

# APPENDIX

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6 **SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE**  
7

8  
9 **M. STANLEY SLOAN,**  
10 **Plaintiff,**

11 **vs.**

12 **LEONARD HAMILTON and**  
13 **RUTH HAMILTON, husband**  
14 **and wife; LRH LLC, a**  
15 **WASHINGTON LIMITED**  
16 **LIABILITY COMPANY,**  
17 **Defendants.**

**NO. 13-204993-1**  
**FIRST AMENDED**  
**COMPLAINT FOR**  
**BREACH OF FIDUCIARY**  
**DUTY, UNJUST**  
**ENRICHMENT,**  
**CONVERSION,**  
**CONSTRUCTIVE TRUST,**  
**ACCOUNTING BY**  
**FIDUCIARY, AND**  
**RELATED DAMAGES**

18 COMES NOW, the Plaintiff, M. Stanley Sloan, by and through his  
19 attorney, John A. Bardelli, and for the cause of action against the  
20 Defendants, alleges as follows:  
21

22 **I. PARTIES**

23 1. The plaintiff, M. Stanley Sloan, is now and was at all times material  
24 hereto, a single person residing in Spokane County, Washington.  
25

26 **FIRST AMENDED COMPLAINT FOR BREACH**  
27 **OF FIDUCIARY DUTY, UNJUST ENRICHMENT,**  
28 **CONVERSION, CONSTRUCTIVE TRUST, ACCOUNTING**  
**BY FIDUCIARY, AND RELATED DAMAGES - 1**

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COUNTY OF SPOKANE, STATE OF WASHINGTON.

6. The above-described real property was purchased from Willis P. and Marian V. Johnson, husband and wife, and George F. Orchard. Appendix, p. 81.

7. At the time of the conveyance from Johnson/Orchard to Sloan, the property was undeveloped.

8. In the 1980's Mr. Sloan constructed a two-story residential duplex on the Duplex Property. Appendix p. 49, ¶ 3.

9. The upper unit of the Duplex Property (Unit A) is larger than the lower unit (Unit B).

10. Rent charged for Unit A is higher than rent charged for Unit B. Declaration of Sloan, Appendix p. 51, ¶ 12; Declaration of Herman, Appendix p. 89, ¶ 7.3.6

11. At all times from the date of its construction until Defendants Hamilton evicted him in December, 2010, Mr. Sloan occupied some portion of the Duplex Property as a residence and/or home office. Declaration of Sloan, Appendix p. 50, ¶ 9.

1           12. In 2004 Mr. Sloan was accused of shoplifting a \$1.29 doorstop  
2 from a hardware store.  
3

4           13. The prosecutor offered to settle the matter if Mr. Sloan would plead  
5 guilty to misdemeanor shoplifting and pay restitution. Declaration of Sloan,  
6 Appendix p. 114, ¶ 5.  
7

8           14. Believing himself innocent of shoplifting, Mr. Sloan declined the  
9 plea bargain. *Id.* 3.9  
10

11           15. In October 2004 a jury convicted Mr. Sloan of first-degree robbery,  
12 after which he was sentenced to three years in prison, and was denied release  
13 pending appeal.  
14

15           16. From October 2004 to October 2006 Mr. Sloan was incarcerated  
16 by the Washington State Department of Corrections (DOC). Declaration of  
17 Herman, Appendix p. 88, ¶ 5; Second Supplemental Declaration of Sloan,  
18 Appendix pp. 113-114, ¶¶ 2-8.  
19  
20

21           17. Near the time Mr. Sloan began his incarceration, he asked long-  
22 time friend Leonard Hamilton to act as his attorney in fact to manage his  
23 business and personal affairs during incarceration; Mr. Hamilton agreed to  
24  
25

1 do so.

2 18. Mr. Sloan executed a durable power of attorney on February 21,  
3 2005, appointing Leonard Hamilton his attorney in fact. Appendix p. 76-77;  
4 Appendix p. 96, ¶¶ 15-16; Appendix p. 115, ¶ 13.  
5

6 19. Around the time the durable power of attorney was executed,  
7 attorney Howard Herman agreed to assist Leonard Hamilton with various  
8 tasks associated with managing Mr. Sloan's affairs during his incarceration.  
9 Declaration of Herman, Appendix p. 89, ¶ 10.  
10

11 20. One of the main tasks confronting Mr. Sloan, Mr. Hamilton and  
12 Mr. Herman was to raise money to pay small existing liens against the duplex  
13 property, as well as to pay attorney fees for Stan's criminal appeal and  
14 various legal actions associated with the estates of his deceased parents.  
15 Appendix p. 89, ¶ 6.  
16

17 21. When Mr. Sloan, Mr. Hamilton and Mr. Herman began assessing  
18 Mr. Sloan's financial situation as of 2005, it was apparent to them that Mr.  
19 Sloan's own credit record was insufficient for him to obtain a loan against his  
20 Duplex Property. Declaration of Herman, Appendix p. 90, ¶¶ 11-13;  
21  
22  
23  
24

1 Declaration of Sloan, Appendix p. 96, ¶ 18.

2  
3 22. Based upon the status of Mr. Sloan's credit record, it was agreed  
4 between Mr. Sloan, Mr. Hamilton and Mr. Herman that funds would be  
5 raised by deeding the Duplex Property to Howard Herman and his wife, who  
6 would then use it as security for a loan to cover Mr. Sloan's expenses. *Id.* 23.

8 24. The Duplex Property was in fact conveyed to Mr. and Mrs.  
9 Herman by warranty deed, which was executed by Leonard Hamilton acting  
10 as attorney in fact for Mr. Sloan. Declaration of Herman, Appendix p. 90,  
11 ¶ 12. Declaration of Herman, Appendix p. 90, ¶ 12.

14 25. A loan of approximately \$67,000 was obtained by Mr. and Mrs.  
15 Herman. *Id.*

17 26. The proceeds from this loan were used to reimburse Mr. and Mrs.  
18 Herman for payments they had recently made to clear existing liens against  
19 the Duplex Property, as well as to reimburse Hamiltons for various expenses  
20 they had recently incurred on Mr. Sloan's behalf. *Id.*

22 27. The balance of the loan proceeds was placed in an account at Bank  
23 of America, Hillyard Branch (hereafter Trust Account), which Hamiltons  
24

1 then used to pay legal fees and other expenses on Mr. Sloan's behalf.  
2 Declaration of Herman, Appendix p. 90, ¶¶ 13-14.  
3

4 28. The Trust Account at the Bank of America, Hillyard Branch, was  
5 at all times under the sole and exclusive control of Mr. and/or Mrs.  
6 Hamilton.  
7

8 29. The proceeds from a check issued to Mr. Sloan by Mountain View  
9 Credit Union in March, 2003, in the approximate amount of \$117,000.00,  
10 was given to Hamiltons to use as needed for Mr. Sloan's expenses. Second  
11 Supplemental Declaration of Sloan, Appendix pp. 114-115, ¶¶ 9-10.  
12  
13

14 30. The aforementioned proceeds, in the approximate amount of  
15 \$117,000.00, were deposited into the Trust Account at Bank of America,  
16 Hillyard Branch.  
17

18 31. The aforementioned proceeds, in the approximate amount of  
19 \$117,000.00, were withdrawn from the Trust Account and disbursed from  
20 time to time by Mr. and/or Mrs. Hamilton.  
21

22 32. At no time has Mr. Sloan been a signatory of, nor had access to,  
23 the aforementioned Trust Account at Bank of America, Hillyard Branch.  
24  
25

1 33. At no time has Mr. Sloan been a signatory of, nor had access to  
2 any bank account or credit union account into which were deposited nor from  
3 which funds were withdrawn by Mr. and/or Mrs. Hamilton on behalf of Mr.  
4 Sloan.  
5

6  
7 34. From the time he was appointed attorney in fact by Mr. Sloan, until  
8 the present, Mr. Hamilton has managed the Duplex Property, maintaining the  
9 premises and collecting all rent from tenants.  
10

11 35. From the time he was appointed attorney in fact by Mr. Sloan, until  
12 the present, Mr. Hamilton has not provided Mr. Sloan an accounting of rental  
13 monies collected from Duplex Property tenants.  
14

15 36. From the time he was appointed attorney in fact by Mr. Sloan, until  
16 the present, Mr. Hamilton has not provided Mr. Sloan an accounting of the  
17 \$117,000.00 derived from the sale of Mr. Sloan's Idaho property.3.21  
18  
19 Until Hermans deeded the Duplex Property to Hamiltons, rental proceeds  
20 from the Duplex Property were used, in large part, to pay the loan Mr. and  
21 Mrs. Herman had obtained for Mr. Sloan's benefit. Declaration of Herman,  
22 Appendix p. 90, ¶ 15.  
23  
24  
25

1 37. During Mr. Sloan's incarceration and after his release, title to the  
2 Duplex Property remained in the names of Mr. and Mrs. Herman.  
3  
4 Declaration of Sloan, Appendix p. 90, ¶ 15.

5 38. Mr. and Mrs. Herman always considered themselves to be holding  
6  
7 the Duplex Property in trust for Mr. Sloan, in that it constituted security for  
8  
9 the loan they had obtained to help with his financial obligations. Declaration  
10  
11 of Herman, Appendix p. 91, ¶ 16-19.

12 39. In 2008 Mr. and Mrs. Herman decided they no longer wanted the  
13  
14 Duplex Property in their names, because if it remained that way and they  
15  
16 were to pass away, they were concerned that Mr. Sloan's substantial interest  
17  
18 would mistakenly end up as part of their estates. Declaration of Herman.  
19  
20 Appendix p. 91, ¶ 17.

21 40. Because Mr. Sloan's credit record in 2008 was still insufficient to  
22  
23 refinance the Duplex Property or otherwise obtain a loan himself, it was  
24  
25 decided by Mr. Sloan, the Hermans and the Hamiltons that the Duplex  
26  
27 Property would be conveyed to Hamiltons. Declaration of Howard Herman,  
28  
29 Appendix p. 91, ¶ 17.

1 41. It was agreed between Mr. Sloan, Hermans and Hamiltons that  
2 Hamiltons would obtain new replacement financing, pay off the note and trust  
3 deed that Mr. and Mrs. Herman had previously undertaken, and secure the  
4 replacement financing with the Duplex Property. Declaration of Herman,  
5 Appendix p. 91, ¶¶ 18-19.  
6

7  
8 42. Hamiltons arranged financing in the approximate amount of  
9 \$53,900.00. MetroScan Abstract, Appendix p. 105; and, Declaration of  
10 Herman, Appendix p. 91-92, ¶¶ 19-20; see also, warranty deed, Appendix  
11 p. 85.  
12

13  
14 43. Duplex Property has been appraised at a fair market value of  
15 approximately \$165,000.00. See Appraisal, Appendix p. 134.  
16

17 44. At some point in late 2007, Hamiltons requested that Mr. Sloan  
18 sign a lease (the Lease) regarding the Duplex Property.  
19

20 45. On or about January 1, 2008, the Lease was signed, designating  
21 "LRH, LLC" as the lessor and Mervin Stanley Sloan as the lessee.  
22

23 46. At the time the lease was signed, title to the Duplex Property was  
24 in the name of Hermans, and title to the property was not conveyed to  
25

1 Hamiltons until July 11, 2008. Appendix p. 85.

2 47. There is no evidence in the record that Hamiltons were authorized  
3  
4 by Hermans to enter into a lease with Sloan on their behalf or otherwise.

5 48. Title to the Duplex Property was not in the name of Hamiltons as  
6  
7 of January 2008, and Hamiltons were not authorized to enter into a lease with  
8 Sloan.

9 49. The lease entered into between LRH LLC and Sloan is either void  
10  
11 or voidable, inasmuch as neither Hamiltons nor LRH LLC were authorized  
12 by Hermans to enter into a lease with Sloan.

13 50. The address given for LRH LLC was the home address of Leonard  
14 and Ruth Hamilton.

15 51. Leonard Hamilton and Ruth Hamilton are the sole owners of "LRH  
16  
17 LLC."

18 52. The leased property was described as "...those certain premises  
19  
20 hereinafter referred to as "Premises" located at 6007 E 12th Spokane, WA  
21 99212."

22 53. The Lease set rent at \$400.00 per month. Appendix p. 72.  
23  
24  
25

1 54. The Lease provided that in the event of litigation regarding its  
2 interpretation or enforcement, the prevailing party would be entitled to  
3 reasonable costs and attorney fees. Appendix p. 18, ¶ 16.

4  
5 55. In 2009 it was determined the hookup to the municipal sewer  
6 system for the Duplex Property must be repaired. Declaration of Sloan,  
7 Appendix p. 120, ¶ 23.

8  
9 56. Mr. Sloan went to the Spokane County Planning Department  
10 (Planning) to apply for the appropriate permit authorizing sewer system  
11 repairs regarding the Duplex Property. Declaration of Sloan, Appendix p.  
12 120, ¶ 23.

13  
14 57. Upon inquiring with the Spokane County Planning Department  
15 regarding a permit authorizing repairs, Mr. Sloan was advised that Hamiltons  
16 were listed as the owners of the Duplex Property. Declaration of Sloan,  
17 Appendix p. 120, ¶ 23.

18  
19 58. Because Mr. Sloan did not have a contractor's license and was not  
20 the named owner of record regarding the Duplex Property, Planning declined  
21 to issue him the requisite sewer repair permit. Declaration of Sloan,  
22  
23  
24  
25

1 Appendix p. 120, ¶ 23.

2 59. Mr. Sloan reported to Mr. Hamilton that Planning would not issue  
3 Mr. Sloan a permit to repair the Duplex Property sewer system, on grounds  
4 that Mr. Sloan did not have a contractor's license and was not the named  
5 owner of record of the Duplex Property  
6  
7

8 60. Mr. Hamilton signed a letter stating that Mr. Sloan had a  
9 substantial ownership interest in the property. Declaration of Sloan,  
10 Appendix, p. 108.  
11

12 61. Mr. Sloan took the letter referenced in the preceding paragraph,  
13 signed by Mr. Hamilton, to Planning. Declaration of Sloan, Appendix p.  
14 120, ¶ 23.  
15

16 62. Planning issued Mr. Sloan a permit that identified him as having a  
17 substantial ownership interest in the property. Second Supplemental  
18 Declaration of Sloan, Appendix p. 120, ¶ 23; Permit Application and related  
19 documents, Appendix pp. 106-111.  
20  
21

22 63. Planning's issuance of a sewer repair permit regarding the Duplex  
23 Property was based upon a letter signed by Leonard Hamilton that stated that  
24  
25

1 Mr. Sloan possessed a substantial ownership interest in the Duplex Property.

2  
3 64. In March 2010 Mr. Hamilton sent Mr. Sloan a letter demanding  
4 rent, stating that the Duplex Property was going to be sold. Appendix p. 99.

5 Mr. Sloan revoked the durable power of attorney he had granted Mr.  
6  
7 Hamilton in 2005. Appendix p. 78.

8 65. Mr. Sloan was not truly *required* to pay rent, in that he was, and  
9  
10 remains, an equitable and/or actual owner of the Duplex Property.

11 Declaration of Sloan, Appendix p. 50, ¶ 11.

12 66. At the time title to the Duplex Property was conveyed from  
13  
14 Hermans to Hamiltons, Mr. Sloan had a *legal* and/or *equitable* ownership  
15  
16 interest in the Duplex Property.

17 67. At the time title to the Duplex Property was conveyed from  
18  
19 Hermans to Hamiltons, Leonard Hamilton and Ruth Hamilton knew that Mr.  
20  
21 Sloan had a *legal* and/or *equitable* ownership interest in the Duplex Property.

22 68. Neither Leonard Hamilton nor Ruth Hamilton are bona fide  
23  
24 purchasers for value regarding the Duplex Property.

25 69. At the time title to the Duplex Property was conveyed from

1 Hermans to Hamiltons, Leonard Hamilton and Ruth Hamilton knew that Mr.  
2 Sloan had conveyed his ownership interest in the Duplex Property purely for  
3 the sole purpose of providing security for obtaining funds and that Mr. Sloan  
4 had, at the very least, an *equitable* ownership interest in the Duplex Property,  
5 notwithstanding the quitclaim deed to Howard Herman and his wife.  
6

7  
8 70. In August 2010, Hamiltons initiated unlawful detainer proceedings  
9 against Mr. Sloan, based on the "Lease" Mr. Sloan had signed, in order to  
10 evict him from the Duplex Property.  
11

12 71. Hamiltons alleged in their eviction complaint that Mr. Sloan had  
13 failed to pay rent as purportedly required pursuant to the Lease. Declaration  
14 of Hamilton, Appendix p. 13.  
15

16 72. RCW 59.18.380 requires that a plaintiff seeking a writ of restitution  
17 in an unlawful detainer action must file a bond.  
18

19 73. In pursuing the writ of restitution against Mr. Sloan, neither the  
20 Hamiltons nor their LLC, filed a bond as required by RCW 59.18.380.  
21

22 74. Based upon the warranty deed conveyance to Hamiltons by  
23 Hermans in 2008, and the Lease signed by Sloan January 1, 2008, Hamiltons  
24

1 obtained a writ of restitution on November 30, 2010. Appendix p. 27.

2  
3 75. In the course of pursuing the aforementioned writ of restitution,  
4 neither the Hamiltons, their LLC, nor their attorney of record provided Mr.  
5 Sloan notice that a hearing had been set for November 30, 2010 regarding the  
6 writ of restitution.  
7

8 76. Mr. Sloan was not given notice of the proceedings conducted  
9 November 30, 2010 before Judge Moreno regarding the writ of restitution.  
10 Declaration of Sloan, Appendix pp. 94-95, ¶¶ 8-9.  
11

12 77. Mr. Sloan did not did not appear at the proceedings conducted by  
13 Judge Moreno regarding the writ of restitution on November 30, 2010.  
14 Declaration of Sloan, Appendix pp. 94-95, ¶¶ 8-9.  
15

16 78. Pursuant to the aforementioned writ of restitution, the sheriff  
17 evicted Mr. Sloan from the Duplex Property on or about December 7, 2010.  
18 Sheriff's Return of Service, Appendix p. 3; Writ of Restitution, Appendix p.  
19  
20  
21 27.

22 79. Hamiltons paid approximately \$65,000.00 to *replace* the financing  
23 obligations originally obtained by the Hermans and, having done so, did  
24  
25

1 thereby obtain from Hermans title to and possession of the Duplex Property.

2  
3 80. Hamiltons have not tendered to Mr. Sloan any consideration  
4 reflecting his equity in the Duplex Property.

5  
6 81. Following Hamiltons' eviction of Mr. Sloan from the Duplex  
7 Property, both units thereof have been rented to other tenants. Plaintiff's  
8 Objection to Motion to Vacate Order of Default and Writ of Restitution,  
9 Appendix p. 124, ¶ 12.

10  
11 82. On October 14, 2011, the Writ of Restitution was vacated,  
12 inasmuch as, contrary to a declaration of service, sworn under oath to be  
13 truthful, Mr. Sloan was not given notice of the proceedings of November 30,  
14 2010. See Order Vacating Default Order, Writ of Restitution, and Award of  
15 Costs and Attorney Fees; Appendix p. 130.

16  
17 83. Vacation of the Writ of Restitution was based, in whole or in part,  
18 on the failure of Hamiltons' and/or LRH, LLC to provide statutory notice to  
19 Mr. Sloan of the unlawful detainer proceedings of November 30, 2010.

20  
21 84. Hamiltons contend, in whole or in part, that Plaintiff cannot occupy  
22 a unit in the Duplex Property because Defendants have rented out both Unit  
23  
24  
25

1 A and Unit B to other tenants. Plaintiff's Objection to Motion to Vacate  
2 Order of Default and Writ of Restitution, Appendix p. 124, ¶ 12.  
3

4 85. Defendants' eviction of Plaintiff from the Duplex Property pursuant  
5 to the unlawful detainer proceeding of November 30, 2010, without  
6 compensating him for his financial equity therein, directly and proximately  
7 caused Plaintiff to be homeless for nearly two years.  
8

9  
10 **IV. FIRST CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY**

11 86. Plaintiff hereby realleges and incorporates by reference each and every  
12 allegation previously set forth as if set forth in full herein.  
13

14 87. Acts and/or omissions complained of herein occurred, in whole or in  
15 relevant and material part, while Leonard Hamilton was appointed and acting as  
16 attorney-in-fact for and on behalf of Plaintiff, including but not necessarily  
17 limited to acquisition of title to the Duplex Property.  
18

19  
20 88. An attorney-in-fact is an agent to whom the principal has given authority  
21 to act in his or her stead for the purposes set forth in the power of attorney. *See*  
22 *Bryant v. Bryant*, 125 Wn.2d 113, 118-19, 882 P.2d 169 (1994).  
23

24  
25 89. As Mr. Sloan's attorney-in-fact, Leonard Hamilton had a fiduciary duty

1 whereby he was bound to act with the utmost good faith and loyalty toward Mr.  
2 Sloan, and to fully disclose all facts relating to his interest in and his actions  
3 involving the Duplex Property, including the fact that, at the time he acquired title  
4 to the Duplex Property, it was his intention to exclude and deny Mr. Sloan's  
5 substantial equity interest therein.  
6  
7

8 90. As Mr. Sloan's attorney-in-fact, Leonard Hamilton has a duty to deliver  
9 to Mr. Sloan all benefits derived from or inuring to the Duplex Property arising  
10 from any breach of the fiduciary relationship. See *Crisman v. Crisman*, 85 Wn.  
11 App. 15, 22, 931 P.2d 163 (1997); *Moon v. Phipps*, 67 Wn.2d 948, 956, 411 P.2d  
12 157 (1966)).  
13  
14

15 91. Leonard Hamilton breached his fiduciary duty to Mr. Sloan, including but  
16 not necessarily limited to the following acts:  
17

- 18
- 19 (a) Inveighing Mr. Sloan to sign a lease regarding real property in  
20 which Mr. Sloan had a substantial financial equity and legal  
21 and/or equitable interest, which lease failed in all respects to  
22 recognize Mr. Sloan's legal and/or equitable interest and  
23 substantial financial interest in the Duplex Property, while  
24 depicting Mr. Sloan as a mere tenant and complete stranger thereto;
  - 25 (b) Excluding and evicting Mr. Sloan from all possession and  
26 occupancy of the Duplex Property, despite Mr. Sloan's substantial

1 financial and legal and/or equitable interest therein, all to the  
2 financial advantage of Leonard Hamilton and/or the LLC owned  
3 by Leonard Hamilton and the complete financial disadvantage of  
4 Mr. Sloan.

5 (c) Failing to compensate Mr. Sloan for the full monetary value of his  
6 equity in the Duplex Property, whether such interest be *legal*  
7 *interest* or *equitable interest*.

8 (d) Disposing of Mr. Sloan's chattel property located at the Duplex  
9 Property, despite Mr. Sloan's written request that the location of  
10 such chattel property be identified so that Mr. Sloan could retrieve  
11 said chattel property.

12 **V. SECOND CAUSE OF ACTION: UNJUST ENRICHMENT**

13 92. Plaintiff hereby realleges and incorporates by reference each and every  
14 allegation previously set forth as if set forth in full herein.

15 93. Defendants have unjustly benefitted and continue to unjustly benefit by  
16 claiming exclusive ownership of the Duplex Property, by wrongfully evicting  
17 Plaintiff from the Duplex Property, by collecting rent from tenants of the two units  
18 in the Duplex Property, and by failing to compensate Plaintiff for the full monetary  
19 value of his ownership equity in the Duplex Property, whether such interest be a  
20 *legal interest* or an *equitable interest*.

21 94. Defendants appreciate and have knowledge of the benefits they are

1 receiving by claiming exclusive ownership of the Duplex Property.  
2

3 95. Defendants appreciate and have knowledge of the benefits they are  
4 receiving by having wrongfully evicted Plaintiff from the Duplex Property, and by  
5 otherwise denying his substantial financial and ownership interest therein, whether  
6 such interest be *legal* or *equitable*.  
7

8  
9 96. Defendants appreciate and have knowledge of the benefits they are  
10 receiving by collecting and retaining all rents from tenants of the two units in the  
11 Duplex Property.  
12

13 97. Defendants appreciate and have knowledge that their possession of the  
14 property is to the detriment of Plaintiff's ownership and/or possessory rights,  
15 whether such rights be *legal* or *equitable*.  
16

17  
18 98. While Plaintiff continues to incur damage during Defendant's claim of  
19 exclusive ownership of the Duplex Property, as of the time of filing, Plaintiff is  
20 entitled to rent and/or restitution damages of \$400.00 per month, or \$16.66 per day  
21 from December 7, 2010, until Plaintiff is restored to possession of the Duplex  
22 Property, and/or until Plaintiff is fully compensated for his substantial financial and  
23 ownership interest therein, regardless of whether such interest be deemed *legal* or  
24  
25

1 *equitable.*

2  
3 99. It is not equitable to allow Defendants to retain the benefit of Plaintiff's  
4 equity in the Duplex property without payment for its fair market value, plus  
5 interest accruing from December 7, 2010 to the date of entry of judgment.  
6

7 100. Plaintiff is entitled to rents and profits resulting from Defendant's  
8 possession and use of Duplex Property as a result of the doctrine of Unjust  
9 Enrichment.  
10

11  
12 **VI. THIRD CAUSE OF ACTION: EQUITABLE MORTGAGE**

13 101. Plaintiff hereby realleges and incorporates by reference each and every  
14 allegation previously set forth as if set forth in full herein.  
15

16 102. Mr. Sloan's conveyance of his interest in the Duplex Property to Mr.  
17 and Mrs. Herman was done for the sole purpose of providing security for a loan,  
18 the proceeds of which were to be applied to Mr. Sloan's financial needs and  
19 obligations. See *Smith v. Monson*, 157 Wn. App. 443, 236 P.3d 991 (Div. 3 2010).  
20  
21

22 103. The sole purpose of the Hermans' conveyance to Leonard and Ruth  
23 Hamilton of title to the Duplex Property was to provide a continuation of using the  
24  
25

1 Hamilton of title to the Duplex Property was to provide a continuation of using the  
2 Duplex Property as security for a loan obtained for the benefit of Mr. Sloan  
3

4 104. Because conveyance of title to the Duplex Property from Mr. Sloan to  
5 the Hermans and from Hermans to the Hamiltons was intended to constitute and did  
6 constitute security for a loan for the benefit of Mr. Sloan, those conveyances must  
7 be deemed by the court to be equitable mortgages, not fee simple absolute  
8 conveyances.  
9  
10

11 105. Leonard and Ruth Hamilton are not bona fide purchasers for value  
12 regarding the Duplex Property, inasmuch as at all times relevant hereto, they had  
13 direct and explicit knowledge of Stan Sloan's legal and/or equitable interest in the  
14 Duplex Property, including knowledge that it was never Stan Sloan's intent to  
15 abandon his substantial equity in said property.  
16  
17

18 106. Leonard Hamilton was closely and intimately involved with Stan Sloan  
19 and Howard Herman in planning and executing conveyance of the Duplex Property  
20 for the sole purpose of providing security for a loan for Stan Sloan's benefit, not for  
21 the purpose of selling the Duplex Property and thereby abandoning his substantial  
22 and valuable equity in the property.  
23  
24  
25

## VII. FOURTH CAUSE OF ACTION: CONSTRUCTIVE TRUST

107. A constructive trust is an equitable remedy that compels restoration of property where one through actual fraud, abuse of confidence reposed and accepted, or through other questionable means, gains something for himself which, in equity and good conscience, he should not be permitted to retain.

108. Leonard and Ruth Hamilton have acquired fee simple absolute title to the Duplex Property as a direct and proximate result of a breach of fiduciary duty owed by Leonard Hamilton to Mr. Sloan, namely, by using his position of trust arising from his status as attorney-in-fact for Mr. Sloan to obtain title to the Duplex Property, then fraudulently claiming exclusive ownership of the Duplex Property and denying Mr. Sloan's right, title and interest therein, and thereafter excluding him from occupancy and possession thereof.

109. Leonard and Ruth Hamilton have refused to compensate Mr. Sloan for the monetary value of his substantial monetary interest in the Duplex Property.

A constructive trust should be imposed on the Defendants, requiring that they compensate Mr. Sloan in full for his ownership interest in the Duplex Property, in such amount as shall be demonstrated at trial.

**VIII. FIFTH CAUSE OF ACTION: ACCOUNTING**

110. Plaintiff hereby realleges and incorporates by reference each and every allegation previously set forth as if set forth in full herein.

111. On February 21, 2005, Plaintiff appointed Defendant Leonard Hamilton to act as his attorney in fact.

112. Beginning February 21, 2005, a fiduciary relationship existed between Plaintiff and Defendant Leonard Hamilton.

113. Beginning February 21, 2005, Defendant Leonard Hamilton owed Plaintiff a fiduciary duty to act in Plaintiff's best interests.

114. Defendant Leonard Hamilton has received rent monies from Duplex Property tenants.

115. Plaintiff is entitled to an accounting reflecting the receipt and disbursement of all monies received by Defendant Leonard Hamilton from Duplex Property tenants.

Defendant Leonard Hamilton received monies constituting proceeds from the sale of Plaintiff's Idaho real property, in the approximate amount of \$117,000.00.

1 116. Plaintiff is entitled to an accounting by Defendant Leonard Hamilton  
2 reflecting Mr. Hamilton's receipt and disbursement of all monies constituting  
3 proceeds from the sale of Plaintiff's Idaho real property.  
4

5  
6 **WHEREFORE,** Plaintiff seeks Judgment and Relief relief against the  
7 Defendants, jointly and severally, as follows:

- 8  
9 1. Judgment determining that Leonard Hamilton and Ruth Hamilton  
10 acquired title to the Duplex Property in the course of and as a result of  
11 Leonard Hamilton's position as attorney-in-fact for Mr. Sloan.  
12  
13 2. Judgment determining that Leonard Hamilton breached his fiduciary  
14 duty owed to Mr. Sloan, by virtue of claiming as exclusively his own  
15 real property he acquired solely by and through his status as Mr.  
16 Sloan's attorney-in-fact, with full knowledge that his claim of exclusive  
17 ownership was, and remains, contrary to and in derogation of Mr.  
18 Sloan's legal and/or equitable interest in the Duplex Property.  
19  
20 3. Judgment determining that conveyances from Mr. Sloan to the Hermans,  
21 and from the Hermans to the Hamiltons, constituted equitable  
22 mortgages, by which the Hamiltons did not acquire clear title in fee  
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25

1 simple absolute.

2  
3 4. Judgment determining that Leonard and Ruth Hamilton are not bona fide  
4 purchasers for value regarding the Duplex Property, inasmuch as at all  
5 times relevant hereto, they had direct and explicit knowledge of Stan  
6 Sloan's legal and/or equitable interest in the Duplex Property, including  
7 knowledge that it was never Stan Sloan's intent to abandon his  
8 substantial equity in said property.  
9

10  
11 5. Judgment determining that the Hamiltons are not bona fide purchasers  
12 for value regarding the Duplex Property but, rather, had full and  
13 complete knowledge of Mr. Sloan's substantial monetary interest in the  
14 Duplex Property before and following their acquisition of title by  
15 "warranty deed" from the Hermans, and at all relevant times knew for  
16 a fact and were on actual notice that Hermans could not "warrant" clear  
17 title to the Duplex Property.  
18

19  
20 6. Judgment imposing a constructive trust on the Hamiltons personally and  
21 upon the Duplex Property *in rem*, equal to the fair market value of the  
22 Duplex Property, minus reasonable sums expended by the Hamiltons for  
23  
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1 mortgage or deed of trust payments secured by the Duplex Property, as  
2 well as reasonable sums expended for the preservation and maintenance  
3 of the Duplex Property;  
4

5  
6 7. Judgment ordering that Defendant Leonard Hamilton provide Plaintiff  
7 an itemized accounting of all monies received from tenants residing in  
8 the Duplex Property from February 21, 2005, onward; in the event  
9 Defendants provide an appropriate and thorough accounting as requested  
10 herein, Plaintiff will voluntarily withdraw this claim/prayer for relief;  
11

12  
13 8. Judgment ordering that Defendant Leonard Hamilton provide Plaintiff  
14 an itemized accounting of all monies constituting proceeds from the sale  
15 of Plaintiff's Idaho real property; in the event Defendant Leonard  
16 Hamilton provides an appropriate and thorough accounting as requested  
17 herein, Plaintiff will voluntarily withdraw this claim/prayer for relief;  
18

19  
20 9. Judgment ordering that Defendants provide Plaintiff with an itemized  
21 accounting that lists each and every disbursement made from loan  
22 proceeds obtained by the Hermans and turned over to Hamiltons,  
23 including all financial transactions occurring by and through the Trust  
24  
25

1 Account maintained at the Hillyard Branch of Bank of America for the  
2 benefit of Plaintiff.  
3

4 10. Judgment ordering that Defendant Leonard Hamilton provide Plaintiff  
5 with an itemized accounting that lists all chattel property removed from  
6 the Duplex Property following Plaintiff's eviction therefrom, and  
7 identifying the disposition/location of all such chattel property, including  
8  
9 but not necessarily limited to:  
10

- 11 a. Furniture
- 12
- 13 b. Appliances
- 14
- 15 c. Clothing
- 16
- 17 d. Business and personal papers
- 18
- 19 e. Cash
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- 21 f. Negotiable instruments
- 22
- 23 g. Trailers
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- 25 h. Motor vehicles
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- 27 i. Motor vehicle parts
- 28

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j. Motor vehicle titles/registrations

k. Building/construction materials

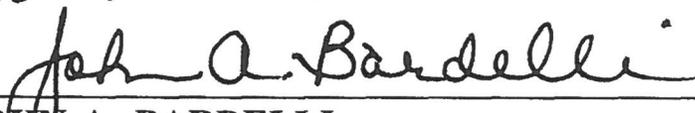
- 1. Metal
- 2. Wood
- 3. Wood-composite
- 4. Plastic

11. Judgment awarding damages for unjust enrichment in the principal amount of the fair market value, rent and/or profits, together with consequential damages, arising out of Defendant's wrongful seizure, possession, dominion, sequestration and conversion of Plaintiff's personal property, in such amount as proven at time of trial.

12. Judgment awarding damages for unjust enrichment, arising out of Defendants having wrongfully sued out a Writ of Restitution and unlawfully evicted Plaintiff from the Duplex Property, in such amount as proven at trial, including but not necessarily limited to the fair market rental value of one of the units in said property in the approximate amount of five hundred dollars (\$500.00) per month, plus statutory interest from December 7, 2010 to the date of judgment.

- 1 13. Judgment awarding pre-judgment interest on Plaintiff's Damages
- 2 computed at a rate of twelve percent (12%) per annum;
- 3
- 4 14. Judgment awarding post-judgment interest on any judgment entered
- 5 herein computed at a rate of twelve percent (12%) per annum.
- 6
- 7 15. Judgment awarding Plaintiff reasonable attorney fees and costs incurred
- 8 as a result of this action, as provided by law and/or equitable principles;
- 9
- 10 16. Judgment awarding Plaintiff general damages for pain, suffering, loss
- 11 of enjoyment of life and mental anguish experienced as a result of being
- 12 homeless and related conditions; and
- 13
- 14
- 15 17. Judgment awarding such other and further relief as the Court deems just
- 16 and equitable.
- 17

18 DATED this 16<sup>TH</sup> day of October, 2014.

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21 JOHN A. BARDELLI  
22 Attorney for Plaintiff  
23 WSBA NO. 05498  
24  
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