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6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **COUNTY OF LOS ANGELES – WEST JUDICIAL DISTRICT**

9 ANTHONY H. HACCHE, an individual,)

10 Plaintiff,)

11 vs.)

12 COLDWELL BANKER RESIDENTIAL)
13 BROKERAGE COMPANY, a California)
14 corporation, erroneously sued as NRT, LLC, a)
15 Delaware limited liability company doing)
16 business as COLDWELL BANKER)
17 RESIDENTIAL BROKERAGE; and DOES 1 to)
18 15, inclusive,)

19 Defendants.)
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Case No. SC122519

Case Assigned to Hon. Craig D. Karlan
Department N

FIRST AMENDED COMPLAINT FOR:

- 1) **Breach of Fiduciary Duty**
- 2) **Negligence**
- 3) **Intentional Infliction of Emotional Distress**

Complaint Filed: May 7, 2014
Trial Date: TBD

UNLIMITED JURISDICTION
(Damages in Excess of \$25,000)

Demand for Jury Trial

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PARTIES

2. Plaintiff ANTHONY H. HACCHE (hereafter referred to as "PLAINTIFF") is, and at all times mentioned herein, a natural person over the age of eighteen residing in the County of Los Angeles in the State of California.
3. Plaintiff is informed and believes and thereon alleges that Defendant COLDWELL BANKER RESIDENTIAL BROKERAGE COMPANY, a California corporation, erroneously sued as NRT, LLC, a Delaware limited liability company doing business as COLDWELL BANKER RESIDENTIAL BROKERAGE (hereafter referred to as "DEFENDANT" or "COLDWELL BANKER") is, and at all times mentioned herein, a limited liability company organized under the laws of the State of Delaware with its principal place of business in the City of Pacific Palisades in the County of Los Angeles, State of California.
4. Plaintiff is informed and believes and thereon alleges that each DEFENDANT is, and at all times mentioned herein, the agent, employee, alter-ego, principal, employer, or co-conspirator of each of the remaining co-DEFENDANTS, and in committing the acts herein alleged, were acting in the scope of their authority as such agents, employees, principals, alter-egos, or co-conspirators and with the permission and consent of the remaining co-DEFENDANTS.
5. The true names and capacities, whether individual, corporate, associate or otherwise, of DEFENDANTS named herein as DOES 1 to 15, inclusive, are unknown to PLAINTIFF, who therefore sues said DEFENDANTS, and each of them, by such fictitious names. PLAINTIFF will amend this Complaint when the same has been ascertained.

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JURISDICTION AND VENUE

5. This court has personal jurisdiction over Defendants, and each of them, who are residents of, and/or doing business in, the State of California.
6. Venue is proper in this court pursuant to California Code of Civil Procedure § 392 because the real property that is subject of this action is situated in this county and within this judicial district.

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DEMAND FOR JURY TRIAL

7. PLAINTIFF requests a jury trial on the issues in this matter.

GENERAL ALLEGATIONS

- 1
- 2 8. PLAINTIFF is, and all times relevant to this matter, was the owner of certain real property located
- 3 at 901 Fiske Street in City of Pacific Palisades, State of California (hereafter referred to as the
- 4 “HOME”).
- 5 9. PLAINTIFF is the sole legal title owner of a fee simple interest in the HOME. PLAINTIFF is an
- 6 88-year old World War II veteran who has lived in the HOME for over forty (40) years. The
- 7 HOME is owned free and clear of any liens. PLAINTIFF’S long-time female companion passed
- 8 away in December 2009 leaving PLAINTIFF in a state of isolation and depression. PLAINTIFF
- 9 also suffers, and has suffered, from dementia and/or other psychological ailments, which were
- 10 diagnosed from 2009.
- 11 10. DEFENDANT is a residential real estate broker licensed to conduct real estate transactions in the
- 12 State of California under Bureau of Real Estate License number 00616212. DEFENDANT
- 13 employs one or more Real Estate Sales Agent, licensed to conduct real estate transactions under
- 14 DEFENDANT’S broker license. The Real Estate Sales Agents are not permitted to perform real
- 15 estate transactions without the supervision of a licensed Real Estate Broker. DEFENDANT is the
- 16 supervising broker for a Sales Agent named Lisa Hay Morrin (“Ms. Morrin.”) Ms. Morrin’s sales
- 17 agent license number with the Bureau of Real Estate is 00873563. DEFENDANT has a duty to
- 18 supervise its agents in the performance of real estate transactions. DEFENDANT is liable for all
- 19 acts or omissions of its Real Estate Sales Agents, including Ms. Morrin.
- 20 11. Beginning in or about June 2004, DEFENDANT, by and through its Real Estate Sales Agent, Ms.
- 21 Morrin, began soliciting PLAINTIFF for the purpose of listing and/or selling the HOME. Ms.
- 22 Morrin, as agent of DEFENDANT, continuously solicited PLAINTIFF to sell his HOME
- 23 approximately two dozen times through the year 2013. Each time, PLAINTIFF indicated that he
- 24 was not interested in selling his HOME.
- 25 12. PLAINTIFF communicated specific reasons for his lack of intent to sell his HOME, *inter alia*, the
- 26 HOME was paid off, free and clear of debts; capital gains liability would be exorbitant; and the
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1 difficulties of moving at such an advanced age. PLAINTIFF is retired and depends on the ability
2 to live in the HOME cost-free.

3 13. The solicitations by Ms. Morrin nevertheless continued and frequently occurred in a face-to-face
4 unsolicited communication. For example, as recently as November 2012, Ms. Morrin approached
5 PLAINTIFF at his HOME and knocked on his door to solicit his agreement to sell the property.
6 Ms. Morrin used the opportunity of seeing PLAINTIFF at a voting booth the day before as
7 subterfuge for the solicitation. In another incident, Ms. Morrin made a presentation regarding her
8 services and the sale of Mr. Hacche's HOME, conducted at Mr. Hacche's HOME. Ms. Morrin
9 knew that Mr. Hacche lived alone and that his son Craig lived hours away. She represented to Mr.
10 Hacche that she would be doing the presentation with a partner or associate. However, this was not
11 the case as only Mr. Hacche and Ms. Morrin were present at the HOME during Ms. Morrin's
12 presentation. This was an ideal environment for Ms. Morrin because there were no witnesses to
13 observe her predatory sales tactics and manipulation of the elderly, and mentally and emotionally
14 vulnerable, Mr. Hacche.

15 14. After continuous and relentless attempts to convince PLAINTIFF to sell his HOME, Ms. Morrin
16 delivered an unsolicited offer to purchase the property on or about February 26, 2013 for the
17 purchase price of \$1,500,000.00. As a result of the systematic pressure applied by Ms. Morrin,
18 who represented to PLAINTIFF that it was a very good price, PLAINTIFF buckled and accepted
19 the offer.

20 15. The offer was canceled by the potential buyer just two days after PLAINTIFF'S acceptance.
21 PLAINTIFF is informed and believes and thereon alleges that the offer given to him by Ms. Morrin
22 was not a genuine offer in that the prospective buyer did not exist or did not otherwise have a true
23 intention to purchase the HOME. PLAINTIFF is informed and believes and thereon alleges that
24 the offer was used only to stimulate PLAINTIFF into selling his HOME after all prior efforts by
25 Ms. Morrin had been unsuccessful. Ms. Morrin claimed that the potential buyer decided the lot
26 size was too small. However, such information is and was publicly available prior to the tender of
27 the purported offer.

1 16. Just one week later, on or about March 6, 2013, Ms. Morrin presented another unsolicited offer to
2 PLAINTIFF from another prospective buyer. This second offer indicated a purchase price of
3 \$1,375,000.00, a full \$125,000.00 less than the offer received the week before. PLAINTIFF did
4 not respond to this offer. Approximately one week later, Ms. Morrin presented another offer from
5 the same prospective buyer with an offer price reduced to \$1,325,000.00 – a full \$50,000.00 less
6 than the offer the same prospective buyer had submitted just days before. PLAINTIFF did not
7 respond to this offer.

8 17. Subsequently, Ms. Morrin called PLAINTIFF to request his response. Ms. Morrin urged
9 PLAINTIFF to counter-offer the prospective buyer. In light of the continued pressure from Ms.
10 Morrin, PLAINTIFF finally acquiesced by submitting a counter-offer for \$1,350,000.00, which
11 was accepted by the prospective buyer. Mr. Hacche's counter-offer of \$1,350,000.00 was lower
12 than the \$1,375,000.00 offer that Mr. Hacche had rejected! Ms. Morrin did not inquire as to the
13 fact that elderly Mr. Hacche's counter-offer was lower than the offer he had rejected days before.

14 18. Instead of advising PLAINTIFF to decline the offer and bring the HOME to market to ascertain the
15 highest price, Ms. Morrin urged PLAINTIFF to sell the HOME. Ms. Morrin proposed to
16 PLAINTIFF that he could place the HOME on the Multiple Listing Service ("MLS") but dissuaded
17 PLAINTIFF from doing so by indicating that the commission would be higher and that it would
18 require PLAINTIFF to open his home to strangers and allow interested offerors to investigate the
19 property.

20 19. On advice of Ms. Morrin, PLAINTIFF agreed to submit a counter-offer, which was accepted by the
21 prospective buyer on your about March 11, 2013.

22 20. At all times relevant, PLAINTIFF believed that Ms. Morrin was representing his best interest in the
23 capacity of a fiduciary. Ms. Morrin acted, and represented herself, as the Seller's Agent. Ms.
24 Morrin executed the purchase offer as PLAINTIFF'S agent under DEFENDANT'S brokerage
25 license.

26 21. Approximately one week later, PLAINTIFF communicated to Ms. Morrin that he had made a
27 mistake and he wanted to cancel the transaction. PLAINTIFF explained that he was not thinking
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1 straight and that he could not mentally or physical endure the difficulties and efforts of relocating
2 his life that he accumulated in the house over 40 years. PLAINTIFF asked Ms. Morrin to cancel
3 the transaction.

4 22. In response, Ms. Morrin claimed that the offeror had already invested \$40,000.00 towards the
5 purchase of the HOME, that with regard to a cancellation “this has never been done before” and if
6 PLAINTIFF canceled the transaction, he “will face a lawsuit.” PLAINTIFF began to panic and
7 suffer emotional, psychological and physical distress. As a result of this episode, PLAINTIFF
8 visited a doctor who prescribed several medications for PLAINTIFF’S condition. PLAINTIFF
9 visited doctors between April 2013 and October 2013.

10 23. PLAINTIFF again asked Ms. Morrin’s assistance to cancel the transaction, but was unsuccessful.
11 Mentally and physically depleted, PLAINTIFF again asked Ms. Morrin to help him cancel the
12 transaction but to no avail.

13 24. PLAINTIFF is informed and believes that Ms. Morrin was in dual representation, representing the
14 prospective buyer as well as PLAINTIFF. PLAINTIFF is informed and believes that Ms. Morrin
15 represented only her interests in trying to obtain a commission, rather than abide by her fiduciary
16 duties to PLAINTIFF to represent him and his interests.

17 25. PLAINTIFF was forced to engage legal counsel to assist him in keeping his HOME. PLAINTIFF
18 was ultimately forced to put a reverse mortgage on his HOME to pay the sum of \$150,000.00 to
19 the offeror to cancel the transaction. PLAINTIFF also incurred the sum of \$34,000.00 in fees to
20 perform the reverse mortgage and interest to date in the approximate amount of \$7,000.00 a well as
21 other incidental charges and expenses for an approximate total in excess of \$205,000.00, according
22 to proof at trial.

23 **FIRST CAUSE OF ACTION**

24 **Breach of Fiduciary Duty**

25 (Against All Defendants)

26 26. PLAINTIFF herein incorporates by this reference Paragraphs 1 through 25 as though fully set forth
27 herein.

1 27. On or about February 26, 2013, DEFENDANT became a fiduciary to PLAINTIFF by virtue Ms.
2 Morrin's presentation of an offer from a third-party to PLAINTIFF to purchase the HOME.
3 DEFENDANT became PLAINTIFF'S real estate broker for the transaction and was obligated to
4 represent PLAINTIFF'S interests in the purchase and sale transaction.

5 28. On or about March 11, 2013, PLAINTIFF entered into a transaction for the purchase and sale of
6 the HOME. Upon the undue influence of DEFENDANT, by and through its agent Ms. Morrin,
7 PLAINTIFF agreed to submit a counter-offer to a prospective buyer that was accepted by the
8 buyer. Said buyer had tender an offer to purchase the HOME for \$1,375,000.00 and then promptly
9 withdrew that offer and submitted a subsequent offer for \$1,325,000.00. Based on the pressure
10 applied on PLAINTIFF by Ms. Morrin, PLAINTIFF agreed to write a counter-offer for
11 \$1,350,000.00, which the buyer accepted. When Plaintiff later informed Ms. Morrin that he
12 wanted to cancel the transaction, Ms. Morrin, in continued breach of her fiduciary duties and in
13 exercising undue influence, threatened PLAINTIFF from cancelling and failed to inform
14 PLAINTIFF of the methods and ramifications of cancelling the contract.

15 29. DEFENDANT, by virtue of Ms. Morrin who held herself as a professional agent, held out to the
16 public as having particular skills and knowledge in the real estate field, and assumed an obligation
17 to exercise greater care and skill than is within the capacity of the ordinary citizen. Thus, as a
18 fiduciary, DEFENDANT was subject to a duty to PLAINTIFF to act with care and skill that is
19 standard for the type of work DEFENDANT had undertaken. On information and belief, Defendant
20 is a member of several real estate professional associations, and also owed PLAINTIFF duties and
21 standard of care of members of the real estate industry.

22 30. As PLAINTIFF'S agent, Ms. Morrin and thereby DEFENDANT, owed PLAINTIFF several
23 fiduciary duties, including but not limited to, the duty: (1) to exercise reasonable skill and care in
24 the diligent exercise of agency duties for PLAINTIFF'S benefit and best interest; (2) to exercise the
25 highest good faith and undivided service and loyalty; (3) to learn the material facts that may have
26 affected PLAINTIFF'S decision making, and to perform the necessary research and investigation
27 in order to know those important matters that would affect PLAINTIFF'S decision making; (4) to
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1 counsel and advise PLAINTIFF regarding the propriety, and legal and non-legal ramifications of
2 his decisions, and disclose reasonably obtainable material information; (5) to advise and explain to
3 PLAINTIFF how DEFENDANT'S commission is determined, the market value of PLAINTIFF'S
4 PROPERTY, and other factors that might have affected PLAINTIFF'S decision of whether, and
5 for what amount, to make a counteroffer; (6) to advise PLAINTIFF as to whether the terms of the
6 agreement were reasonable for PLAINTIFF, and explain (and ensure PLAINTIFF'S understanding
7 of) the terms of the purchase agreement; and (7) make fullest disclosure of all material facts that
8 might have affected PLAINTIFF'S interest in, and the circumstances of, entering into and
9 remaining in the transaction.

10 31. The facts that DEFENDANT was obligated to learn, and the advice and counsel required of
11 DEFENDANT, depended on PLAINTIFF'S knowledge and experience, nature of the property and
12 terms of the sale. DEFENDANT was obligated to place itself in the position of PLAINTIFF and
13 ask the questions and obtain the type of information required for PLAINTIFF to make an informed
14 decision.

15 32. DEFENDANT, by and through Ms. Morrin, breached its fiduciary duty as PLAINTIFF'S agent by,
16 *inter alia*, by among other things: (1) failing to explain, disclose or ensure PLAINTIFF understood
17 all important matters that may have affected PLAINTIFF'S desirability to enter into and remain in
18 the transactions; (2) pressuring PLAINTIFF into accepting an offer to purchase the HOME on
19 terms that were contrary to PLAINTIFF'S interests; (3) urging PLAINTIFF to make a counter-offer
20 without guiding PLAINTIFF as to the amount and terms of PLAINTIFF'S counteroffer; (4) failing
21 to advise PLAINTIFF to bring the HOME to market to ascertain the highest price prior to
22 PLAINTIFF making a counteroffer and entering into the contract; (5) affirmatively misrepresenting
23 information and dissuading PLAINTIFF to place the HOME on Multiple Listing Service (MLS) by
24 stating the commission would be higher, PLAINTIFF would be required to open the HOME to
25 strangers, allow offerors to investigate the property, and be subjected to various burdens; (6)
26 providing advice that served DEFENDANT'S own interests ahead of PLAINTIFF'S interest; (7)
27 failing to act with the required diligence, skill, care and loyalty when PLAINTIFF expressly
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1 informed Ms. Morrin that he wanted to cancel the contract; (8) threatening PLAINTIFF, and
2 coercing him to proceed with the sale, by stating he would “face a lawsuit” if he attempted to
3 terminate the transaction; (9) falsely stating “this has never been done before” with regard to
4 PLAINTIFF’S request to cancel the transaction.

5 33. Ms. Morrin exerted undue influence on PLAINTIFF, who was visibly vulnerable to pressure due to
6 his age; mental, psychological and physical health; isolation from trusted family members; and lack
7 of knowledge and experience in real estate transactions. PLAINTIFF’s dementia and depression
8 made him particularly susceptible to Ms. Morrin’s predatory tactics. Ms. Morrin exerted undue
9 influence in breaching fiduciary duties owed to PLAINTIFF while PLAINTIFF fully trusted her,
10 and in threatening PLAINTIFF from cancelling the transaction upon PLAINTIFF’s initial request
11 to cancel. DEFENDANT was in a position of dominance and had a special relationship with
12 PLAINTIFF. PLAINTIFF did not have other third party advisors giving him professional guidance
13 throughout his interactions with Ms. Morrin, nor did Ms. Morrin advise PLAINTIFF to seek
14 outside advice. Ms. Morrin baited PLAINTIFF into selling his home by discussing sales offers and
15 transactions at unusual or inappropriate times (such as the voting booth area), despite repeated
16 efforts from PLAINTIFF to stop Ms. Morrin’s consistent efforts to get him to sell the HOME.

17 34. Ms. Morrin’s fiduciary duties owed to PLAINTIFF did not terminate when PLAINTIFF entered the
18 contract. Ms. Morrin applied undue influence upon PLAINTIFF and breached duties owed to
19 PLAINTIFF as described above, causing delay in PLAINTIFF’s cancellation of the contract. Ms.
20 Morrin failure to advise PLAINTIFF to include terms appropriate for his needs placed him on an
21 untenable deadline to find a new home and relocate all of his personal property that he had
22 accumulated in the HOME for nearly forty years. Due to the circumstances, including
23 PLAINTIFF’S mental and physical health and elderly age, PLAINTIFF was unable to meet the
24 required deadlines. Thus, PLAINTIFF, mentally and physically depleted, asked Ms. Morrin a
25 second time to help him cancel the transaction.

26 35. As the result of DEFENDANT’S breach of fiduciary duties and undue influence, PLAINTIFF has
27 been damaged in a sum according to proof. Due to DEFENDANT’S actions and omissions,
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1 PLAINTIFF made a counteroffer to sell his home under terms and conditions that he would not
2 have otherwise had DEFENDANT exercised the fiduciary duties owed to PLAINTIFF.
3 Furthermore, DEFENDANT'S breach of fiduciary duties owed to PLAINTIFF and exercise of
4 undue influence caused PLAINTIFF to proceed with the contract instead of making an informed
5 decision as to how to proceed, or rather, to negotiate with buyer earlier for other more favorable
6 terms.

7 36. As a direct and proximate result of Ms. Morrin's actions and omissions, PLAINTIFF was forced to
8 pay \$150,000.00 to the buyer. To obtain said funds, PLAINTIFF was forced to put a reverse
9 mortgage on the HOME and pay approximately \$34,000.00 in costs to receive the funds from that
10 reverse mortgage, in addition to other charges and expenses, for an approximate total in excess of
11 \$205,000.00.

12 37. As a direct and proximate result Ms. Morrin's actions and omissions, in addition to monetary
13 damages described above, PLAINTIFF also suffered, and continues to suffer, emotional and
14 psychological distress that has manifested itself in physical symptoms.

15 38. Accordingly, PLAINTIFF seeks damages according to proof at trial, including compensatory
16 damages for all harm caused by DEFENDANT'S breach of fiduciary duties, negligence,
17 intentional infliction of emotional distress and conduct as alleged herein, and including
18 compensation for mental suffering that includes anxiety, depression, indignity, nervousness,
19 headaches and sleep deprivation. Defendant further seeks punitive damages against Defendant for
20 its oppressive, fraudulent and malicious actions.

21 **SECOND CAUSE OF ACTION**

22 **Negligence**

23 (Against All Defendants)

24 39. Plaintiff incorporates the preceding paragraphs of the Complaint by reference as though fully set
25 forth herein.

26 40. As PLAINTIFF'S agent, Ms. Morrin and thereby DEFENDANT, owed PLAINTIFF several
27 fiduciary duties, including but not limited to, the duty: (1) to exercise reasonable skill and care in
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1 the diligent exercise of agency duties for PLAINTIFF'S benefit and best interest; (2) to exercise the
2 highest good faith and undivided service and loyalty; (3) to learn the material facts that may have
3 affected PLAINTIFF'S decision making, and to perform the necessary research and investigation
4 in order to know those important matters that would affect PLAINTIFF'S decision making; (4) to
5 counsel and advise PLAINTIFF regarding the propriety, and legal and non-legal ramifications of
6 his decisions, and disclose reasonably obtainable material information; (5) to advise and explain to
7 PLAINTIFF how DEFENDANT'S commission is determined, the market value of PLAINTIFF'S
8 PROPERTY, and other factors that might have affected PLAINTIFF'S decision of whether, and
9 for what amount, to make a counteroffer; (6) to advise PLAINTIFF as to whether the terms of the
10 agreement were reasonable for PLAINTIFF, and explain (and ensure PLAINTIFF'S understanding
11 of) the terms of the purchase agreement; and (7) make fullest disclosure of all material facts that
12 might have affected PLAINTIFF'S interest in, and the circumstances of, entering into and
13 remaining in the transaction.

14 41. DEFENDANT owed PLAINTIFF a duty as further determined by the following factors:
15 foreseeability of harm to PLAINTIFF, degree of certainty that PLAINTIFF suffered injury,
16 closeness of the connection between DEFENDANT'S conduct and PLAINTIFF's injury; moral
17 blame attached to DEFENDANT'S conduct, the policy of preventing future harm, the extent of the
18 burden to the DEFENDANT, and the consequences to the community of imposing a duty to
19 exercise care with resulting liability for breach. These factors weigh in favor of imposing a duty on
20 DEFENDANT owed to PLAINTIFF.

21 42. DEFENDANT, by and through Ms. Morrin, breached its duties as PLAINTIFF'S agent by, *inter*
22 *alia*, by among other things: (1) failing to explain, disclose or ensure PLAINTIFF understood all
23 important matters that may have affected PLAINTIFF'S desirability to enter into and remain in the
24 transactions; (2) pressuring PLAINTIFF into accepting an offer to purchase the HOME on terms
25 that were contrary to PLAINTIFF'S interests; (3) urging PLAINTIFF to make a counter-offer
26 without guiding PLAINTIFF as to the amount and terms of PLAINTIFF'S counteroffer; (4) failing
27 to advise PLAINTIFF to bring the HOME to market to ascertain the highest price prior to
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1 PLAINTIFF making a counteroffer and entering into the contract; (5) affirmatively misrepresenting
2 information and dissuading PLAINTIFF to place the HOME on Multiple Listing Service (MLS) by
3 stating the commission would be higher. PLAINTIFF would be required to open the HOME to
4 strangers, allow offerors to investigate the property, and be subjected to various burdens; (6)
5 providing advice that served DEFENDANT'S own interests ahead of PLAINTIFF'S interest; (7)
6 failing to act with the required diligence, skill, care and loyalty when PLAINTIFF expressly
7 informed Ms. Morrin that he wanted to cancel the contract; (8) threatening PLAINTIFF, and
8 coercing him to proceed with the sale, by stating he would "face a lawsuit" if he attempted to
9 terminate the transaction; (9) falsely stating "this has never been done before" with regard to
10 PLAINTIFF'S request to cancel the transaction

11 43. Ms. Morrin applied undue influence upon PLAINTIFF and breached duties owed to PLAINTIFF as
12 described above, causing delay in PLAINTIFF's cancellation of the contract. Ms. Morrin failure to
13 advise PLAINTIFF to include terms appropriate for his needs placed him on an untenable deadline
14 to find a new home and relocate all of his personal property that he had kept in the HOME for over
15 forty years. Due to the circumstances, including PLAINTIFF'S mental and physical health and
16 elderly age, PLAINTIFF was unable to meet the required deadlines. Thus, when PLAINTIFF,
17 mentally and physically depleted, asked Ms. Morrin a second time to help him cancel the
18 transaction, Ms. Morrin continued to fail to appropriately advise Mr. Hacche in accordance with
19 the fiduciary duties she owed him.

20 44. As the result of DEFENDANT'S breach of fiduciary duties, negligence and undue influence,
21 PLAINTIFF has been damaged in a sum according to proof. Due to DEFENDANT'S actions and
22 omissions, PLAINTIFF made a counteroffer to sell his home under terms and conditions that he
23 would not have otherwise had DEFENDANT exercised the fiduciary duties owed to PLAINTIFF.
24 Furthermore, DEFENDANT'S breach of fiduciary duties owed to PLAINTIFF and exercise of
25 undue influence caused PLAINTIFF to proceed with the contract instead of making an informed
26 decision as to how to proceed, or rather, to negotiate with buyer earlier for other more favorable
27 terms.

1 45. As a direct and proximate result of Ms. Morrin's actions and omissions, PLAINTIFF was forced to
2 pay \$150,000.00 to the buyer. To obtain said funds, PLAINTIFF was forced to put a reverse
3 mortgage on the HOME and pay approximately \$34,000.00 in costs to receive the funds from that
4 reverse mortgage, in addition to other charges and expenses, for an approximate total in excess of
5 \$205,000.00.

6 46. PLAINTIFF suffered and continues to suffer serious emotional distress directly proximately caused
7 by DEFENDANT's negligent conduct in breaching its legal duty of care and other fiduciary duties
8 owed directly to Plaintiff (as described above) stemming from DEFENDANT'S relationship with
9 PLAINTIFF. PLAINTIFF'S resulting severe emotional and psychological distress manifested
10 itself into physical symptoms, including but not limited to, weight loss, loss of sleep and
11 headaches.

12 47. Accordingly, DEFENDANT'S negligence has directly and proximately caused PLAINTIFF
13 significant damages in an amount to be determined at trial. PLAINTIFF seeks damages to be
14 proven at trial, including compensatory damages for all harm directly and proximately caused by
15 DEFENDANT'S conduct as alleged herein, including compensation for mental suffering that
16 includes anxiety, depression, indignity, nervousness, headaches and sleep deprivation. Defendant
17 further seeks punitive damages against Defendant for its oppressive, fraudulent and malicious
18 actions.

19 **THIRD CAUSE OF ACTION**

20 **Intentional Infliction of Emotional Distress**

21 (Against All Defendants)

22 48. PLAINTIFF incorporates the preceding paragraphs of the Complaint by reference as though fully
23 set forth herein.

24 49. DEFENDANT'S conduct, including its negligence and breach of fiduciary duty, as alleged herein
25 and to be proven at trial, was so extreme and outrageous as to be beyond all bounds of decency
26 tolerated by society.

1 50. DEFENDANT knew, or should have known, that PLAINTIFF was at all relevant times alleged
2 herein vulnerable or had a special susceptibility to injuries through mental distress. As alleged and
3 incorporated herein, at all relevant times PLAINTIFF was an elderly and ill man. Furthermore, as
4 PLAINTIFF'S real estate agent and brokerage, Defendant abused a relation or position that gave
5 Defendant power to damage PLAINTIFF'S interest. DEFENDANT acted intentionally and/or
6 unreasonably with the recognition that the acts were likely to result in illness through mental
7 distress.

8 51. DEFENDANT'S egregious conduct, such as its negligence and breach of fiduciary duties, was
9 directed at PLAINTIFF and/or DEFENDANT committed outrageous acts with reckless disregard
10 of the probability that those acts would cause PLAINTIFF severe emotional distress.

11 52. DEFENDANT intended to cause emotional distress or recklessly disregarded the probability of
12 causing PLAINTIFF emotional distress.

13 53. DEFENDANT'S extreme and outrageous conduct actually and proximately caused PLAINTIFF to
14 suffer severe or extreme emotional distress. At all relevant times herein, PLAINTIFF suffered and
15 continues to suffer from, depression, anxiety, sleeplessness, racing heart, appetite changes, weight
16 loss, headaches, among other physical symptoms, as a direct and proximate cause of Defendant's
17 conduct alleged herein. DEFENDANT'S outrageous conduct, including its negligence and breach
18 of fiduciary duty, as alleged herein and to be proven at trial, directly and proximately caused and
19 continues to cause PLAINTIFF emotional distress of such substantial quality or enduring quality
20 that no reasonable person in civilized society should be expected to endure it. Defendant further
21 seeks punitive damages against Defendant for its oppressive, fraudulent and malicious actions.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS, and each of them, as set
24 forth below:

25 **First Cause of Action**

- 26 1. For general damages according to proof;
27 2. For consequential damages according to proof;

- 1 3. For punitive or exemplary damages;
- 2 4. For costs of suit herein incurred;
- 3 5. Reasonable attorney's fees as allowed by statute.
- 4 6. For such other and further relief as the court may deem proper.

5 **Second Cause of Action**

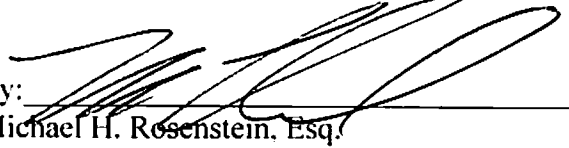
- 6 1. For general damages according to proof;
- 7 2. For consequential damages according to proof;
- 8 3. For punitive or exemplary damages;
- 9 4. For costs of suit herein incurred;
- 10 5. For such other and further relief as the court may deem proper.

11
12 **Third Cause of Action**

- 13 1. For general damages according to proof;
- 14 2. For consequential damages according to proof;
- 15 3. For punitive or exemplary damages;
- 16 4. For costs of suit herein incurred;
- 17 5. Reasonable attorney's fees as allowed by statute.
- 18 6. For such other and further relief as the court may deem proper.

19
20 Dated: September 4, 2014

LAW OFFICES OF MICHAEL H. ROSENSTEIN

21
22 By: 
23 Michael H. Rosenstein, Esq.
24 Roger Kirnos, Esq.
25 Attorneys for Plaintiff, ANTHONY H. HACCHE
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28

1 CASE NO.: SC122519

2 PROOF OF SERVICE

3 STATE OF CALIFORNIA IN THE COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party
5 to the within action. My business address is 433 N. Camden Drive, Suite 400, Beverly Hills, CA 90210.

6 On September 4, 2014 I served the foregoing document described as **FIRST AMENDED**
7 **COMPLAINT FOR: 1) Breach of Fiduciary Duty, 2) Negligence, 3) Intentional Infliction of**
8 **Emotional Distress** in this action by placing a true copy thereof enclosed in a sealed envelope addressed
as follows:

9 Robert J. Shulkin, Esq.
10 Law Department of Coldwell Banker
11 Residential Brokerage Company
12 5161 California Avenue, Suite 250
Irvine, California 92617

Attorneys for Defendant,

COLDWELL BANKER RESIDENTIAL BROKERAGE
COMPANY, a California corporation, erroneously sued as NRT,
LLC, a Delaware limited liability company doing business as
COLDWELL BANKER RESIDENTIAL BROKERAGE

13 **BY MAIL:** I caused such envelope to be deposited in the mail at Los Angeles, CA. The envelope
14 was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of
15 collection and processing correspondence for mailing. Under that practice, it would be deposited with
16 U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, CA, in the
ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if
postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit.

17 **BY PERSONAL SERVICE:** I delivered by hand such envelope to the offices of the addressee(s)
with delivery time prior to 5:00 P.M. on the date specified above.

18 **VIA FACSIMILE:** I caused such documents to be transmitted from facsimile number (310) 285-
0401 to the facsimile machine(s) of interested parties prior to 5:00 P.M. on the date specified above. The
19 facsimile machine I used was in compliance with Rule 2003(3) and the transmission was reported as
20 complete and without error. Pursuant to Rule 2008(e), I caused a copy of the transmission report to be
properly issued by the transmitting facsimile machine, and a copy of the transmission record is attached
hereto.

21 Executed on September 4, 2014, at Beverly Hills, CA.

22 **STATE:** I declare, under penalty of perjury under the laws of the State of California, that the
23 foregoing is true and correct.



24 Michael H. Rosenstein