

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION**

**DYNAMIC DUO REAL ESTATE, PL,  
Plaintiff/Counterdefendant,**

**CASE NO.: 16-CA-2597  
DIVISION: I**

**SGS REAL ESTATE LLC;  
JASON GARCIA,  
Defendants/Counterplaintiffs/  
Thirdparty Plaintiffs,**

vs.

**ANDREW S. DUNCAN, LLC; ANDREW S. DUNCAN;  
ANGELA C. DUNCAN,  
Thirdparty Defendants.**

/

**DEFENDANT(S) RESPONSE TO COMPLAINT**

COMES NOW Defendant(s) SGS REAL ESTATE LLC (“SGS”) and JASON GARCIA (“GARCIA”) (collectively SGS and GARCIA shall be referred to as “Defendants”), by and through the undersigned counsel, and hereby files this Answer and Affirmative Defenses and Counterclaim to the Complaint served by Plaintiff, DYNAMIC DUO REAL ESTATE, PL (“Plaintiff”), and states as follows:

**ANSWER**

1. Admitted by Defendants.
2. Denied by Defendants.
3. Admitted by Defendants.
4. Admitted by Defendants.
5. Defendants admit for purposes of jurisdiction only. As to all other material allegations, Defendants are without knowledge and therefore denies the same and demands strict proof thereof.
6. As to all other material allegations, Defendants are without knowledge and therefore denies the same and demands strict proof thereof.
7. Admitted that GARCIA sent an email on or about August 20, 2015. Admitted that Exhibit “A” is attached to Plaintiff’s Complaint. As to all other material allegations, Defendants are without knowledge and therefore denies the same and demands strict proof thereof.
8. Admitted that GARCIA gave a one star Google rating online on or about October 30, 2015. Admitted that Exhibit “B” is attached to Plaintiff’s Complaint. As to all other material allegations, Defendants are without knowledge and therefore denies the same and demands strict proof thereof.

9. Admitted that GARCIA made a Facebook post to GARCIA's profile on or about October 30, 2015. Admitted that Exhibit "C" is attached to Plaintiff's Complaint. As to all other material allegations, Defendants are without knowledge and therefore denies the same and demands strict proof thereof.

10. Admitted GTAR contacted GARCIA. Admitted that GARCIA gave a one star Google rating online on or about October 30, 2015. Admitted that Exhibit "D" is attached to Plaintiff's Complaint. As to all other material allegations, Defendants are without knowledge and therefore denies the same and demands strict proof thereof.

11. Admitted GTAR contacted GARCIA. Admitted that GARCIA made a Facebook post to GARCIA's profile on or about October 30, 2015. Admitted that GARCIA made a replacement Facebook post to GARCIA's profile on or about October 30, 2015. Admitted that Exhibit "E" is attached to Plaintiff's Complaint. As to all other material allegations, Defendants are without knowledge and therefore denies the same and demands strict proof thereof.

12. Admitted GTAR contacted GARCIA. Admitted that GARCIA made a Facebook post to GARCIA's profile on or about October 30, 2015. Admitted that GARCIA made a replacement Facebook post to GARCIA's profile on or about October 30, 2015. Admitted that Exhibit "E" is attached to Plaintiff's Complaint. As to all other material allegations, Defendants are without knowledge and therefore denies the same and demands strict proof thereof.

13. Admitted SRS shared GARCIA's replacement Facebook post to SRS'S business page on or about October 30, 2015. Admitted that Exhibit "G" is attached to Plaintiff's Complaint. As to all other material allegations, Defendants are without knowledge and therefore denies the same and demands strict proof thereof.

14. Admitted that GARCIA made statements in the scope and course of his employment by SRS. As to all other material allegations, Defendants are without knowledge and therefore denies the same and demands strict proof thereof.

15. Denied by Defendants.

16. Denied by Defendants.

17. Denied by Defendants.

18. Denied by Defendants.

19. Denied by Defendants.

20. Defendants admit for purposes of jurisdiction only. As to all other material allegations, Defendants are without knowledge and therefore denies the same and demands strict proof thereof.

21. Defendants reallege their responses to 1 - 12 herein.

22. Denied by Defendants.

23. Denied by Defendants.

24. Denied by Defendants.
25. Denied by Defendants.
26. Denied by Defendants.
27. Denied by Defendants.
28. Denied by Defendants.

#### **FIRST AFFIRMATIVE DEFENSE**

29. Defendants both assert that pursuant to Florida Rules of Civil Procedure, Rule 1.140 (b)(1) and (h) (2), Plaintiff lacked standing and subject matter jurisdiction to bring this action. At all times relevant to the conduct complained in Plaintiff's Complaint, 'The Duncan Duo' was an unregistered, illegal fictitious or trade name. Subsequent to the commencement of the above-styled action, 'The Duncan Duo' was finally registered as a fictitious name with the State of Florida. Such registration lists Andrew S. Duncan, LLC as the owner of 'The Duncan Duo.' However, at no time has the Plaintiff ever been known as 'The Duncan Duo.' Plaintiff never registered 'The Duncan Duo' as a fictitious or trade name with the State of Florida, nor the Department of Business and Professional Regulation. Furthermore, Plaintiff has never done business as 'The Duncan Duo.'

#### **SECOND AFFIRMATIVE DEFENSE**

30. Defendants both assert that pursuant to Florida Rules of Civil Procedure, Rule 1.140 (b)(6) and (h) (2), Plaintiff's Complaint fails to state a cause of action in relief can be granted because at all times relevant to the conduct complained in Plaintiff's Complaint, 'The Duncan Duo' was an unregistered, illegal fictitious or trade name. Subsequent to the commencement of the above-styled action, 'The Duncan Duo' was finally registered as a fictitious name with the State of Florida. Such registration lists Andrew S. Duncan, LLC as the owner of 'The Duncan Duo.' However, at no time has the Plaintiff ever been known as 'The Duncan Duo.' Plaintiff never registered 'The Duncan Duo' as a fictitious or trade name with the State of Florida, nor the Department of Business and Professional Regulation. Furthermore, Plaintiff has never done business as 'The Duncan Duo.' As a result, any alleged defamatory statements were not 'of and concerning Plaintiff' which is a necessary element of defamation and Plaintiff's alleged claims against SRS and/or GARCIA.

#### **THIRD AFFIRMATIVE DEFENSE**

31. Defendants both assert that pursuant to Florida Rules of Civil Procedure, Rule 1.140 (b)(6) and (h) (2), Plaintiff's Complaint fails to state a cause of action in relief can be granted because at all times relevant to the conduct complained in Plaintiff's Complaint, 'The Duncan Duo' was an unregistered, illegal fictitious or trade name. Subsequent to the commencement of the above-styled action, 'The Duncan Duo' was finally registered as a fictitious name with the State of Florida. Such registration lists Andrew S. Duncan, LLC as the owner of 'The Duncan Duo.' However, at no time has the Plaintiff ever been known as 'The Duncan Duo.' Plaintiff never registered 'The Duncan Duo' as a fictitious or trade name with the State

of Florida, nor the Department of Business and Professional Regulation. Furthermore, Plaintiff has never done business as ‘The Duncan Duo.’ As a result, any alleged defamatory statements did not harm Plaintiff which is a necessary element of defamation and Plaintiff’s alleged claims against SRS and/or GARCIA.

#### **FOURTH AFFIRMATIVE DEFENSE**

32. Defendants both assert that pursuant to Florida Rules of Civil Procedure, Rule 1.140 (b)(6) and (h) (2), Plaintiff’s Complaint fails to state a cause of action in relief can be granted because any alleged statements made by SRS and/or GARCIA were true, or substantially true. As a result, any alleged statements made by SRS and/or GARCIA were not false statements of fact which is a necessary element of defamation and Plaintiff’s alleged claims against SRS and/or GARCIA.

#### **FIFTH AFFIRMATIVE DEFENSE**

33. Defendants both assert that pursuant to Florida Rules of Civil Procedure, Rule 1.140 (b)(6) and (h) (2), Plaintiff’s Complaint fails to state a cause of action in relief can be granted because any alleged statements made by SRS and/or GARCIA were matters of opinion. As a result, any alleged statements made by SRS and/or GARCIA were not false statements of fact which is a necessary element of defamation and Plaintiff’s alleged claims against SRS and/or GARCIA.

#### **SIXTH AFFIRMATIVE DEFENSE**

34. Defendants both assert that pursuant to Florida Rules of Civil Procedure, Rule 1.140 (b)(6) and (h) (2), Plaintiff’s Complaint fails to state a cause of action in relief can be granted because Plaintiff has failed to fulfill all conditions precedent prior to filing this current cause of action. ‘The Duncan Duo’ as a fictitious or trade name is not registered to Plaintiff in accordance with the registration requirements of Florida’s “Fictitious Name Act” which is codified in Florida Statutes, §865.09, *et. seq.*

#### **SEVENTH AFFIRMATIVE DEFENSE**

35. Defendants both assert that pursuant to Florida Rules of Civil Procedure, Rule 1.140 (b)(6) and (h) (2), Plaintiff’s Complaint fails to state a cause of action in relief can be granted because Plaintiff has failed to fulfill all conditions precedent prior to filing this current cause of action. Prior to filing the instant action, Plaintiff failed to comply with the presuit notice requirements which is codified in Florida Statutes, §770.01, *et. seq.*

#### **EIGHTH AFFIRMATIVE DEFENSE**

36. Defendants both assert that pursuant to Florida Rules of Civil Procedure, Rule 1.140 (b)(6) and (h) (2), Plaintiff’s Complaint fails to state a cause of action in relief can be granted because Defendants both assert that to the extent that Plaintiff is a public figure, neither GARCIA or SRS acted with actual malice regarding any alleged statements which is a necessary element of Plaintiff’s alleged claims against SRS and/or GARCIA.

#### **NINTH AFFIRMATIVE DEFENSE**

37. SRS asserts that pursuant to Florida Rules of Civil Procedure, Rule 1.140 (b)(6) and (h) (2), Plaintiff's Complaint fails to state a cause of action in relief can be granted because pursuant to 47 U.S. Code § 230, *et. seq.* ("Section 230), SRS is exempt from liability for any republication or distribution of third-party content or statements.

**TENTH AFFIRMATIVE DEFENSE**

38. SRS asserts that pursuant to Florida Rules of Civil Procedure, Rule 1.140 (b)(1) and (h) (2), Plaintiff lacked standing and subject matter jurisdiction to bring this action because pursuant to 47 U.S. Code § 230, *et. seq.* ("Section 230), SRS is exempt from liability for any republication or distribution of third-party content or statements. Furthermore, section 230 specifically preempts state law in the area of liability for any republication or distribution of third-party content or statements.

**ELEVENTH AFFIRMATIVE DEFENSE**

38. SRS asserts that pursuant to Florida Rules of Civil Procedure, Rule 1.140 (b)(6) and (h) (2), Plaintiff's Complaint fails to state a cause of action in relief can be granted because SRS asserts any alleged statements were made by GARCIA as an employee or officer of SRS. As a result, any alleged statements made by GARCIA could not be an agreement between two or more people to achieve an illegal objective which is a necessary element of defamation and Plaintiff's alleged claims against SRS.

**DEMAND FOR JURY TRIAL**

39. Defendants hereby requests a trial by jury on all issues so triable.

WHEREFORE, Defendants prays that this Court dismiss or grant judgment for Defendant on all counts of Plaintiff's Complaint; grant a trial by jury on all issues so triable; and grant such other relief as this Court deems just and proper under the circumstances.

**COUNTERCLAIM**

**COUNT I-DECEPTIVE AND UNFAIR TRADE PRACTICES FOR ILLEGAL FICTITIOUS NAME SCHEME**

COMES NOW Defendant(s)/Counterplaintiff(s) SGS REAL ESTATE LLC ("SGS") and JASON GARCIA ("GARCIA") (collectively SGS and GARCIA shall be referred to as "Counterplaintiff"), by and through the undersigned counsel, and hereby files this Counterclaim to the Complaint served by Plaintiff/Counterdefendant, DYNAMIC DUO REAL ESTATE, PL ("Counterdefendant"), and states as follows:

40. This is an action for violations of Florida's Deceptive and Unfair Trade Practices Act, Florida Statutes, §501, Part II, *et. seq.* (DUTPA) for damages that exceeds \$15,000.00 in value, exclusive of interest, court costs and attorney's fees.

41. All conditions precedent to bringing this cause of action have occurred, been performed, or been excused.

42. SGS is a domestic limited liability company, with its principal address in Hillsborough County, Florida.

44. GARCIA is an individual doing business or residing in Hillsborough County, Florida.

43. Counterdefendant is a domestic professional limited liability company, with its principal address in Hillsborough County, Florida, and regularly engages in business in Hillsborough County, Florida.

44. Counterdefendant, at all times material hereto, provided goods or services as defined within DUTPA.

45. Counterdefendant, at all times material hereto, solicited consumers within the meaning of DUTPA.

46. Counterdefendant, at all times material hereto, was engaged in a trade or commerce as defined within DUTPA.

47. Commencing on a date unknown, but at least subsequent to November 30, 2011, Counterdefendant, along with other third party Defendants and/or other third parties currently unknown and yet to be determined, have engaged in substantial business throughout the entire Tampa Bay region using a series of unregistered, unauthorized and/or illegal fictitious or trade names. It is estimated that this unregistered, unauthorized and/or illegal fictitious or trade name scheme has resulted or been used in over \$500,000,000.00 in real estate closings throughout the entire Tampa bay region.

48. Commencing on a date unknown, but at least subsequent to November 30, 2011, it appears that Counterdefendant does substantial business, or attempts to substantial business under at least the following trade or fictitious name: (a) Dynamic Duo Real Estate; (b) Dynamic Duo; (c) Dynamic Broker Referral; (d) Dynamic; (e) Remax Dynamic; (f) The Duncan Duo; (g) The Duncan Duo & Associates; (h) Sold or We Buy It; and/or (i) We Buy Tampa Real Estate. While Remax Dynamic appears to have been registered with DPBR as required, it is not registered as required by Florida Statutes. Subsequent to the commencement of the above-styled action, ‘The Duncan Duo’ was finally registered as a fictitious name with the State of Florida. However, such registration was late and is still not compliant with the requirements of Florida Statutes or DPBR. None of the other remaining trade or fictitious names are registered with Florida Statutes or DPBR.

49. Florida Statutes, §865.09 (3) states that “A person may not engage in business under a fictitious name unless the person first registers the name with the division [Division of Corporations].” Florida’s Department of Business and Professional Regulation (“DPBR”) has a similar requirement for licensees to register their trade or fictitious names in which they practice their real estate business, and generally speaking, DPBR only permits one trade or fictitious to conduct business.

50. Florida Statutes, §865.09 (9)(c) states that “Any person who fails to comply with this division [Fictitious Name Act] commits a misdemeanor of the second degree. . . .”

51. Florida Statutes §501.203(3)(c) states that a violation of DUPTA may be based upon “any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.”

52. As set forth above, Counterdefendant conducts business substantial business using an unregistered, unauthorized and/or illegal fictitious or trade name scheme and have thus committed acts or practices in trade or commerce which offend established public policy and are unethical, unscrupulous or injurious to consumers in violation of DUPTA.

53. Said unregistered, unauthorized and/or illegal fictitious or trade name scheme has caused millions of dollars in lost revenues, sales, commissions, listings, closings, clients and other benefits to injured, persons, consumers or other licensed real estate agents throughout the Tampa Bay region by diverting real estate closings to Plaintiff and other third party Defendants and/or other third parties currently unknown and yet to be determined. GARCIA and SRS are examples of such persons, consumers or other licensed real estate agents that have been harmed or injured by Counterdefendant’s unregistered, unauthorized and/or illegal fictitious or trade name scheme.

#### **CLASS REPRESENTATION ALLEGATIONS**

54. Counterplaintiff brings this case as a class action pursuant to Rule 1.220(b)(1)(2) and (3) of the Florida Rules of Civil Procedure on behalf of themselves and a class consisting of all persons who participated in a successfully funded real estate closing as a licensed real estate agent in either Hillsborough, Pinellas, Pasco, Hernando, Polk, Manatee and/or Sarasota counties from approximately May 1, 2012 through May 2, 2016 (the "Class" and "the Class Period"). It is believed that the Class may total in excess of 25,000 persons. Excluded from the Class are any persons who have commenced Class or representative actions outside the State of Florida.

55. The definition of the Class as set forth above is subject to amendment upon completion of discovery.

56. The Class is so numerous as to make joinder impossible.

57. Counterplaintiff's claims involve questions of law and fact common to the Class, because Counterplaintiff and the other members of the Class were subject to Counterdefendant's conduct in participating or orchestrating the unregistered, unauthorized and/or illegal fictitious or trade name scheme as described herein. Counterplaintiff and the Class are entitled to recover damages and penalties as a result of Defendant's conduct in violation of the common law and of DUPTA. Since Counterdefendant engages in substantial business in the State of Florida and committed the acts and/or omissions which are the subject of this cause of action in the State of Florida, DUPTA is applicable to all members of the Class including those residing outside Florida. Further, Counterplaintiffs and the Class are entitled to have Counterdefendant

enjoined from engaging in its conduct in participating or orchestrating the unregistered, unauthorized and/or illegal fictitious or trade name scheme as described herein in the future.

58. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- a. Whether Counterdefendant's conduct as alleged herein is covered by Florida's "Fictitious Name Act" which is codified in Florida Statutes, §865.09, *et. seq.*
- b. Whether Counterdefendant's conduct as alleged herein is a violates of Florida's "Fictitious Name Act" which is codified in Florida Statutes, §865.09, *et. seq.*
- c. Whether Counterdefendant's conduct as alleged herein is covered by DUPTA;
- d. Whether Counterdefendant's conduct as alleged herein violates DUPTA;
- e. Whether the Counterplaintiff and the Class have sustained damages and, if so, the proper measure thereof; and
- f. Whether Counterplaintiff and the Class are entitled to injunctive relief prohibiting the challenged conduct of participating or orchestrating the unregistered, unauthorized and/or illegal fictitious or trade name scheme as described herein in the future and enjoining Counterdefendant from such conduct until such practices are rectified.

59. Counterplaintiff's claims are typical of the claims of the members of the Class, because Counterplaintiff and the Class are victims similarly harmed and damaged by Counterdefendant's conduct of participating or orchestrating the unregistered, unauthorized and/or illegal fictitious or trade name scheme as described herein.

60. Counterplaintiffs will fairly and adequately protect the interests of the Class. Counterdefendant's conduct of participating or orchestrating the unregistered, unauthorized and/or illegal fictitious or trade name scheme as described herein during the stressful process of trying to operate a real estate business while complying with all the legal requirements for doing so and following one of the worst real estate depressions seen in over 25 years. As a result, Counterplaintiff is passionate and committed to justice for the consumer in the instant case, as well as Counterplaintiff has ample time and resources to participate as Class representative.

61. Counterplaintiff has retained counsel competent and experienced in consumer litigation, collections, real estate, business, foreclosure and bankruptcy, and have no conflict of interest with other Class members in the maintenance of this class action. In addition, Counterplaintiff has no relationship with Counterdefendant, and will vigorously pursue the claims of the Class.

62. The Class as defined herein is certifiable pursuant to Rule 1.220(b)(1) of the Florida Rules of Civil Procedure in that the prosecution of separate claims or defenses by or against individual members of the Class would create a risk of either:

- a. Inconsistent or varying adjudications with respect to individual members of the Class would establish incompatible standards of conduct for the party opposing the Class; or
- b. Adjudication with respect to individual members of the Class as a practical matter would be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

63. The Class as defined herein is also certifiable pursuant to Rule 1.220(b)(2) of the Florida Rules of Civil Procedure because Counterdefendant has acted on grounds generally applicable to the Class, in that it has acted in a uniform manner with respect to all members of the Class.

64. The Class as defined herein is also certifiable pursuant to Rule 1.220(b)(3) of the Florida Rules of Civil Procedure in that Counterplaintiff's claims involve questions of law or fact common to the claim of the representative party and the claim of the Class predominate over any question of law or fact affecting only individual members of the Class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy.

65. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable. Furthermore, because the monetary damages suffered by individual Class members may be relatively small, the expenses and burden of individual litigation make it impracticable for the Class to individually seek redress for the wrongs done to them. Counterplaintiff and the Class members, to the extent they are aware of their rights against Counterdefendant as alleged herein, would be unable to secure counsel to litigate their claims on an individual basis because of the relatively small nature of individual damages, and that a class action is the only feasible means of recovery for the Class members. Individual actions would also present a risk of inconsistent decisions, even though the conduct of Counterdefendant has been uniform with respect to each Class member.

66. Counterplaintiff envisions no difficulty in the management of this action as a class action.

67. Damages may be calculated from the information maintained in records of Counterplaintiff, the Class, Counterdefendant as well as public records, so that the cost of administering a recovery for the Class can be minimized.

#### **ENTITLEMENT AND REQUEST FOR ATTORNEYS FEES AND COSTS**

68. Counterplaintiff is: (a) is entitled to collect its attorney's fees and costs pursuant to the DUPTA; (b) has retained the law firm of Stamatakis + Thalji + Bonanno in this action; and (c) is obligated to pay the law firm of Stamatakis + Thalji + Bonanno a reasonable fee for its services in bringing or defending in this case, as well as all costs of collections.

#### **DEMAND FOR JURY TRIAL**

69. Counterplaintiff hereby requests a trial by jury on all issues so triable.

WHEREFORE, Counterplaintiff respectfully requests relief in the form of: (i) actual damages, interest, court costs and attorney's fees; (ii) declaring that this action is properly brought as a class action pursuant to Florida Rules of Civil Procedure, Rule 1.220, certifying the Class described herein, and declaring that Counterplaintiff's are proper representatives of the Class; (iii) enjoining Counterdefendant from engaging in further conduct as described in this Complaint until such practices are rectified; (iv) a trial by jury; and (v) such further relief in law or equity that the Court deems just an appropriate under the circumstances.

**COUNT II-INJUNCTIVE RELIEF**

70. Counterplaintiff realleges each and every allegation contained in paragraphs 40 through 69 herein.

71. This is an action for equitable, injunctive relief and Counterplaintiff has no adequate remedy at law.

72. Unless the Counterdefendant is permanently enjoined from engaging further in the acts and practices complained of herein, the continued activities of the Counterdefendant will result in further irreparable injury to Counterplaintiff and the public for which there is no adequate remedy at law.

73. Counterdefendant employed the unregistered, unauthorized and/or illegal fictitious or trade name scheme as described herein with the specific intent on receiving as many real estate closings as possible, and the continuation of said scheme will cause Counterplaintiff irreparable harm in the form of lost revenues, sales, commissions, listings, closings, clients and other benefits to Counterplaintiff and the

74. Absent injunctive relief, the harm to Counterplaintiff outweighs any potential harm to Counterdefendant from the granting of injunctive relief.

75. Counterplaintiff's request for preliminary and permanent injunctive relief is consistent with the public interest, because it will preserve the status quo between the parties while protecting both Counterplaintiff's and Counterdefendant's ability to defend itself.

76. Counterplaintiff has a substantial likelihood of success on the merits.

**DEMAND FOR JURY TRIAL**

77. Counterplaintiff hereby requests a trial by jury on all issues so triable.

WHEREFORE, Counterplaintiff prays that this Honorable Court take jurisdiction of this case; award Counterplaintiff such injunctive and ancillary relief as may be necessary to avert the likelihood of injury during the pendency of this action and to preserve the possibility of effective final relief; award Counterplaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper; grant a trial by jury on all issues so triable; and grant such other relief as this Court deems just and proper under the circumstances.

**THIRDPARTY COMPLAINT**

**COUNT I-DECEPTIVE AND UNFAIR TRADE PRACTICES FOR ILLEGAL FICTITIOUS  
NAME SCHEME**

COMES NOW Defendant(s)/Counterplaintiff(s)/Thirdparty Plaintiffs, SGS REAL ESTATE LLC (“SGS”) and JASON GARCIA (“GARCIA”) (collectively SGS and GARCIA shall be referred to as “Thirdparty Plaintiff”), by and through the undersigned counsel, and hereby files this Thirdparty Complaint against Plaintiff,/Counterdefendant/Thirdparty Defendants, ANDREW S. DUNCAN, LLC; ANDREW S. DUNCAN, individually; and ANGELA C. DUNCAN, individually (collectively ANDREW S. DUNCAN, LLC; ANDREW S. DUNCAN, individually; and ANGELA C. DUNCAN, individually shall collectively be referred to as “Thirdparty Defendant”), and states as follows:

78. Thirdparty Plaintiff realleges each and every allegation contained in paragraphs 40 through 69 herein.

79. This is an action for violations of Florida’s Deceptive and Unfair Trade Practices Act, Florida Statutes, §501, Part II, *et. seq.* (DUTPA) for damages that exceeds \$15,000.00 in value, exclusive of interest, court costs and attorney’s fees.

80. ANDREW S. DUNCAN, LLC is a domestic limited liability company, with its principal address in Hillsborough County, Florida.

81. ANDREW S. DUNCAN is an individual doing business or residing in Hillsborough County, Florida.

82. ANGELA C. DUNCAN is an individual doing business or residing in Hillsborough County, Florida.

83. Said unregistered, unauthorized and/or illegal fictitious or trade name scheme has harmed or injured Thirdparty Plaintiff.

**ENTITLEMENT AND REQUEST FOR ATTORNEYS FEES AND COSTS**

84. Thirdparty Plaintiff is: (a) is entitled to collect its attorney’s fees and costs pursuant to the DUPTA; (b) has retained the law firm of Stamatakis + Thalji + Bonanno in this action; and (c) is obligated to pay the law firm of Stamatakis + Thalji + Bonanno a reasonable fee for its services in bringing or defending in this case, as well as all costs of collections.

**DEMAND FOR JURY TRIAL**

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

WHEREFORE, Thirdparty Plaintiff respectfully requests relief in the form of: (i) actual damages, interest, court costs and attorney’s fees; (ii) declaring that this action is properly brought as a class action pursuant to Florida Rules of Civil Procedure, Rule 1.220, certifying the Class described herein, and declaring that Thirdparty Plaintiff’s are proper representatives of the Class; (iii) enjoining Thirdparty Defendant from engaging in further conduct as described in this Complaint until such

practices are rectified; (iv) a trial by jury; and (v) such further relief in law or equity that the Court deems just an appropriate under the circumstances.

### **COUNT II-INJUNCTIVE RELIEF**

86. Plaintiff realleges each and every allegation contained in paragraphs 78 through 85 herein.

87. This is an action for equitable, injunctive relief and Thirdparty Plaintiff has no adequate remedy at law.

88. Unless the Thirdparty Defendant is permanently enjoined from engaging further in the acts and practices complained of herein, the continued activities of the Thirdparty Defendant will result in further irreparable injury to Thirdparty Plaintiff and the public for which there is no adequate remedy at law.

89. Thirdparty Defendant employed the unregistered, unauthorized and/or illegal fictitious or trade name scheme as described herein with the specific intent on receiving as many real estate closings a possible, and the continuation of said scheme will cause Thirdparty Plaintiff irreparable harm in the form of lost revenues, sales, commissions, listings, closings, clients and other benefits to Thirdparty Plaintiff and the

90. Absent injunctive relief, the harm to Thirdparty Plaintiff outweighs any potential harm to Thirdparty Defendant from the granting of injunctive relief.

91. Thirdparty Plaintiff's request for preliminary and permanent injunctive relief is consistent with the public interest, because it will preserve the status quo between the parties while protecting both Thirdparty Plaintiff's and Thirdparty Defendant's ability to defend itself.

92. Thirdparty Plaintiff has a substantial likelihood of success on the merits.

### **DEMAND FOR JURY TRIAL**

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

WHEREFORE, Thirdparty Plaintiff prays that this Honorable Court take jurisdiction of this case; award Thirdparty Plaintiff such injunctive and ancillary relief as may be necessary to avert the likelihood of injury during the pendency of this action and to preserve the possibility of effective final relief; award Thirdparty Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper; grant a trial by jury on all issues so triable; and grant such other relief as this Court deems just and proper under the circumstances.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2nd day of May, 2016, a true and correct copy of the foregoing has been furnished to all counsel of record via Florida Court's E-Filing.

STAMATAKIS + THALJI + BONANNO

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