully the "developer's money," but a transaction cost funded entirely by the buyers.

85. In addition, the money used to pay Defendants' commissions was, in every instance, deposited into escrow by the buyers and then transferred from escrow directly to W Real Estate without ever being distributed to the developer.

86. Finally, the commissions earned by Defendants were secured by a promise to serve as the fiduciary not only of the developers, but each of the buyers. The commissions Defendants received were obtained through a breach of fiduciary duty owed to the buyers personally.

Additional Damages Sustained as a Result of the Mandatory Dual Agency Scheme

87. By eliminating independent buyer representation and paying competing brokers to withdraw, Defendants foreclosed access to competitive brokerage alternatives, including buyer-agent rebates, commission offsets, and other pricing options routinely available in a competitive market. Plaintiffs and Class members were deprived of the opportunity to obtain such rebates or pricing concessions, not because those benefits were unavailable in the market, but because Defendants' scheme intentionally suppressed competition and eliminated buyer choice.

88. Defendants' conduct deprived Plaintiffs and Class members of independent buyer-side representation and advocacy. Independent buyer's agents customarily provide economic value by advising on pricing, negotiating concessions and credits, coordinating inspections, identifying defects and risks, negotiating repairs, and counseling buyers regarding whether to proceed, renegotiate, or walk away from a transaction. Plaintiffs and Class members were denied these services and instead forced into conflicted dual-agency relationships.

89. Defendants' elimination of independent buyer representation and suppression of buyer-side competition also caused Plaintiffs and Class members to pay artificially inflated purchase prices.

The absence of buyer-side negotiation pressure allowed Defendants and their developer partners to maintain fixed or inflexible pricing, minimize concessions, limit inspection leverage, and accelerate sales without meaningful challenge.

90. These effects flow directly from the structure of Defendants' scheme itself and occur irrespective of how any individual buyer may have attempted to negotiate.

91. Plaintiffs' damages will be established using objective, market-level data reflecting broader norms and competitive conditions in buyer-side real estate brokerage services, including prevailing commission structures, rebate practices, negotiation patterns, and buyer-agent advocacy functions in comparable new-home and resale markets where independent representation was not foreclosed. This analysis relies on accepted economic methods and does not require review of any individual buyer's negotiation history, subjective reliance, or transaction-specific communications.

Punitive Damage Allegations

92. Defendants' conduct was undertaken intentionally, knowingly, and with conscious disregard of Plaintiffs' statutory and fiduciary rights. Defendants knew that California law prohibits a dual agent from acting for more than one principal without voluntary, informed consent, yet they deliberately drafted, inserted, and enforced mandatory dual-agency clauses in every listing agreement.

93. Defendants' concealment was systematic and deliberate. They intentionally withheld material facts regarding the dual-agency requirement from all buyers, used the Broker Referral Program to eliminate independent representation, and created a uniform script instructing sales personnel to falsely state that outside agents were "not allowed."

94. Defendants acted with financial motivation and self-enrichment as their primary objective, securing both sides of every commission by unlawfully restricting buyer representation. Defendants knowingly placed their own financial interests above their duties of loyalty, candor, and good faith owed to their buyer-clients.

95. Defendants' conduct was oppressive because it deprived buyers, many of them first-time homebuyers, of meaningful representation in one of the most significant financial transactions of their lives, effectively coercing them into conflicted dual-agency relationships.

96. Defendants' conduct was fraudulent because they intentionally misrepresented buyers' rights, concealed the existence and illegality of mandatory dual agency, and used statutory disclosure forms as tools of deception to create the false appearance of voluntary buyer consent.

97. Defendants' conduct warrants punitive and exemplary damages under Civil Code §3294 because it was malicious, oppressive, and fraudulent and was undertaken with a conscious disregard of the rights and safety of Plaintiffs and the Class.

CLASS ACTION ALLEGATIONS

98. Plaintiffs bring this action under Code of Civil Procedure §382 on behalf of themselves and all others similarly situated.

99. The Class is defined as:

> **All persons who purchased newly constructed homes in residential developments in California where: (a) W Real Estate or any of its agents acted as the listing agent for the developer; (b) the applicable listing agreement contained a mandatory dual-agency requirement obligating W Real Estate to represent both the developer and the buyer; and (c) the buyer was represented in the transaction by W Real Estate or any of its brokers, agents, or sales personnel.**

100. Excluded from the Class are Defendants, their officers, directors, employees, agents, and immediate families; any entity in which Defendants have a controlling interest; the Court and its staff; and any person who validly opts out.

101. This case satisfies all requirements for class certification under California law, including manageability and predominance of common issues over individual questions. The systematic nature of defendants' scheme creates common questions of law and fact that predominate over individual issues. All class members were subjected to the same mandatory dual agency provisions embedded in standardized listing agreements, the same broker referral program designed to eliminate independent representation, the same misrepresentations about outside agent availability, and the same concealment of Defendants' illegal forced-dual-agency scheme.

102. **Numerosity**. The Class is so numerous that joinder of all members is impracticable. Defendants acted as exclusive listing brokers for dozens of new-home developments across California. At least 730 (likely significantly more) people purchased new homes in these developments where W Real Estate acted as the dual agent for the buyers and the developers.

103. Class members can be readily identified from Defendants' standardized transaction records, builder sales logs, MLS data, escrow closing statements, and commission disbursement records.

104. **Commonality and Predominance**. Numerous questions of law and fact are common to all Class members and predominate over any individualized issues, including whether:

a. Defendants' listing agreements uniformly required mandatory dual agency;

b. Mandatory dual agency violated Civil Code §2079.16 and/or Business & Professions Code §10176(d);

c. Defendants were required to disclose the existence and consequences of the mandatory dual-agency provision in its listing agreements;

d. Defendants' use of CAR Form AD and Form AC was misleading;

e. Defendants eliminated outside representation through the Broker Referral Program;

f. Defendants misrepresented that outside representation was prohibited;

g. Defendants failed to meaningfully disclose buyers' right to independent representation;

h. Defendants owed fiduciary duties and breached them;

i. Defendants' conduct violated the UCL;

j. Defendants' conduct violated the Cartwright Act;

k. Defendants' conduct violated the CLRA;

l. Defendants were legally entitled to commissions paid from buyer escrow funds;

m. Restitution, disgorgement, and injunctive relief are appropriate classwide.

105. These issues arise from Defendants' standardized documents, uniform scripts, training policies, referral-program forms, and form listing agreements, all of which were used across developments statewide.

106. Because Defendants' misconduct was systemic, uniform, and policy-driven, common questions overwhelmingly predominate.

107. Because dual agency was predetermined by undisclosed contracts before any buyer interaction, no class member could have provided lawful, voluntary consent regardless of subjective understanding.

108. Defendants' liability arises independently of intent, reliance, or subjective knowledge, because California law prohibits dual agency absent voluntary and informed consent and mandates forfeiture where such consent is lacking.

109. **Typicality**. Plaintiffs' claims are typical of the Class because Plaintiffs were subjected to the same unlawful mandatory dual-agency model, the same concealment, the same misrepresentations, and the same deprivation of representation rights.

110. Plaintiffs' transactions are typical in all material respects because the same mandatory dual-agency provisions, referral-program restrictions, standardized CAR forms, misrepresentations, and concealment applied uniformly to all Class members

111. Plaintiffs' injuries arise from the same course of conduct affecting all Class members.

112. **Adequacy**. Plaintiffs will fairly and adequately protect the Class. Plaintiffs' interests are fully aligned with those of the Class.

113. Plaintiffs have retained counsel experienced in class actions, real-estate law, and fiduciary-duty litigation.

114. No conflicts exist between Plaintiffs and the Class.

115. **Superiority**. A class action is superior to individual lawsuits because the damages per class member, primarily consisting of unlawful commissions and inflated purchase prices, are significant in the aggregate but may be insufficient to justify individual litigation.

116. Litigating hundreds of identical cases would burden the courts and risk inconsistent outcomes. A class action ensures efficiency, consistency, and uniform relief.

117. **Classwide Restitution and Damages Model**. Restitution, disgorgement, and damages can be determined through a uniform classwide methodology, primarily: the commission amounts paid to Defendants from buyer escrow funds, plus the loss of competitive pricing and/or higher home values.

118. Classwide restitution and disgorgement are measurable through Defendants' own escrow and commission records and do not require individualized inquiries, satisfying California's predominance and manageability standards.

119. Defendants' own records, including escrow closing statements and commission disbursement ledgers, identify the precise amounts W Real Estate received in commission despite breaching its fiduciary duties to Plaintiffs and the Class.

120. Because Defendants were not legally entitled to any commissions, these amounts constitute the primary measure of classwide restitution.

121. No individualized reliance or damages issues defeat classwide treatment because Defendants' misconduct was standardized and concealed in the same manner for every Class member.

FIRST CAUSE OF ACTION

Violation of California Business & Professions Code §17200 et seq.

(Against All Defendants and DOES 1-300)

122. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

123. California's Unfair Competition Law ("UCL"), Business & Professions Code §§17200 *et seq.*, prohibits any unlawful, unfair, or fraudulent business act or practice.

124. **Unlawful Conduct**. Defendants engaged in unlawful business practices by violating:

a. Business & Professions Code §10176(d), which prohibits a licensee from acting for more than one party in a transaction without the knowledge and consent of all parties;

b. Civil Code §2079.16 and associated agency-disclosure statutes, which require voluntary, informed consent before a broker may act as a dual agent;

c. The Cartwright Act, Business and Professions Code §§16720–16726, as described below;

d. The Consumers Legal Remedies Act, Civil Code §§1750, *et seq.*, as described below

e. California common-law fiduciary principles requiring full disclosure of all material facts affecting a principal's decision to permit dual representation.

f. Beyond the dual agency violations already pled, defendants violated Business & Professions Code section 10177.5 by engaging in conduct that would subject them to licensing discipline for fraud, misrepresentation, or deceit in real estate transactions. The systematic embedding of mandatory dual agency clauses without disclosure, combined with the referral fee scheme designed to eliminate independent representation, constitutes substantial misrepresentation under Business & Professions Code section 10176(a) and dishonest dealing under section 10176(i).

125. Defendants violated these statutes and duties by embedding a mandatory, undisclosed dual-agency requirement in every listing agreement, purging outside real estate agents through the broker referral program, concealing that requirement from buyers, proceeding to act as dual agents without informed consent, and, in many cases, expressly misrepresenting to buyers that outside agents were not allowed.

126. **Unfair Conduct**. Defendants engaged in unfair business practices by designing and implementing a business model whose central purpose was to eliminate independent buyer representation and guarantee Defendants' dual-agency status in every transaction.

127. Defendants' standardized "Broker Referral Program," which required outside agents to withdraw from representing buyers and accept a referral-fee payoff, unfairly stripped buyers of independent representation and secured both sides of the commission for Defendants.

128. Defendants' conduct offended established public policies embodied in California's agency-disclosure statutes, the Real Estate Law, and fiduciary-duty principles designed to protect consumers from coerced dual agency and undisclosed conflicts of interest.

129. **Fraudulent Conduct**. Defendants engaged in fraudulent business practices by:

a. Concealing the compulsory dual-agency provisions in the listing agreements;

b. Misrepresenting to buyers that outside agents were "not allowed" and that Defendants alone would represent both sides;

c. Presenting CAR Form AD and Form AC as though buyers had a real choice of agency when, in fact, Defendants had already predetermined the agency relationship; and

d. Omitting material facts necessary to make Defendants' representations not misleading, including buyers' right to independent representation and the illegality of mandatory dual agency.

130. These misrepresentations and omissions were likely to deceive reasonable consumers and did deceive every member of the Class.

131. **Restitution**. In each Class transaction, Defendants' commissions were paid directly from buyers' escrowed purchase funds.

132. Because Defendants acted mandatory dual agents without informed consent, they were not legally entitled to any commission.

133. The commission payments are specifically identifiable, traceable to Class members' funds, and reflected in escrow records, commission disbursement statements, and Defendants' internal files.

134. Plaintiffs personally lost money because their escrowed purchase funds were the direct source of Defendants' commission payments.

135. Plaintiffs and the Class are entitled to restitution and disgorgement of all monies Defendants wrongfully obtained through their unlawful, unfair, and fraudulent practices.

136. **Injunctive Relief**. Plaintiffs and the Class seek injunctive relief restraining Defendants from:

a. Using mandatory dual-agency provisions in listing agreements;

b. Continuing the Broker Referral Program;

c. Misrepresenting or concealing buyers' right to independent representation; and

d. Receiving or retaining commissions obtained through unlawful conduct.

137. Such relief is necessary to prevent ongoing and future violations of the UCL.

138. Plaintiffs also seek attorneys' fees under Code of Civil Procedure §1021.5.

SECOND CAUSE OF ACTION

Breach of Fiduciary Duty

(Against All Defendants and DOES 1-300)

139. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

140. A fiduciary relationship existed between Defendants and Plaintiffs. When acting as real-estate agents and purported dual agents, Defendants owed Plaintiffs fiduciary duties of undivided loyalty, full and honest disclosure, avoidance of conflicts of interest, good faith, and the highest standard of fair dealing.

141. Defendants breached heightened fiduciary duties that arise specifically in dual agency relationships under California Supreme Court authority. This heightened standard applies to both the broker and all associate licensees. Defendants systematically violated these enhanced duties by concealing the mandatory dual agency provisions, failing to disclose the referral program's impact on buyer representation, and misrepresenting that outside agents were prohibited.

142. Defendants breached their fiduciary duties by:

a. Entering into secret listing agreements containing mandatory, undisclosed dual-agency provisions with the developers;

b. Failing to disclose the existence, nature, or consequences of these compulsory dual-agency provisions;

c. Implementing a referral-fee payoff scheme designed to coerce outside agents to withdraw from representation;

d. Misrepresenting to buyers and their outside agents that outside representation was not permitted;

e. Using CAR Form AD and Form AC to create the false appearance of choice while concealing that dual agency had been predetermined;

f. Acting to secure both sides of the commission while concealing conflicts of interest; and,

g. Placing their own financial interests above the interests of their buyer-clients.

143. As a direct and proximate result of Defendants' breaches, Plaintiffs and the Class suffered injury, including loss of independent representation, payment of unlawful commissions, and inflated home prices.

144. Defendants' conduct constitutes intentional misconduct warranting complete commission forfeiture rather than mere actual damages. The systematic embedding of mandatory dual agency clauses, implementation of the referral program to eliminate competition, and misrepresentations about outside agent availability demonstrate intentional disloyalty, bad faith, and duplicitous conduct that goes far beyond inadvertent breaches. The systematic nature across multiple developments demonstrates this was not inadvertent conduct but a deliberate business model designed to maximize defendants' profits through deceptive practices.

145. To the extent Defendants are not subject to disgorgement, they will be unjustly enriched having obtained the benefits of the commission through the perpetration of fraud and deceptive conduct upon the buyers as described herein.

146. Defendants' conduct was carried out intentionally, maliciously, oppressively, and with conscious disregard of Plaintiffs' rights. Defendants knowingly concealed the mandatory dual-agency provisions, deliberately eliminated independent representation, and intentionally misled buyers regarding their statutory rights for the purpose of financial gain.

147. Such conduct constitutes "malice," "oppression," and "fraud" within the meaning of Civil Code §3294. Defendants acted with the intent to deceive or with willful and conscious disregard of buyers' rights to independent representation and informed consent.

148. Plaintiffs therefore seek punitive and exemplary damages against Defendants, including Waller in his capacity as managing and directing agent of the enterprise, in an amount sufficient to punish and deter similar misconduct in the future.

149. Plaintiffs also seek attorneys' fees under Code of Civil Procedure §1021.5.

THIRD CAUSE OF ACTION

Constructive Fraud

(Civil Code §1573)

(Against All Defendants and DOES 1-300)

150. Plaintiffs incorporate all preceding paragraphs.

151. A fiduciary relationship existed between Plaintiffs and Defendants. As fiduciaries, Defendants owed duties of complete candor, full disclosure, and loyalty.

152. Constructive fraud arises when a fiduciary breaches these duties, gains an advantage by misleading the principal, or fails to disclose material facts.

153. Defendants committed constructive fraud by:

a. Failing to disclose mandatory dual-agency provisions in the listing agreements;

b. Failing to disclose that mandatory dual agency is unlawful without voluntary, informed consent;

c. Concealing buyers' rights to independent representation;

d. Misrepresenting that outside agents were prohibited from participating;

e. Using CAR agency forms to create the illusion of choice; and

f. Concealing the substantial financial conflicts inherent in Defendants' scheme.

154. These omissions were material because a reasonable buyer would consider independent representation and dual-agency conflicts vitally important information in deciding how to engage in a real-estate transaction.

155. As a result of Defendants' constructive fraud, Plaintiffs suffered injury, including payment of unlawful commissions, inflated pricing, loss rebates, and the loss of independent representation.

156. Although constructive fraud does not require intent, Defendants' conduct involved actual fraud, malice, and oppression within the meaning of Civil Code §3294. Defendants knowingly suppressed material facts they were legally obligated to disclose and acted with conscious disregard of buyers' rights.

157. Defendants' scheme, including mandatory dual-agency agreements, the referral-fee payoff system, systematic misrepresentations, and concealment of conflicts, was executed willfully and intentionally for the purpose of obtaining unlawful financial gain at the expense of consumers.

158. Defendants' conduct warrants an award of punitive and exemplary damages to punish and deter similar misconduct by Defendants and other licensed real-estate professionals.

159. Plaintiffs seek restitution, disgorgement, punitive damages, and attorneys' fees under Code of Civil Procedure §1021.5.

FOURTH CAUSE OF ACTION

Violation of the Cartwright Act (Bus. & Prof. Code §§16720–16750)

(Against All Defendants and DOES 1-1,000)

160. Plaintiffs incorporate all preceding paragraphs.

161. The Cartwright Act prohibits combinations, trusts, agreements, and conspiracies in restraint of trade, including group boycotts, tying arrangements, exclusive-dealing agreements, and any contract that restricts free competition in the provision of services.

162. **Relevant Product and Geographic Market**. The relevant market is the market for buyer-side real-estate brokerage services in new-home developments in the State of California, in general, and the County of Sonoma, in particular (where W Real Estate has a significant market share, as alleged above).

163. Alternatively, the relevant market includes buyer-side real estate brokerage services for new-home construction statewide or regionally, within which Defendants' standardized practices had the purpose and effect of foreclosing competition at the development level.

164. Defendants' services form a distinct submarket because:

a. Developers of new-home communities generally require on-site sales programs.

b. New home developments are rare in California which has few new home developments and otherwise faces a shortage of new homes.

c. Buyer-side representation in new-home developments is not reasonably interchangeable with representation in the resale market because buyers of new construction typically

cannot negotiate commissions, pricing incentives, or inspection contingencies without an agent familiar with that development's policies and programs.

d. New-home developments are geographically discrete: buyers choose among the limited set of developments within the commuting radius of their employment, schools, and communities based on the particular characteristics of each development.

e. Each new-home development listed by W Real Estate was marketed as a unique product built by specific developers, in specific styles (e.g., craftsman, modern, etc.), in choice or convenient locations, and with specific features, floorplans, designs and/or amenities, each of which, individually and collectively, were custom marketed to specific buyers looking for specific products in specific locations.

165. Thus, for each new-home development in California in which W Real Estate acted as the exclusive listing broker, there existed a micro-market in which consumers purchased distinct brokerage services, and in which Defendants and competing buyer's agents offered (or attempted to offer) those services.

166. The geographic market consists of the State of California generally and the County of Sonoma in particular, and specifically, individual new-home developments and the local counties in which they are located, each of which constitutes a discrete marketplace for buyer-agent services.

167. **Market Structure and Defendants' Market Power.** For numerous residential developments across California and Sonoma County, W Real Estate was appointed the exclusive listing broker and controlled all buyer-facing interactions. Because buyers could only purchase a home through the developer's designated broker and because developers simultaneously adopted W Real Estate's restrictive access policies, Defendants possessed and exercised:

a. Complete control over the limited number of homes within each development;

b. Market power exceeding 90% in each local market for buyer-agent services within the affected developments;

c. The ability to foreclose competing buyer's agents from meaningful participation;

d. The ability to raise price levels and eliminate rebates by eliminating competition on commissions; and

e. The power to impose commission structures and restrict consumer choice without losing sales.

168. Defendants' contractual control over access and information for each development, combined with their coordination with developers, gave Defendants the power to dictate the competitive conditions of each development's buyer-agent market.

169. **Unlawful Contract, Combination or Conspiracy**. Defendants W Real Estate and Waller, together with the developers for whom W Real Estate served as exclusive listing broker, entered into written listing agreements that had the purpose and effect of restraining trade in the market for buyer-side real-estate representation in each affected development.

170. These uniform, written listing agreements included:

a. Mandatory dual-agency provisions requiring W Real Estate to represent both buyers and sellers in *every* transaction;

b. A standardized Broker Referral Program whereby competing brokers were paid a "referral fee" payoff on the condition that they withdraw from representing their buyer-clients and cede all representation to Defendants;

c. Policies that barred or discouraged outside buyer's agents, including misrepresentations that outside representation was "not allowed"; and

d. Sales scripts, training, and uniform conduct implemented across all developments to ensure that all buyer-representation business was exclusively allocated to W Real Estate.

171. These vertical agreements formed the backbone of Defendants' scheme. In addition, the referral-fee program, which paid horizontal competitors (outside buyer agents) to withdraw from competition, constituted a horizontal market-allocation agreement and a group boycott, both unlawful per se under the Cartwright Act, or, alternatively, unlawful under the rule of reason.

172. These agreements and practices constitute a contract, combination, or conspiracy within the meaning of Business & Professions Code §§16720 and 16726 because they excluded all competing

buyer-side brokers, eliminated competitive alternatives, and allocated the entire buyer-representation market within each development to W Real Estate.

173. The following anticompetitive restraints were jointly conceived, implemented, and enforced:

a. Horizontal boycott: Competing buyer brokers were systematically paid to exit the market and prohibited from representing their clients resulting in an effective group boycott of outside brokers;

b. Market allocation: Defendants and developers allocated all buyer representation in the development to W Real Estate, thereby foreclosing all competition in the buyer-agent market for new-home developments and resulting in reduction of consumer choice.

c. Exclusive dealing: Purchase of a home was conditioned on using W Real Estate for representation (i.e., "you may buy only if you use our agent").

d. Tying: The purchase of real property (the tying product) was conditioned on obtaining brokerage services exclusively from W Real Estate (the tied product).

174. The above conduct is per se unlawful as a horizontal group boycott, market allocation, tying (home purchase conditioned on using W Real Estate as buyer's agent), exclusive dealing, and paying competitors to exit. No inquiry into market power or reasonableness is required. Alternatively, the above conduct is unlawful under the rule of reason.

175. Alternatively, the agreements and referral-fee scheme foreclosed all or nearly all independent brokers in affected developments, producing substantial anticompetitive effects: removal of lower-priced and rebate-offering competitors; elimination of independent advice; reduced quality, choice, and service competition; and a de facto monopoly over buyer representation, not justified by any pro-competitive rationale

176. **Anticompetitive Effects and Foreclosure of Competition**. Defendants' practices resulted in substantial foreclosure of the entire market for buyer-side brokerage services in each affected development. Specifically:

a. 100% foreclosure: Competing brokers were excluded or forced to abandon their clients upon pain of forfeiting access to the development.

b. Suppression of price and service competition: Without independent buyer-agents, buyers ability to obtain fee rebates, reduced buyer-agent commissions, or competitive alternatives that are routinely offered in an open market was diminished.

c. Buyers were deprived of independent negotiation leverage, advice, and representation, thereby reducing quality, choice, and service competition.

d. Raised prices: Buyers paid supracompetitive prices for homes because commissions, fixed and controlled entirely by W Real Estate, were baked into the purchase price.

e. Reduced output and quality: Buyers received lower-quality services due to conflicts of interest inherent in mandatory dual agency, which eliminated competition on quality, loyalty, fiduciary obligations, and negotiation services.

177. Any claimed pro-competitive justification (e.g., efficiency, simplicity) is outweighed by the significant anticompetitive effects.

178. **Anti-Trust Injury**. Plaintiffs suffered antitrust injury including: (i) Payment of supracompetitive commissions hidden within the home price; (ii) Loss of rebates and competitive fee reductions universally available in competitive residential brokerage markets; (iii) Suppression of commission competition, rebate competition, and service-quality competition; (iv) Deprivation of the benefits of a competitive brokerage market; (v) Loss of the ability to choose independent agents; (vi) Loss of the benefits of free and fair competition, including bargaining leverage, full fiduciary advocacy, transparent pricing, and non-conflicted advice; and, (vii) Monetary overcharges and economic harm directly tied to the foreclosure of competition.

179. Plaintiff's damages include, without limitation:

a. Restitution / disgorgement of commission W Real Estate had no right to receive by virtue of its violation of California law;

b. Commission overcharges paid in the restrained environment;

c. Lost rebates, lost competitive savings, and loss of competitive alternatives;

d. Loss of independent representation (i.e., loss of quality, independence, and degradation of negotiation and advice quality); and,

e. Home price inflation.

180. Under Business & Professions Code §16750, Plaintiffs and the Class are entitled to recover three times the damages sustained, as well as attorneys' fees and costs.

181. Plaintiffs therefore request judgment against Defendants for treble damages, attorneys' fees, costs of suit, injunctive relief, and all other relief available under the Cartwright Act.

FIFTH CAUSE OF ACTION

Violation of the Consumers Legal Remedies Act (Civ. Code §§1750, et seq.)

(Against All Defendants and DOES 1-300)

182. Plaintiffs incorporate all preceding paragraphs.

183. The transactions at issue constitute "transactions" involving the sale or lease of services to consumers for personal, family, or household purposes within the meaning of the CLRA.

184. Defendant's brokerage-related representations and conduct constitute the provision of "services" under the CLRA.

185. Defendants engaged in unfair and deceptive acts and practices in violation of Civil Code section 1770, including, without limitation, the following:

a. Representing that services have characteristics, uses, and benefits which they do not have, in violation of Civil Code section 1770(a)(5), by misrepresenting the characteristics and benefits of brokerage services and stating that outside representation was "not allowed."

b. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of Civil Code section 1770(a)(14), by misrepresenting buyers' rights to independent representation and the legal obligations governing agency relationships.

c. Misrepresenting the authority of a salesperson or agent to negotiate the final terms of a transaction, in violation of Civil Code section 1770(a)(18), by making false statements

regarding who could lawfully act as a representative for buyers and asserting that Defendant's personnel were the agents for both buyers and sellers.

186. Defendant's misrepresentations and omissions were part of a systematic scheme to coerce buyers into dual-agency relationships and to eliminate outside representation, including through written and oral statements that independent agents were "not allowed."

187. Defendants' misrepresentations were material as a matter of law because they concerned the existence, legality, and exclusivity of representation in a residential real estate transaction.

188. Plaintiff and Class Members reasonably relied on Defendant's uniform misrepresentations and omissions regarding the availability and legality of independent representation and would have acted differently had the true facts been disclosed.

189. Because Defendants acted as fiduciaries and controlled access to the transaction, Plaintiffs' reliance on Defendants' omissions and misrepresentations was reasonable as a matter of law

190. As a direct and proximate result of Defendant's violations of the CLRA, Plaintiff and Class Members suffered damage, including payment of commissions and other monetary harm associated with the loss of independent advocacy and conflict-free representation in residential real estate transactions.

191. The remedies provided by the CLRA are cumulative of other statutory and common-law remedies, and a prevailing plaintiff is entitled to recover attorney's fees under Civil Code section 1780(e). Plaintiff seeks all available CLRA remedies, including actual damages, restitution, injunctive relief, punitive damages where appropriate, and attorney's fees and costs.

192. Plaintiff provided, or will provide, the requisite notice and demand for correction as required by the CLRA, and to the extent any additional notice is required, Plaintiff will amend as permitted by statute.

SIXTH CAUSE OF ACTION

Civil Conspiracy

(Against All Defendants and DOES 1-1,000)

193. Plaintiffs incorporate all preceding paragraphs.

194. Plaintiffs allege a civil conspiracy among W Real Estate (and DOES 1-300) and the Developers (DOES 301-1,000) to implement and profit from an unlawful dual-agency scheme that deprived buyers of independent representation and lawful, voluntary, informed consent. This conspiracy consisted of a common plan and agreement, memorialized in uniform written listing agreements and enforced through standardized sales practices, to impose mandatory dual agency in every transaction.

195. The conspirators agreed that W Real Estate "shall represent both buyer and seller in all transactions," thereby predetermining dual agency before any buyer interaction and eliminating the possibility of lawful consent. The mandatory dual-agency clause was embedded in each developer's listing agreement and concealed from buyers.

196. To effectuate and enforce the scheme, the conspirators jointly adopted and implemented the "Broker Referral Program," which paid outside agents a referral fee only if they withdrew from representation, referred their clients to W Real Estate, and ceased any further involvement, ensuring W Real Estate alone would represent both sides.

197. The conspirators further implemented uniform misrepresentations and access policies stating that outside agents were "not allowed," and used CAR Forms AD and AC to create the false appearance that buyers had a choice of agency, while concealing the predetermined dual-agency requirement. In signing CAR Form AD, the Developers knew that the choices presented to the buyers concerning the type of agency they desired were illusory because the mandatory dual agency had been previously predetermined by contract.

198. The unlawful objectives included: (a) acting as dual agents without voluntary, informed consent in violation of Civil Code §2079.16; (b) acting for more than one party without knowledge and consent in violation of Business & Professions Code §10176(d); and (c) breaching fiduciary duties through nondisclosure, misrepresentation, and disloyalty. The conspirators committed numerous overt acts in furtherance of these objectives, including entering the listing agreements, enforcing the referral program, making misrepresentations, and collecting commissions from buyer escrow funds.

199. The Developers knowingly and substantially participated by executing and enforcing the listing agreements that mandated dual agency, coordinating with W Real Estate to exclude independent buyer agents, and allowing W Real Estate to control buyer-facing interactions at the developments.

200. The illegality of mandatory dual agency without buyer consent was apparent on the face of the listing agreements, which expressly required Defendants to act as dual agents in all transactions irrespective of buyer consent. Further each of the developers signed CAR Form AD – the same form signed by the buyers – which presented dual agency as a legitimate choice, knowing that dual agency had already been predetermined under the W Real Estate's listing agreement.

201. As a direct and proximate result of the conspiracy and overt acts committed in furtherance thereof, Plaintiffs and the Class suffered harm, including loss of independent representation, payment of unlawful commissions, inflated home prices, and deprivation of statutory rights to informed, voluntary consent.

202. Plaintiffs seek all available relief arising from the conspiracy, including restitution, disgorgement, damages, injunctive relief, and attorneys' fees as otherwise pled.

SEVENTH CAUSE OF ACTION

Aiding and Abetting Breach of Fiduciary Duty

(Against the Developers, DOES 301-1,000)

203. Plaintiffs incorporate all preceding paragraphs.

204. W Real Estate and its associate licensees owed fiduciary duties to Plaintiffs and the Class, including duties of loyalty, full disclosure, avoidance of conflicts, and the heightened duties applicable in dual-agency relationships.

205. W Real Estate and its agents breached those duties by embedding and concealing mandatory dual-agency provisions, eliminating outside representation through the referral-fee program, misrepresenting that outside agents were not permitted, using CAR Forms to create a false appearance of choice, and prioritizing their own financial interests over buyers.

206. DOE Developers (DOES 301-1,000) knew or were willfully blind to the fiduciary duties owed by W Real Estate to buyers and to the breaches described above, because the mandatory dual-

agency requirement was codified in their own listing agreements, implemented in their developments, and enforced through uniform on-site sales practices excluding outside representation.

207. The illegality of mandatory dual agency without buyer consent was apparent on the face of the listing agreements, which expressly required Defendants to act as dual agents in all transactions irrespective of buyer consent. Further each of the developers signed CAR Form AD – the same form signed by the buyers – which presented dual agency as a legitimate choice, knowing that dual agency had already been predetermined under the W Real Estate's listing agreement. Any seasoned developer knew or should have known that forced dual agency is illegal in California.

208. With that knowledge, DOE Developers gave substantial assistance and encouragement to W Real Estate's breaches by: (a) executing listing agreements that required dual agency in every transaction; (b) adopting and enforcing the Broker Referral Program within their developments; (c) permitting and participating in policies and statements that outside agents were "not allowed"; and (d) enabling W Real Estate's exclusive control over buyer interactions and agency disclosures on-site.

209. DOE Developers' assistance was a substantial factor in the occurrence of Plaintiffs' injuries, including the loss of independent representation, payment of unlawful commissions from buyer escrow funds, and inflated home prices that incorporated the commissions.

210. Plaintiffs seek all appropriate remedies against DOE Developers for aiding and abetting, including restitution, disgorgement, damages, injunctive relief, and attorneys' fees as otherwise pled.

PRAYER FOR RELIEF

Plaintiffs, individually and on behalf of the Class, respectfully request that the Court enter judgment in their favor and against Defendants as follows:

Class Certification

1. Certification of the Class under Code of Civil Procedure §382, appointment of Plaintiffs as Class Representatives, and appointment of their counsel as Class Counsel

On the First Cause of Action

1. For general damages in an amount to be proven at trial, but no less than the jurisdictional minimum of this Court;

2. For special damages in an amount to be proven at trial;
3. For restitution and/or disgorgement of all commissions, referral fees, or other monies wrongfully obtained from Plaintiffs and the Class;
2. For punitive and exemplary damages pursuant to Civil Code §3294 based on Defendants' malicious, oppressive, and fraudulent conduct;
4. For pre-judgment and post-judgment interest at the maximum rates permitted by law;
5. For attorneys' fees and costs pursuant to Code of Civil Procedure §1021.5 and any other applicable authority
6. For costs of suit; and
7. For such other and further relief as the Court may deem just and proper.

On the Second Cause of Action

1. For restitution of all commissions, referral fees, or other monies wrongfully obtained from Plaintiffs and the Class;
2. Injunctive relief under Business & Professions Code §17203, including orders prohibiting Defendants from enforcing or using mandatory dual-agency provisions, concealing agency rights, or retaining benefits obtained through unlawful conduct;
3. For attorneys' fees and costs pursuant to Code of Civil Procedure §1021.5 and any other applicable authority;
4. For costs of suit; and
5. For such other and further relief as the Court may deem just and proper.

On the Third Cause of Action

1. For general damages in an amount to be proven at trial, but no less than the jurisdictional minimum of this Court;
2. For special damages in an amount to be proven at trial;
3. For restitution and/or disgorgement of all commissions, referral fees, or other monies wrongfully obtained from Plaintiffs and the Class;

3. For punitive and exemplary damages pursuant to Civil Code §3294 based on Defendants' malicious, oppressive, and fraudulent conduct;
4. For pre-judgment and post-judgment interest at the maximum rates permitted by law;
5. For attorneys' fees and costs pursuant to Code of Civil Procedure §1021.5 and any other applicable authority
6. For costs of suit; and
7. For such other and further relief as the Court may deem just and proper.

On the Fourth Cause of Action

1. For general damages in an amount to be proven at trial, but no less than the jurisdictional minimum of this Court;
2. For special damages in an amount to be proven at trial;
3. For restitution of monies wrongfully obtained from Plaintiffs and/or the relevant market as a result of Defendants' anticompetitive conduct, and order disgorgement of ill-gotten gains to the extent permitted by law, in amounts to be determined at trial;
4. For treble damages pursuant to Business & Professions Code §16750;
5. For preliminary and permanent injunctive relief enjoining Defendants, their officers, directors, employees, agents, affiliates, successors, and all persons acting in concert with them from continuing, maintaining, enforcing, or renewing any contract, combination, conspiracy, or other practice that unreasonably restrains trade or competition in violation of the Cartwright Act, and requiring affirmative steps to restore competition and prevent recurrence, including appropriate compliance, monitoring, and reporting obligations to be determined;
6. For attorneys' fees and costs pursuant to Business & Professions Code §16750(a) and Code of Civil Procedure §1021.5 and any other applicable authority
7. For costs of suit; and
8. For such other and further relief as the Court may deem just and proper.

On the Fifth Cause of Action

1. For restitution of all commissions, referral fees, or other monies wrongfully obtained from Plaintiffs and the Class and/or actual damages according to proof;
2. For an order enjoining Defendant from continuing the unlawful, unfair, and deceptive practices described herein;
3. For punitive damages;
4. For reasonable attorney's fees and costs pursuant to Code of Civil Procedure §1021.5and Civil Code section 1780(e); and
5. For such other and further relief as the Court may deem just and proper.

On the Sixth Cause of Action

1. For general and special damages in amounts to be proven at trial;
2. For restitution and/or disgorgement of all commissions, referral fees, and any other monies wrongfully obtained from Plaintiffs and the Class as a result of the unlawful dual agency scheme;
3. For punitive and exemplary damages as permitted by law;
4. For pre-judgment and post-judgment interest at the maximum rates permitted by law;
5. For attorneys' fees and costs pursuant to applicable statutes, including Code of Civil Procedure §1021.5;
6. For costs of suit; and
7. For such other and further relief as the Court may deem just and proper

On the Seventh Cause of Action

1. For general and special damages in amounts to be proven at trial;
2. For restitution and/or disgorgement of all commissions, referral fees, and other monies wrongfully obtained through the aided-and-abetted fiduciary breaches, including commission forfeiture;
3. For punitive and exemplary damages as permitted by law;
4. For pre-judgment and post-judgment interest at the maximum rates permitted by law;

5. For attorneys' fees and costs pursuant to applicable statutes, including Code of Civil Procedure §1021.5;
6. For costs of suit; and
7. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury on all issues so triable.

LAW OFFICES OF STEPHEN M. FLYNN



DATED: February 3, 2026

Stephen M. Flynn
Attorney for PLAINTIFFS