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17 Banker Real Estate Corporation and
18 Coldwell Banker Real Estate, LLC

19 UNITED STATES DISTRICT COURT

20 CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

21	BRADLEY B. LARSON, <u>et al.</u> ,)	CASE NO.: SA CV-10-00401 AG
22)	(MLGx)
23	Plaintiffs,)	
24)	ANSWER TO SECOND AMENDED
25	v.)	CLASS ACTION COMPLAINT FOR:
26)	
27	COLDWELL BANKER REAL)	1. Negligence;
28	ESTATE CORPORATION, <u>et al.</u> ,)	2. Fraud;
)	3. Negligent Misrepresentation;
	Defendants.)	4. Unfair Business Practices;
)	5. False Advertising; and
)	6. Aiding and Abetting
)	
)	DEMAND FOR JURY TRIAL

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1 Defendants Coldwell Banker Real Estate Corporation and Coldwell Banker
2 Real Estate, LLC ("Coldwell"), by and through their undersigned counsel, answer the
3 Second Amended Class Action Complaint for Negligence, Fraud, Negligent
4 Misrepresentation, Unfair Business Practices, False Advertising, and Aiding and
5 Abetting ("SAC"), upon knowledge as to themselves and otherwise upon information
6 and belief, as follows:

7 **RESPONSE TO "INTRODUCTION"**

8 1. Coldwell states the allegations in the first sentence of Paragraph 1 are
9 Plaintiffs' legal conclusion to which no response is required. Coldwell lacks
10 knowledge or information sufficient to form a belief as to the truth of allegations in
11 the second sentence of Paragraph 1. Coldwell denies the allegations in the third and
12 fourth sentences of Paragraph 1. Coldwell states the allegations in the fifth sentence
13 of Paragraph 1 are Plaintiffs' legal conclusion to which no response is required.
14 Coldwell otherwise denies the allegations in Paragraph 1.

15 2. Coldwell denies the allegations in Paragraph 2, and refers to the
16 deposition testimony described therein for a full and accurate statement of its
17 contents.

18 3. Coldwell denies the allegations in Paragraph 3.

19 **RESPONSE TO "DEFINITIONS"**

20 4. Paragraph 4 is Plaintiffs' characterization of the definitions to which no
21 response is required.

22 (a) Coldwell acknowledges Plaintiffs' use of the terms "Coldwell Banker,"
23 "Coldwell" and "Defendants" to mean and refer to the parties listed in Paragraph 4,
24 subpart (a).

25 (b) Coldwell acknowledges Plaintiffs' use of the term "CB/AS" to mean and
26 refer to Coldwell Banker Commercial American Spectrum.
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1 (c) Coldwell acknowledges Plaintiffs' use of the term "Committee" to mean
2 and to refer to the party described in Paragraph 4, subpart (c). Coldwell denies the
3 factual allegations in Paragraph 4, subpart (c).

4 (d) Coldwell denies the allegations in Paragraph 4, subpart (d).

5 (e) Coldwell acknowledges Plaintiffs' use of the term "Fraudulent Scheme"
6 to mean and refer to the REP "Investment Funds." Coldwell denies the assertion of a
7 fraudulent scheme.

8 (f) Coldwell acknowledges Plaintiffs' use of the terms "Investments" and/or
9 "Investment," to mean and refer to the description in Paragraph 4, subpart (f).
10 Coldwell denies the factual allegations in Paragraph 4, subpart (f).

11 (g) Coldwell acknowledges Plaintiffs' use of the term "Investment Funds"
12 to mean and refer to the funds described in Paragraph 4, subpart (g).

13 (h) Coldwell acknowledges Plaintiffs' use of the term of "OCC" to mean
14 and refer to Orange Coast Commercial, Inc., the franchisee of Coldwell Banker
15 doing business as Coldwell Banker Commercial REP.

16 (i) Coldwell acknowledges Plaintiffs' use of the term "PPM" to mean and
17 refer to the Investment Funds' Private Placement Memoranda.

18 (j) Coldwell acknowledges Plaintiffs' use of the term "Plaintiffs" to refer to
19 the parties in Paragraph 4, subpart (j).

20 **RESPONSE TO "PARTIES"**

21 5. Coldwell lacks knowledge or information sufficient to form a belief as
22 to the truth of the allegations in the first and second sentences of Paragraph 5. As to
23 the third sentence of Paragraph 5, Coldwell admits that Mr. Larsen is the Chairman
24 of the Joint Equity Committee of Investors of Real Estate Partners, Inc. in the United
25 States Bankruptcy Court for the Central District of California-Santa Ana Division,
26 Case No. 8:07-13239 TA, jointly administered with Case Nos. 8:07-13239 TA
27 through 8:07-13246 TA, and refers to the bankruptcy filings described therein for a
28 complete and accurate statement of their contents. Coldwell denies the allegations in

1 the fourth sentence of Paragraph 5. Coldwell lacks knowledge or information
2 sufficient to form a belief as to the truth of the allegations in the fifth, sixth, seventh
3 and eighth sentences of Paragraph 5. As to the ninth sentence of Paragraph 5,
4 Coldwell admits that Mr. Bunch, Mr. Woodward, and Sun Holdings, LLC are
5 members of the Joint Equity Committee, and otherwise lacks knowledge or
6 information sufficient to form a belief as to the truth of the rest of the allegations
7 contained in the ninth sentence. Coldwell lacks knowledge or information sufficient
8 to form a belief as to the truth of the allegations in the tenth sentence of Paragraph 5.
9 Coldwell admits that Mr. Todd is not a member of the Joint Equity Committee, but
10 otherwise lacks knowledge or information sufficient to form a belief as to the rest of
11 the allegations contained in the eleventh sentence of Paragraph 5. Coldwell denies it
12 was involved in any way in a Fraudulent Scheme.

13 6. Coldwell admits that Coldwell Banker Real Estate Corporation was a
14 corporation organized under the laws of the State of California, with its headquarters
15 and principal place of business in Parsippany, New Jersey, doing business as
16 Coldwell Banker Commercial Affiliates, Inc., and converted to Coldwell Banker
17 Real Estate, LLC, a California limited liability company, on July 2, 2007.

18 7. Coldwell admits that Coldwell Banker Real Estate, LLC is a limited
19 liability company organized under the laws of the State of California, with its
20 headquarters and principal place of business in Parsippany, New Jersey, and is the
21 successor in interest to Coldwell Banker Real Estate Corporation.

22 8. Coldwell lacks knowledge or information sufficient to form a belief as
23 to the truth of the allegations in Paragraph 8.

24 9. Coldwell states the allegations in Paragraph 9 of the SAC constitute
25 Plaintiffs' legal conclusions to which no response is required. To the extent a
26 response is necessary, Coldwell denies the allegations in Paragraph 9.

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RESPONSE TO "JURISDICTION AND VENUE"

10. Coldwell admits that Coldwell Banker Real Estate Corporation and Coldwell Banker Real Estate LLC, respectively, were formed under the laws of the State of California. Coldwell also admits that Coldwell's principal place of business and headquarters is in New Jersey. The rest of the allegations in Paragraph 10 are Plaintiffs' legal conclusion to which no response is required. To the extent a response is necessary, Coldwell denies the allegations in Paragraph 10.

11. Coldwell admits that this Court has subject matter jurisdiction.

12. Coldwell states that the allegations contained in Paragraph 12 are Plaintiffs' legal conclusion to which no response is required. To the extent Paragraph 12 contains factual allegations to which a response is required, Coldwell denies the allegations in Paragraph 12.

RESPONSE TO "SUMMARY"

13. Coldwell admits that it is a real estate company and franchisor.

14. Coldwell denies the allegations in the first and second sentences of Paragraph 14. Coldwell lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence of Paragraph 14.

15. Coldwell denies the allegations in Paragraph 15.

16. Coldwell denies the allegations in Paragraph 16.

17. Coldwell lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17. Coldwell further refers to the complaint described therein for a full and accurate statement of its contents.

18. As to the first sentence in Paragraph 18, Coldwell lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first half of the sentence, and denies the allegations in the second half of the first sentence in Paragraph 18. As to the rest of Paragraph 18, Coldwell denies the allegations, except it admits that it entered into a Commercial Franchise Agreement with Orange

1 Coast Commercial in April 2003, and that REP had a 40.5% interest in Orange Coast
2 Commercial.

3 19. Coldwell denies the allegations in Paragraph 19.

4 20. Coldwell denies the allegations in Paragraph 20.

5 21. Coldwell admits that, as a franchisee, Coldwell Banker Commercial
6 REP paid franchise and advertising fees to Coldwell. Coldwell otherwise denies the
7 allegations in Paragraph 21.

8 22. In response to Paragraph 22, Coldwell admits that the Texas State
9 Securities Board made an inquiry into the REP investment funds, and that the SEC
10 filed suit against REP, REP's investment funds, and the REP principals. Coldwell
11 refers to the SEC complaint for a full and accurate statement of its contents.

12 23. Coldwell refers to the bankruptcy petitions described in the first
13 sentence of Paragraph 23 for a full and accurate statement of their contents.
14 Coldwell lacks knowledge or information sufficient to form a belief as to the truth of
15 the rest of the allegations in Paragraph 23.

16 24. Coldwell refers to the bankruptcy action documents described in
17 Paragraph 24 for a full and accurate statement of their contents.

18 25. Coldwell refers to the bankruptcy application and order described in
19 Paragraph 25 for a full and accurate statement of their contents.

20 26. Coldwell denies the allegations in Paragraph 26.

21 27. Coldwell lacks knowledge or information sufficient to form a belief
22 about the truth of the allegations in the first and second sentences of Paragraph 27.

23 Coldwell denies the allegations in the third, fourth, and fifth sentences of
24 Paragraph 27. Coldwell states that the allegations contained in the sixth sentence
25 include Plaintiffs' legal conclusion to which no response is required, and, to the
26 extent a response is required, denies the allegations in the sixth sentence of
27 Paragraph 27.

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1 28. Coldwell refers to the final judgment described in the first sentence in
2 Paragraph 28 for a full and accurate statement of its contents. Coldwell lacks
3 knowledge or information sufficient to form a belief as to the truth of the allegations
4 in the second sentence of Paragraph 28.

5 29. Coldwell lacks knowledge or information sufficient to form a belief as
6 to the truth of the allegations in the first sentence of Paragraph 29. Coldwell denies
7 the allegations in the second sentence of Paragraph 29. Coldwell admits that this suit
8 was first filed on April 2, 2010.

9 30. Coldwell admits that it is a franchisor. The contractual arrangements as
10 between Coldwell and its franchisees are laid out in the franchise agreements, and
11 Coldwell refers to the franchise agreements described in Paragraph 30 for a full and
12 accurate statement of its contents. Coldwell denies the rest of the allegations in
13 Paragraph 30.

14 31. Coldwell denies the allegations in Paragraph 31.

15 **RESPONSE TO "CLASS ACTION ALLEGATIONS"**

16 32. Coldwell denies the allegations in Paragraph 32.

17 33. Coldwell states that Paragraph 33 is a characterization of the SAC to
18 which no response is required. To the extent that Paragraph 33 contains factual
19 allegations to which a response is required, Coldwell denies the allegations.

20 34. Coldwell states that Paragraph 34 is a characterization of Plaintiffs'
21 intentions to which no response is required.

22 35. Coldwell denies the allegations in Paragraph 35.

23 36. Coldwell denies the allegations in Paragraph 36.

24 37. Coldwell states that the allegations contained in the first sentence of
25 Paragraph 37 are Plaintiffs' legal conclusion to which no response is required.
26 Coldwell lacks knowledge or information sufficient to form a belief as to the truth of
27 the allegations in the second sentence of Paragraph 37.

28 38. Coldwell denies the allegations in Paragraph 38.

1 39. Coldwell denies the allegations in Paragraph 39 and its subparts (a)
2 through (i).

3 40. Coldwell denies the allegations in Paragraph 40.

4 41. Coldwell denies the allegations in Paragraph 41.

5 42. Coldwell denies the allegations in Paragraph 42.

6 **RESPONSE TO "THE FRAUDULENT SCHEME"**

7 **A. Response to "REP's Franchise Relationships with Coldwell**
8 **Banker"**

9 43. Coldwell denies the allegations in Paragraph 43.

10 44. Coldwell denies the allegations in Paragraph 44.

11 45. Coldwell denies the allegations in Paragraph 45, and refers to the
12 Williams Action complaint described therein for a full and accurate statement of its
13 contents.

14 46. Coldwell admits that it entered into a Commercial Franchise Agreement
15 with Orange Coast Commercial, Inc., in April 2003, and that REP owns 40.5% of
16 Orange Coast Commercial, Inc. Coldwell denies the rest of the allegations in
17 Paragraph 46.

18 47. Coldwell denies the allegations in Paragraph 47.

19 48. Coldwell denies the allegations in Paragraph 48.

20 49. Coldwell denies the allegations in Paragraph 49.

21 50. Coldwell denies the allegations in Paragraph 50.

22 51. Coldwell denies the allegations in the first sentence of Paragraph 51.
23 Coldwell refers to the franchise agreement described in the second and third
24 sentences of Paragraph 51 for a full and accurate statement of its contents. Coldwell
25 refers to the deposition testimony described in the fourth sentence of Paragraph 51
26 for a full and accurate statement of its contents. Coldwell admits that Michael
27 McLean testified that any use of Coldwell Banker's name in connection with the
28 investment funds was a violation of Section 6.4 of the Franchise Agreement.

1 52. Coldwell refers to the franchise agreement described in the first
2 sentence of Paragraph 52 for a full and accurate statement of its contents. Coldwell
3 denies the allegations in the second sentence of Paragraph 52.

4 53. Coldwell refers to the email described in Paragraph 53 for a full and
5 accurate statement of its contents.

6 54. Coldwell denies the allegations in Paragraph 54.

7 55. Coldwell refers to the email described in Paragraph 55 for a full and
8 accurate statement of its contents.

9 56. Coldwell admits that an addendum to the franchise agreement was
10 entered into on April 30, 2003. Coldwell otherwise denies the allegations in
11 Paragraph 56.

12 57. Coldwell refers to the franchise agreement addendum described in the
13 first, second, and third sentences of Paragraph 57 for a full and accurate statement of
14 its contents. Coldwell denies the allegations in the fourth sentence.

15 58. Coldwell denies the allegations in Paragraph 58.

16 59. Coldwell denies the allegations in Paragraph 59.

17 (a) Coldwell states that it lacks knowledge or information sufficient to form
18 a belief as to the truth of the allegations in the first, second, and third
19 sentences of subpart (a) of Paragraph 59. Coldwell denies the
20 allegations in the fourth sentence of subpart (a) of Paragraph 59.

21 Coldwell denies the allegations in the fifth sentence as they relate to
22 CB/REP, and lacks knowledge or information sufficient to form a belief
23 as to the truth of the allegations as they relate to REP.

24 (b) Coldwell lacks knowledge or information sufficient to form a belief as
25 to the truth of the allegations in subpart (b) of Paragraph 59.

26 (c) Coldwell denies the allegations in subpart (c) of Paragraph 59.

27 (d) Coldwell denies the allegations in subpart (d) of Paragraph 59.

28 (e) Coldwell denies the allegations in subpart (e) of Paragraph 59.

1 (f) Coldwell denies the allegations in subpart (f) of Paragraph 59.

2 60. Coldwell denies the allegations in Paragraph 60.

3 **B. Response to "Solicitation of Investments and Misrepresentations to**
4 **Class Members"**

5 61. Coldwell denies the allegations in the first and fifth sentences of
6 Paragraph 61. Coldwell lacks knowledge or information sufficient to form a belief
7 as to the truth of the allegations in the second, third, fourth, sixth, and seventh
8 sentences of Paragraph 61.

9 62. Coldwell denies the allegations in Paragraph 62.

10 63. Coldwell denies the allegations in Paragraph 63.

11 64. Coldwell denies the allegations in Paragraph 64.

12 65. Coldwell denies the allegations in Paragraph 65.

13 66. Coldwell denies the allegations in Paragraph 66 and its subparts (a)
14 through (f).

15 67. Coldwell lacks knowledge or information sufficient to form a belief as
16 to the truth of the allegations in Paragraph 67.

17 68. Coldwell denies that Davenport was in charge of the boiler-rooms. To
18 the extent that Coldwell's approval of promotional materials is alleged, Coldwell
19 denies those allegations. To the extent that CB/REP's involvement is alleged,
20 Coldwell denies those allegations. With respect to the rest of the allegations in
21 Paragraph 68, Coldwell lacks knowledge or information sufficient to form a belief as
22 to the truth of the allegations in Paragraph 68.

23 69. Coldwell lacks knowledge or information sufficient to form a belief as
24 to the truth of the allegations in Paragraph 69.

25 70. Coldwell denies the allegations in Paragraph 70.

26 71. Coldwell lacks knowledge or information sufficient to form a belief as
27 to the truth of the allegations in Paragraph 71.

28 72. Coldwell denies the allegations in the first and second sentences of
Paragraph 72. Coldwell admits that some scripts claimed that "Coldwell Banker

1 Commercial Real Estate Partners" was the third-largest Coldwell Banker franchise in
2 the country. Coldwell lacks knowledge or information sufficient to form a belief as
3 to the truth of the rest of the allegations in Paragraph 72.

4 73. Coldwell lacks knowledge or information sufficient to form a belief as
5 to the truth of the allegations in Paragraph 73.

6 74. Coldwell denies the allegations in Paragraph 74 as they relate to
7 CB/REP. Coldwell lacks knowledge or information sufficient to form a belief as to
8 the truth of the allegations in Paragraph 74 as they relate to the other individuals.

9 75. Coldwell denies the allegations in Paragraph 75 as they relate to
10 CB/REP. Coldwell lacks knowledge or information sufficient to form a belief as to
11 the truth of the allegations in Paragraph 75 as they relate to REP and the other
12 individuals.

13 76. Coldwell denies the allegation that Coldwell approved any Investment
14 Fund brochures. Coldwell lacks knowledge or information sufficient to form a belief
15 as to the truth of the rest of the allegations in Paragraph 76.

16 77. Coldwell refers to the documents described in Paragraph 77 for a full
17 and accurate statement of their contents. Coldwell otherwise lacks knowledge or
18 information sufficient to form a belief as to the truth of the allegations in
19 Paragraph 77.

20 78. Coldwell denies the allegation that Coldwell approved any sales
21 brochures. Coldwell lacks knowledge or information sufficient to form a belief as to
22 the truth of the rest of the allegations in Paragraph 78. Coldwell refers to the
23 brochures described in Paragraph 78 for a full and accurate statement of their
24 contents.

25 79. Coldwell refers to the brochures described in the first sentence of
26 Paragraph 78 for a full and accurate statement of their contents. Coldwell denies the
27 allegations in the second and third sentences of Paragraph 79.

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1 1. Response to "CB/REP Misrepresents the Investment Funds'
2 Relationship with Coldwell Banker"

3 80. Coldwell denies the allegations in Paragraph 80.

4 81. Coldwell denies the allegations in Paragraph 81.

5 82. Coldwell denies the allegations in Paragraph 82.

6 83. Coldwell denies the allegations in Paragraph 83.

7 84. Coldwell denies the allegations in the first and fifth sentences of
8 Paragraph 84. Coldwell admits that some scripts claimed that "Coldwell Banker
9 Commercial Real Estate Partners" was the third-largest Coldwell Banker franchise in
10 the country. Coldwell lacks knowledge or information sufficient to form a belief as
11 to the truth of the allegations in the second, third, and fourth sentences of
12 Paragraph 84, and refers to the brochures described therein for a full and accurate
13 statement of their contents.

14 85. Coldwell lacks knowledge or information sufficient to form a belief as
15 to the truth of the allegations in the first sentence of Paragraph 85. Coldwell states
16 that the allegations in the second sentence of Paragraph 85 include Plaintiffs' legal
17 conclusion to which no response is required, though Coldwell admits that CB/REP
18 was a d/b/a of Orange Coast Commercial, and that Orange Coast Commercial was a
19 Coldwell Banker real estate brokerage franchise. Coldwell refers to the franchise
20 agreement described in the third sentence of Paragraph 85 for a full and accurate
21 statement of its contents. Coldwell denies the allegations in the fourth sentence of
22 Paragraph 85.

23 86. Coldwell denies the allegations in Paragraph 86 as they relate to
24 CB/REP. Coldwell lacks knowledge or information sufficient to form a belief as to
25 the truth of the allegations in the first sentence of Paragraph 86 as they relate to the
26 other individuals. Coldwell denies the allegations in the second sentence in
27 Paragraph 86.

28 87. Coldwell denies the allegations in the first sentence of Paragraph 87.
As to the second sentence, Coldwell admits that it terminated the CBC/REP

1 franchise in September, 2005, and denies the rest of the allegations. Coldwell denies
2 the allegations in the third and fourth sentences of Paragraph 87. Coldwell lacks
3 knowledge or information sufficient to form a belief as to the truth of the allegations
4 in the fifth sentence of Paragraph 87.

5 88. Coldwell denies the allegations in Paragraph 88.

6 2. Response to "Class Members Are Misled With Response to The
7 Use of Their Investments"

8 89. Coldwell lacks knowledge or information sufficient to form a belief as
9 to the truth of the allegations in Paragraph 89.

10 90. Coldwell admits that each offering had its own PPM, which was
11 represented to include all the necessary details regarding the investment funds,
12 including the use of investor money, the limitations on such uses, the required
13 disclosures, and all other material terms of the Investment Funds.

14 91. Coldwell lacks knowledge or information sufficient to form a belief as
15 to the truth of the allegations in Paragraph 91.

16 92. Coldwell refers to the documents described in Paragraph 92 for a full
17 and accurate statement of their contents.

18 93. Coldwell refers to the documents described in Paragraph 93 for a full
19 and accurate statement of their contents.

20 94. Coldwell lacks knowledge or information sufficient to form a belief as
21 to the truth of the allegations in Paragraph 94.

22 95. Coldwell denies the allegations in Paragraph 95.

23 3. Response to "Class Members are Misled Regarding Payment of
24 Dividends"

25 96. Coldwell lacks knowledge or information sufficient to form a belief as
26 to the truth of the allegations in Paragraph 96.

27 97. Coldwell lacks knowledge or information sufficient to form a belief as
28 to the truth of the allegations in the first sentence of Paragraph 97. Coldwell denies
the allegations in the second sentence of Paragraph 97.

1 105. Coldwell lacks knowledge or information sufficient to form a belief as
2 to the truth of the allegations in Paragraph 105.

3 106. Coldwell denies the allegations in Paragraph 106 as they relate to
4 CB/REP. Coldwell lacks knowledge or information sufficient to form a belief as to
5 the truth of the allegations in Paragraph 106 as they relate to REP.

6 107. Coldwell denies the allegations in Paragraph 107 as they relate to
7 CB/REP. Coldwell lacks knowledge or information sufficient to form a belief as to
8 the truth of the allegations in Paragraph 107 as they relate to REP.

9 108. Coldwell denies the allegations in Paragraph 108 as they relate to
10 CB/REP. Coldwell lacks knowledge or information sufficient to form a belief as to
11 the truth of the allegations in Paragraph 108 as they relate to REP.

12 109. Coldwell denies the allegations in Paragraph 109 as they relate to
13 CB/REP. Coldwell lacks knowledge or information sufficient to form a belief as to
14 the truth of the allegations in the first sentence of Paragraph 109 as they relate to
15 REP. Coldwell denies the allegations in the second and third sentences of Paragraph
16 109.

17 **C. Response to "CB/REP Acquires Investor Funds"**

18 110. Coldwell denies the allegations in the first and second sentences of
19 Paragraph 110. Coldwell lacks knowledge or information sufficient to form a belief
20 as to the truth of the allegations in the third and fourth sentences of Paragraph 110.

21 111. Coldwell lacks knowledge or information sufficient to form a belief as
22 to the truth of the allegations in the first sentence of Paragraph 111. Coldwell denies
23 the allegations in the second sentence of Paragraph 111.

24 **D. Response to "Use of Investor Funds"**

25 112. Coldwell denies the allegations in Paragraph 112.

26 113. Coldwell denies the allegations in Paragraph 113 as they relate to
27 CB/REP. Coldwell lacks knowledge or information sufficient to form a belief as to
28 the truth of the allegations in Paragraph 113 as they relate to REP.

1 114. Coldwell lacks knowledge or information sufficient to form a belief as
2 to the truth of the allegations in Paragraph 114.

3 115. Coldwell denies the allegations in Paragraph 115 as they relate to
4 CB/REP. Coldwell lacks knowledge or information sufficient to form a belief as to
5 the truth of the allegations in Paragraph 115 as they relate to REP.

6 116. Coldwell lacks knowledge or information sufficient to form a belief as
7 to the truth of the allegations in Paragraph 116 and its subparts (a) through (t).

8 117. Coldwell denies the allegations in Paragraph 117.

9 118. Coldwell denies the allegations in Paragraph 118.

10 119. Coldwell denies the allegations in Paragraph 119 as they relate to
11 CB/REP. Coldwell lacks knowledge or information sufficient to form a belief as to
12 the truth of the allegations in Paragraph 119 as they relate to REP.

13 120. Coldwell denies the allegations in the first and second sentences of
14 Paragraph 120 as they relate to CB/REP. Coldwell lacks knowledge or information
15 sufficient to form a belief as to the truth of the allegations in the first and second
16 sentences of Paragraph 120 as they relate to REP. Coldwell denies the allegations in
17 the third sentence of Paragraph 120.

18 121. Coldwell denies the allegations in the first, second, and third sentences
19 of Paragraph 121 as they relate to CB/REP. Coldwell lacks knowledge or
20 information sufficient to form a belief as to the truth of the allegations in the first,
21 second, and third sentences of Paragraph 121 as they relate to REP. Coldwell denies
22 the allegations in the fourth sentence of Paragraph 121.

23 **E. Response to "Coldwell Banker's Continued Knowledge of Fraud"**

24 122. Coldwell denies the allegations in Paragraph 122.

25 123. Coldwell admits that Michael McLean was the western regional director
26 for Coldwell Banker Commercial and later a senior vice-president for Coldwell
27 Banker Commercial, overseeing national brokerage operations for the commercial
28 group. Coldwell denies the rest of the allegations in Paragraph 123.

1 124. Coldwell denies the allegations in the first sentence of Paragraph 124.
2 Coldwell refers to the report described in the second and third sentences for a full
3 and accurate statement of its contents. Coldwell denies the allegations in the fourth
4 sentence of Paragraph 124, and refers to the report described therein for a full and
5 accurate statement of its contents.

6 125. Coldwell denies the allegations in the first and second sentences of
7 Paragraph 125, and refers to the report described therein for a full and accurate
8 statement of its contents. Coldwell denies the allegations in the third sentence of
9 Paragraph 125.

10 126. Coldwell denies the allegations in Paragraph 126, and refers to the letter
11 described therein for a full and accurate statement of its contents.

12 127. Coldwell denies the allegations in Paragraph 127, and refers to the letter
13 described therein for a full and accurate statement of its contents.

14 128. Coldwell admits that it notified CB/REP that its franchise would be
15 terminated if the defaults were not cured within 30 days. Coldwell refers to the letter
16 described in the first sentence of Paragraph 128 for a full and accurate statement of
17 its contents. Coldwell denies the allegations in the second and third sentences of
18 Paragraph 128.

19 129. Coldwell denies the allegations in Paragraph 129, and refers to the
20 deposition transcript described therein for a full and accurate statement of its
21 contents.

22 130. Coldwell denies the allegations in Paragraph 130, and refers to the
23 deposition transcript described therein for a full and accurate statement of its
24 contents.

25 131. Coldwell denies the allegations in Paragraph 131, and refers to the
26 deposition testimony described therein for a full and accurate statement of its
27 contents.

28 132. Coldwell denies the allegations in Paragraph 132.

1 133. Coldwell admits that it sent a Mutual Termination Agreement to
2 CB/REP with the date January 6, 2004, for Franchise Agreement #199321-0001.
3 Coldwell denies the allegations in the second sentence of Paragraph 132. Coldwell
4 lacks knowledge or information sufficient to form a belief as to the truth of the
5 allegations in the third sentence of Paragraph 133.

6 134. Coldwell refers to the report described in the first, second, third, sixth,
7 and seventh sentences of Paragraph 134 for a full and accurate statement of its
8 contents. Coldwell refers to the deposition transcript described in the fourth sentence
9 of Paragraph 134 for a full and accurate statement of its contents. Coldwell denies
10 the allegations in the fifth sentence of Paragraph 134.

11 135. Coldwell denies the allegations in Paragraph 135, and refers to the
12 deposition transcript described therein for a full and accurate statement of its
13 contents.

14 136. Coldwell refers to the deposition transcript described in the first
15 sentence of Paragraph 136 for a full and accurate statement of its contents. Coldwell
16 refers to the documents described in the second and third sentences of Paragraph 136
17 for a full and accurate statement of their contents. Coldwell denies the rest of the
18 allegations in Paragraph 136.

19 137. Coldwell refers to the deposition transcript and document described in
20 the first sentence of Paragraph 137 for a full and accurate statement of their contents.
21 Coldwell denies the allegations in the second and fourth sentences of Paragraph 137.
22 Coldwell denies the allegations in the third sentence of Paragraph 137, and refers to
23 the email described therein for a full and accurate statement of its contents.

24 138. Coldwell denies the allegations in the first and third sentences of
25 Paragraph 138. Coldwell refers to the letter described in the second and third
26 sentences of Paragraph 138 for a full and accurate statement of its contents.

27 139. Coldwell denies the allegations in Paragraph 139.
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1 140. Coldwell denies the allegations in Paragraph 140, and refers to the
2 document described therein for a full and accurate statement of its contents.

3 141. Coldwell denies the allegations in Paragraph 141, and refers to the
4 documents and deposition testimony described therein for a full and accurate
5 statement of their contents.

6 142. Coldwell admits that it sent a Notice of Intent to Terminate to CB/REP
7 on September 9, 2004. Coldwell denies the rest of the allegations in Paragraph 143,
8 and refers to the letter described therein for a full and accurate statement of its
9 contents.

10 143. Coldwell admits that it sent a letter on November 23, 2004 to CB/REP.
11 Coldwell denies the rest of the allegations in Paragraph 143, and refers to the letter
12 described therein for a full and accurate statement of its contents.

13 144. Coldwell denies the allegations in Paragraph 144, and refers to the letter
14 described therein for a full and accurate statement of its contents.

15 145. Coldwell denies the allegations in the first, fourth, and fifth sentences of
16 Paragraph 145. Coldwell denies the allegations in the second and third sentences of
17 Paragraph 145, and refers to the letters described therein for a full and accurate
18 statement of its contents.

19 146. Coldwell admits that it terminated the CB/REP franchise in September,
20 2005. Coldwell denies the rest of the allegations in Paragraph 146.

21 147. Coldwell denies the allegations in Paragraph 147.

22 148. Coldwell denies the allegations in Paragraph 148, and states that the
23 allegations in the first sentence include Plaintiffs' legal conclusion to which no
24 response is required.

25 149. Coldwell lacks knowledge or information sufficient to form a belief as
26 to the truth of the allegations in the first and fifth sentences of Paragraph 149. As to
27 the second, third, and fourth sentences, Coldwell refers to the letter described therein
28 for a full and accurate description of its contents.

1 150. Coldwell denies the allegations in Paragraph 150.

2 **RESPONSE TO "FIRST CLAIM FOR RELIEF: NEGLIGENCE"**

3 151. In response to Paragraph 151, Coldwell incorporates by reference and
4 restates its response to Paragraphs 1-150.

5 152. Coldwell denies the allegations in Paragraph 152.

6 153. Coldwell states the allegations in Paragraph 153 constitute a legal
7 conclusion to which no response is required. To the extent a response is required,
8 Coldwell denies the allegations in Paragraph 153.

9 154. Coldwell states the allegations in Paragraph 154 constitute a legal
10 conclusion to which no response is required. To the extent a response is required,
11 Coldwell denies the allegations in Paragraph 154.

12 155. Coldwell refers to the franchise agreement described in Paragraph 155
13 for a full and accurate statement of its contents.

14 156. Coldwell denies the allegations in Paragraph 156.

15 157. Coldwell lacks knowledge or information sufficient to form a belief as
16 to the truth of the allegations in the first sentence of Paragraph 157. Coldwell refers
17 to the complaint described in the second sentence of Paragraph 157 for a full and
18 accurate statement of its contents. Coldwell denies the allegations in the third and
19 fourth sentences of Paragraph 157, except it admits that Coldwell had a franchise
20 agreement with Orange Coast Commercial. Coldwell denies the allegations in the
21 fifth sentence of Paragraph 157.

22 158. Coldwell denies the allegations in Paragraph 158.

23 159. Coldwell denies the allegations in Paragraph 159.

24 160. Coldwell denies the allegations in Paragraph 160.

25 161. Coldwell denies the allegations in Paragraph 161.

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RESPONSE TO "SECOND CLAIM FOR RELIEF: FRAUD"

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2 162. In response to Paragraph 162, Coldwell incorporates by reference and
3 restates its responses to Paragraphs 1 through 161. Coldwell denies the allegations
4 in the second sentence of Paragraph 62.

5 163. Coldwell denies the allegations in Paragraph 163, and refers to the
6 franchise agreement described therein for a full and accurate statement of its contents.

7 164. Coldwell denies the allegations in Paragraph 164 and its subparts (a)
8 through (c).

9 165. Coldwell denies the allegations in Paragraph 165 and its subparts (a)
10 through (d).

11 166. Coldwell denies the allegations in Paragraph 166 as they relate to
12 CB/REP. Coldwell otherwise lacks knowledge or information sufficient to form a
13 belief as to the truth of the allegations in Paragraph 166.

14 167. Coldwell denies the allegations in Paragraph 167 as they relate to
15 CB/REP. Coldwell otherwise lacks knowledge or information sufficient to form a
16 belief as to the truth of the allegations in Paragraph 167.

17 168. Coldwell denies the allegations in Paragraph 168 as they relate to
18 CB/REP. Coldwell otherwise lacks knowledge or information sufficient to form a
19 belief as to the truth of the allegations in Paragraph 168.

20 169. Coldwell denies the allegations in Paragraph 169 as they relate to
21 CB/REP. Coldwell otherwise lacks knowledge or information sufficient to form a
22 belief as to the truth of the allegations in Paragraph 169.

23 170. Coldwell denies the allegations in Paragraph 170 as they relate to
24 CB/REP. Coldwell otherwise lacks knowledge or information sufficient to form a
25 belief as to the truth of the allegations in Paragraph 170.

26 171. Coldwell denies the allegations in Paragraph 171 as they relate to
27 CB/REP. Coldwell otherwise lacks knowledge or information sufficient to form a
28 belief as to the truth of the allegations in Paragraph 171.

1 172. Coldwell denies the allegations in Paragraph 172 as they relate to
2 CB/REP. Coldwell otherwise lacks knowledge or information sufficient to form a
3 belief as to the truth of the allegations in Paragraph 172.

4 173. Coldwell denies the allegations in Paragraph 173.

5 174. Coldwell denies the allegations in Paragraph 174.

6 175. Coldwell denies the allegations in Paragraph 175.

7 176. Coldwell denies the allegations in Paragraph 176.

8 177. Coldwell denies the allegations in Paragraph 177.

9 **RESPONSE TO "THIRD CLAIM FOR RELIEF: NEGLIGENT**
10 **MISREPRESENTATION"**

11 178. In response to Paragraph 178, Coldwell incorporates by reference and
12 restates its responses to Paragraphs 1 through 177. Coldwell denies the allegations
13 in the second sentence of Paragraph 178.

14 179. Coldwell states the allegations in Paragraph 179 are Plaintiffs' legal
15 conclusion to which no response is required, and refers to the franchise agreement
16 described therein for a full and accurate statement of its contents. To the extent a
17 response is required, Coldwell denies the allegations in Paragraph 179.

18 180. Coldwell denies the allegations in Paragraph 180.

19 181. Coldwell denies the allegations in Paragraph 181.

20 182. Coldwell denies the allegations in Paragraph 182.

21 183. Coldwell denies the allegations in Paragraph 183.

22 184. Coldwell denies the allegations in Paragraph 184.

23 185. Coldwell denies the allegations in Paragraph 185.

24 186. Coldwell denies the allegations in Paragraph 186.

25 187. Coldwell denies the allegations in Paragraph 187.

26 188. Coldwell denies the allegations in Paragraph 188.

27 189. Coldwell denies the allegations in Paragraph 189.

28 190. Coldwell denies the allegations in Paragraph 190.

191. Coldwell denies the allegations in Paragraph 191.

1 **RESPONSE TO "FOURTH CLAIM FOR RELIEF: COMMISSION OF**
2 **UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS ACTS AND**
3 **PRACTICES, CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200"**

4 192-200. The Court has dismissed Plaintiffs' Fourth Claim for Relief, and,
5 therefore, no response is necessary for Paragraphs 192 through 200 of the SAC.

6 **RESPONSE TO "FIFTH CLAIM FOR RELIEF: UNTRUE OR**
7 **MISLEADING ADVERTISING, CALIFORNIA BUSINESS & PROFESSIONS**
8 **CODE § 17500"**

9 201. In response to Paragraph 201, Coldwell incorporates by reference and
10 restates its responses to Paragraphs 1 through 200.

11 202. Coldwell denies the allegations in Paragraph 202.

12 203. Coldwell denies the allegations in Paragraph 203.

13 204. Coldwell denies the allegations in Paragraph 204.

14 205. Coldwell denies the allegations in Paragraph 205.

15 206. Coldwell denies the allegations in Paragraph 206.

16 207. Coldwell denies the allegations in Paragraph 207.

17 208. Coldwell denies the allegations in Paragraph 208.

18 **RESPONSE TO "SIXTH CLAIM FOR RELIEF: AIDING AND ABETTING"**

19 209. In response to Paragraph 209, Coldwell incorporates by reference and
20 restates its responses to Paragraphs 1 through 208.

21 210. Coldwell denies the allegations in Paragraph 210.

22 211. Coldwell denies the allegations in Paragraph 211.

23 212. Coldwell denies the allegations in Paragraph 212.

24 213. Coldwell denies the allegations in Paragraph 213.

25 214. Coldwell denies the allegations in Paragraph 214.

26 215. Coldwell denies the allegations in Paragraph 215.

27 216. Coldwell denies the allegations in Paragraph 216.

28 217. Coldwell denies the allegations in Paragraph 217.

1 Plaintiffs' prayer for relief does not require a response. To the extent any
2 response is required, Coldwell denies the allegations and denies that Plaintiffs are
3 entitled to the relief requested.

4 **AFFIRMATIVE DEFENSES**

5 As separate and distinct affirmative defenses, Coldwell alleges as follows. By
6 alleging the matters set forth below as "Affirmative Defenses," Coldwell does not
7 thereby allege or admit that it has the burden of proof or the burden of persuasion
8 with respect to any of these matters. Furthermore, Coldwell hereby gives notice that
9 it intends to rely upon such other and further defenses as may become available or
10 apparent during pretrial proceedings in this action and hereby reserves its right to
11 amend this answer and assert all such defenses.

12 **FIRST AFFIRMATIVE DEFENSE**

13 (Failure to State a Claim)

14 The SAC and each cause of action therein against Coldwell fail to state a
15 claim upon which relief can be granted.

16 **SECOND AFFIRMATIVE DEFENSE**

17 (Statute of Limitations)

18 Each of Plaintiffs' claims is barred, in whole or in part, by the applicable
19 statute of limitations. Plaintiffs' First Claim for Relief for Negligence is barred by
20 the provisions of California Code of Civil Procedure § 339(1) (two-year statute of
21 limitations for actions upon a liability not founded upon an instrument of writing).
22 Plaintiffs' Second Claim for Relief for Fraud is barred by the provisions of California
23 Code of Civil Procedure § 338(d) (three-year statute of limitations for fraud).
24 Plaintiffs' Third Claim for Relief for Negligent Misrepresentation is barred by the
25 provisions of California Code of Civil Procedure § 339(1) (two-year statute of
26 limitations for actions upon a liability not founded upon an instrument of writing).
27 Plaintiffs' Fifth Claim for Relief for False Advertising is barred by the provisions of
28

1 California Code of Civil Procedure § 338(a) (three-year statute of limitations for
2 actions upon a liability created by statute, other than a penalty or forfeiture).

3 **THIRD AFFIRMATIVE DEFENSE**

4 (Waiver)

5 Each of the alleged claims set forth in the SAC is barred by the doctrine of
6 waiver.

7 **FOURTH AFFIRMATIVE DEFENSE**

8 (Laches)

9 Each of the alleged claims set forth in the SAC is barred by the doctrine of
10 laches.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 (Estoppel)

13 Each of the alleged claims set forth in the SAC is barred by the doctrine of
14 estoppel.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 (*In Pari Delicto*)

17 Each of Plaintiffs' claims is barred, in whole or in part, by the doctrine of *in*
18 *pari delicto*, including, without limitation, the arrangement with the REP bankruptcy
19 estate to bring this action for the purpose of benefiting the REP estate and to
20 contribute fifty percent of any recovery directly to the estate, in exchange for
21 payment of all attorneys' fees from the estate.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 (Unclean Hands)

24 Each of Plaintiffs' claims is barred, in whole or in part, by the doctrine of
25 unclean hands, including, without limitation, the arrangement with the REP
26 bankruptcy estate to bring this action for the purpose of benefiting the REP estate
27 and to contribute fifty percent of any recovery directly to the estate, in exchange for
28 payment of all attorneys' fees from the estate.

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EIGHTH AFFIRMATIVE DEFENSE

(Advice of Counsel)

Coldwell is not liable for Plaintiffs' claims because REP, the entity Plaintiffs' claim Coldwell is vicariously liable for, relied in good faith upon information, advice, reports and/or statement prepared or presented by counsel, or other experts, whom REP reasonably believed to be reliable and competent in the matters presented.

NINTH AFFIRMATIVE DEFENSE

(Contributory Negligence)

Plaintiffs failed to exercise reasonable and ordinary care in order to avoid the alleged loss. The resulting damages, if any, sustained by Plaintiffs were proximately caused and contributed to by the negligence of Plaintiffs.

TENTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

Plaintiffs' claims are barred in whole or in part by the doctrine of assumption of risk.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

To the extent Plaintiffs and the members of the putative class have been damaged, if at all, any recovery on any cause of action must be reduced to the extent Plaintiffs and the putative class have failed to mitigate damages.

TWELFTH AFFIRMATIVE DEFENSE

(Good Faith and Exercise of Reasonable Care)

Plaintiffs' claims are barred because Coldwell at all times referred to in the SAC acted in good faith and exercised reasonable care and did not know, and in the exercise of reasonable care could not have known, of any alleged misconduct in the SAC.

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THIRTEENTH AFFIRMATIVE DEFENSE

(Superseding or Intervening Cause)

Plaintiffs' claims are barred in whole or in part because any injury to Plaintiffs or the putative class was caused by superseding and intervening acts or events unconnected to Coldwell.

FOURTEENTH AFFIRMATIVE DEFENSE

(Punitive Damages)

Plaintiffs' claims for punitive damages are barred or reduced by applicable law or statute, or in the alternative, are unconstitutional insofar as they violate the due process protections afforded by the United States Constitution, the Excessive-Fines clause of the Eighth Amendment of the United States Constitution, the Commerce Clause of the United States Constitution, the Full Faith and Credit Clause of the United States Constitution, and applicable provisions of the Constitution of the State of California or similar law of any other jurisdiction. Any law, statute, or other authority purporting to permit the recovery of punitive damages in this case is unconstitutional, facially and as applied, to the extent that, without limitation, it: (1) lacks constitutionally sufficient standards to guide and restrain the jury's discretion in determining whether to award punitive damages and/or the amount, if any; (2) is void for vagueness because it fails to provide adequate advance notice as to what conduct will result in punitive damages; (3) unconstitutionally may permit recovery of punitive damages based on out-of state conduct, conduct that complied with applicable law, or conduct that was not directed at Plaintiffs or did not proximately cause harm, if any, to Plaintiffs; (4) unconstitutionally may permit recovery of punitive damages in an amount that is not both reasonable and proportionate to the amount of harm, if any, to Plaintiffs and to the amount of compensatory damages; (5) unconstitutionally may permit jury consideration of net worth or other financial information relating to Defendant; (6) lacks constitutionally sufficient standards to be applied by the trial court in post-verdict review of any punitive damages award; (7)

1 lacks constitutionally sufficient standards for appellate review of punitive damages
2 awards; and (8) otherwise fails to satisfy Supreme Court precedent, including,
3 without limitation, *Pacific Mutual Life Insurance Company v. Haslip*, 499 U.S. 1
4 (1991); *TXO Production Corporation v. Alliance Resources Inc.*, 509 U.S. 443
5 (1993); *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *State Farm*
6 *Insurance Company v. Campbell*, 538 U.S. 408 (2003); and *Philip Morris USA v.*
7 *Williams*, 549 U.S. 346 (2007).

8 WHEREFORE, Coldwell respectfully prays as follows:

- 9 1. That Plaintiffs take nothing by reason of the SAC, that judgment be
10 rendered in favor of Coldwell;
- 11 2. That Coldwell be awarded its reasonable costs, expenses and attorneys'
12 fees; and
- 13 3. For such other and further relief as this Court may deem just and proper.
14

15 DATED: September 22, 2011

16 SKADDEN, ARPS, SLATE, MEAGHER &
17 FLOM, LLP

18 By: /s/ Peter B. Morrison
19 Peter B. Morrison
20 Virginia F. Milstead
21 Attorneys for Defendants
Coldwell Banker Real Estate Corporation and
22 Coldwell Banker Real Estate, LLC
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DEMAND FOR JURY TRIAL

Pursuant to Federal Rules of Civil Procedure, Rule 38(b), Coldwell hereby demands a trial by jury of all issues so triable.

DATED: September 22, 2011

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM, LLP

By: /s/ Peter B. Morrison
Peter B. Morrison
Virginia F. Milstead
Attorneys for Defendants
Coldwell Banker Real Estate Corporation and
Coldwell Banker Real Estate, LLC