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8 **SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

11 KIMBERLY HEROLD, an individual;
12 **Plaintiff,**
13 vs.
14 MARY ALLRED and JOHN ALLRED, a
15 married couple; and BETTY BERAN and
16 WILLIAM BERRAN, a married couple;
17 **Defendants.**

Case No.

COMPLAINT

(Consumer fraud – A.R.S. § 44-1522;
Fraudulent misrepresentation; Breach of
fiduciary duty; Rescission - A.R.S. §
47-2721; Breach of warranty - A.R.S. §
47-2315; Breach of covenant of good faith
and fair dealing)

18 Plaintiff, Kimberly Herold (“Plaintiff” or “Herold”), for her Complaint against the above-
19 captioned Defendants hereby alleges as follows:

20 **PARTIES, JURISDICTION AND VENUE**

- 21
- 22 1. Herold is a resident of Maricopa County, Arizona.
 - 23 2. Defendants Mary Allred and John Allred (collectively “Allred”) are residents of
24 Maricopa County, Arizona.
 - 25 3. Defendants Betty Beran and William Beran (collectively “Beran”) are residents of
26 Maricopa County, Arizona.
 - 27 4. Allred and Beran (collectively “Defendants”) have caused acts and omissions to occur in
28 Maricopa County, Arizona, resulting in harm to Herold.

1 5. The acts and omissions of Mary Allred and Betty Beran were performed for the benefit of
2 their respective martial communities

3 6. The Court has subject matter jurisdiction over this case pursuant to the Arizona
4 Constitution and A.R.S. § 12-123.

5 7. The Court has personal jurisdiction over Defendants because they are residents of
6 Maricopa County, Arizona and have caused events to occur in Maricopa County that are the basis
7 for this action.

8 8. Venue in Maricopa County, Arizona is proper pursuant to A.R.S. § 12-401.

9 **GENERAL ALLEGATIONS**

10 9. In or about September 2016, Herold began taking horseback riding lessons from Beran
11 after more than a twenty-year hiatus from riding.

12 10. Prior to this hiatus, Herold's experience with horseback riding was limited to pleasure
13 horses.

14 11. Upon her return to riding, Herold's specific interest was learning to ride hunter-jumper
15 horses, lessons for which she began taking from Beran.

16 12. Soon thereafter, Herold began working with Beran to find a potential horse to purchase as
17 a hunter-jumper to jump at 3'6".

18 13. Due to her lack of experience and expertise with respect to hunter-jumper horses, Herold
19 relied extensively on the knowledge and expertise of Defendants in evaluating potential horses to
20 purchase.

21 14. On or about November 13, 2016, Allred approached Herold about purchasing a Belgian
22 warmblood gelding named Hubbell ("Hubbell").

23 15. Beran, who was acting in a dual agent capacity, representing both Allred and Herold, told
24 Herold that Hubbell "is the perfect horse for you to learn on" and that Hubbell is "honest to the
25 fences and is the same horse every day."

26 16. Because Beran was serving as a dual agent in this transaction, her representations are
27 imputed on Allred.
28

1 17. Both Beran and Allred represented Hubbell as sound, specifically stating that Hubbell: (a)
2 had no current lameness problems, (b) had no history of lameness and (c) required no veterinary
3 work for soundness issues.

4 18. Based upon Allred and Beran's recommendations and representations, Herold agreed to
5 purchase Hubbell contingent upon the completion of a pre-purchase veterinary examination on
6 the horse.

7 19. On November 29, 2016, the barn veterinarian, Dr. Martin Crabo, performed the pre-
8 purchase exam and uncovered areas of concern in Hubbell's right hind leg.

9 20. Allred and Beran, who were present for the pre-purchase exam, adamantly reassured
10 Herold that Hubbell was sound and simply needed joint injections in his hocks (which they said
11 he had not needed or received in the past).

12 21. Relying upon Allred and Beran's assurances and representations, Herold proceeded with
13 the purchase of Hubbell and paid Allred the purchase price, \$25,000.00.

14 22. As part of the transaction, Beran received the customary dual-agent commission of ten
15 percent of the purchase price, which was paid to Beran by Allred.

16 23. Almost immediately after the purchase, it became apparent to Herold that Hubbell had
17 lameness issues, and that Allred had misrepresented Hubbell's condition and was aware of the
18 significant lameness issues (and a history of lameness) in Hubbell long before approaching
19 Herold to purchase the horse.

20 24. From December 2016 through January 2017, Hubbell was repeatedly put on stall rest or
21 light work due to lameness.

22 25. Due to his issues, a pattern emerged in which Hubbell could only be ridden for a few
23 days before needing four to seven days of stall rest or light work and being unable to work under
24 saddle.

25 26. On January 31, 2017, Herold removed Hubbell from Beran's facility after receiving
26 confirmation that Hubbell's right hind leg had been severely injured in 2012 and 2013 – injuries
27 that were fraudulently concealed from Herold prior to purchasing Hubbell.
28

1 27. Shortly thereafter, Dr. Crabo advised Herold that Hubbell would need both a fasciotomy
2 and neurectomy, as well as nine to twelve months of stall rest and rehabilitation before he might
3 be fit to ride again, if ever.

4 28. After researching Hubbell's diagnosis of rear limb proximal suspensory desmitis, Herold
5 learned that it is a significant and often career-ending injury for horses, and that Hubbell would
6 likely never jump again, and certainly not at the same height for which he was purchased (3'6").

7 29. Herold subsequently learned that Allred fraudulently failed to disclose that Hubbell had
8 been previously sold for \$75,000.00 in 2011 to a rider in Colorado.

9 30. Allred also fraudulently concealed the fact that the rider gave Hubbell back to Allred (for
10 free) two years later because Hubbell was injured so severely that he needed at least a year of
11 rehabilitation, with his future ability to jump again unknown.

12 31. Herold further learned that the Hubbell's injury in Colorado occurred on the same leg in
13 which he is now experiencing lameness; and that from November 2012 to March 2013, Hubbell
14 displayed the same pattern of intermittent lameness now observed by Herold.

15 32. As a result of Defendants' conduct, which includes fraud, Herold has been left with a
16 horse that is not only unable to fulfill the purpose for which she purchased it, but is now an
17 ongoing financial liability and will be for years to come.

18 33. In addition, it has recently been discovered that Hubbell is likely not the horse that
19 Herold thought she purchased. Allred and Beran recently provided papers for a horse named
20 Fenwick, but represented that it is the same horse as Hubbell (i.e., somehow re-registered under a
21 different name). Despite representations from Allred and Beran that these horses are one in the
22 same, critical information related to the horses does not match up, including the name, color,
23 sire, dam and birthdate.

24 34. Since Herold purchased Hubbell, she has incurred significant damages as a direct and
25 proximate result of Defendants' fraudulent misrepresentations including, but not limited to, at
26 least \$9,813.00 in veterinary expenses, \$5,200.00 in boarding fees, \$631.25 in insurance,
27 \$520.00 in tack, \$375.00 in farrier's fees, \$400.00 in supplements, and a lost deposit of \$250.00.
28

1 35. Over the next twelve months, expenses for Hubbell's surgery, care, and rehabilitation are
2 expected to cost between \$23,000.00 and \$26,000.00, barring any complications.

3 **FIRST CLAIM FOR RELIEF**

4 (Consumer Fraud Act - A.R.S. § 44-1521, et seq. – Defendant Allred)

5 36. Plaintiff realleges and incorporates by reference Paragraphs 1 through 35 above as though
6 fully set forth herein.

7 37. Allred made misrepresentations in connection with the sale of Hubbell.

8 38. In particular, Allred adamantly reassured Herold that Hubbell was sound, had no history
9 of serious lameness and that he was a suitable horse for Herold and her family.

10 39. Allred had full knowledge of the nature, history, and severity of Hubbell's injury at the
11 time they made these representations, and knew these representations were false.

12 40. Herold, lacking both the general expertise related to hunter-jumper horses and the
13 specific knowledge of Hubbell's medical history, reasonably relied upon these
14 misrepresentations.

15 41. As a result of her reliance upon Allred's misrepresentations, Herold purchased Hubbell
16 from Allred for \$25,000.00, an amount which has already been paid.

17 42. But for these misrepresentations, Herold would not have purchased Hubbell.

18 43. As a direct and proximate result of Allred's misrepresentations, Herold has incurred
19 damages, including but not limited to the complete loss of Hubbell's value and intended use,
20 veterinary bills, and other expenses associated with his care.

21 44. Herold is entitled to recover its reasonable costs and attorneys' fees pursuant to A.R.S. §§
22 44-1534, 12-341 and 12-341.01.

23 WHEREFORE, Herold respectfully demands judgment against Allred as follows:

24 A. For actual damages in an amount to be proven at trial;

25 B. For consequential damages in an amount to be proven at trial;

26 C. For reasonable attorney's fees and costs incurred and to be incurred, pursuant to A.R.S. §
27 12-341 and 12-341.01;

28

1 D. Pre- and post-judgment interest on the foregoing amounts at the highest rate allowed by
2 law;

3 E. For such further relief as the Court deems just and proper.

4 **SECOND CLAIM FOR RELIEF**

5 (Fraudulent Misrepresentation – All Defendants)

6 45. Plaintiff realleges and incorporates by reference Paragraphs 1 through 44 above as though
7 fully set forth herein.

8 46. As described above, Defendants intentionally misrepresented Hubbell’s medical
9 condition, medical history, and soundness.

10 47. These representations were false.

11 48. These representations were material to Herold’s decision to purchase Hubbell from
12 Defendants.

13 49. Defendants knew these representations were false.

14 50. Defendants intended that Herold act upon these representations in the manner reasonably
15 contemplated.

16 51. Herold was ignorant of the falsity of these representations.

17 52. Herold reasonably relied upon these representations, especially in light of her
18 comparative lack of access to Hubbell’s medical history and lack of expertise related to hunter-
19 jumper horses.

20 53. Herold had a right to rely upon these misrepresentations.

21 54. As a direct and proximate result of Defendants’ fraudulent misrepresentations, Herold has
22 been damaged in an amount to be proven at trial.

23 55. Defendants have acted to serve their own interests, having reason to know, yet
24 consciously disregarding, the substantial risk that their conduct might significantly injure Herold,
25 and/or Allred consciously pursued a course of conduct knowing that it created a substantial risk
26 of significant harm to Herold, thereby entitling Herold to an award of punitive damages.

27 WHEREFORE, Herold respectfully demands judgment against Defendants as follows:

28 A. For actual damages in an amount to be proven at trial;

- 1 B. For consequential damages in an amount to be proven at trial;
2 C. For punitive damages;
3 D. For reasonable attorney's fees and costs incurred and to be incurred, pursuant to A.R.S. §
4 12-341 and 12-341.01;
5 E. For pre- and post-judgment interest on the foregoing amounts at the highest rate allowed
6 by law; and
7 F. For such further relief as the Court deems appropriate.

8 **THIRD CLAIM FOR RELIEF**

9 (Breach of Fiduciary Duty – Defendant Beran)

10 56. Plaintiff realleges and incorporates by reference Paragraphs 1 through 55 above as though
11 fully set forth herein.

12 57. As an agent to Herold in the purchase of Hubbell, Beran owes fiduciary duties of loyalty
13 and care.

14 58. Through the acts described above, Beran has breached the fiduciary duties owed to
15 Herold.

16 59. As a direct and proximate result of Beran's breach of her fiduciary duties, Herold has
17 been damaged in an amount to be proven at trial.

18 60. Beran has acted to serve her own interests, having reason to know and consciously
19 disregarding the substantial risk that her conduct might significantly injure Herold and/or Beran
20 has consciously pursued a course of conduct knowing that it created a substantial risk of
21 significant harm to Herold, thereby entitling Herold to an award of punitive damages.

22 WHEREFORE, Herold respectfully demands judgment against Beran as follows:

- 23 A. For compensatory damages in an amount to be proven at trial;
24 B. For punitive damages in an amount to be proven at trial;
25 C. For reasonable attorney's fees and costs incurred and to be incurred, pursuant to A.R.S. §
26 12-341 and 12-341.01;
27 D. For such further relief as the Court deems appropriate.

28 **FOURTH CLAIM FOR RELIEF**

(Breach of Contract - Rescission – Defendant Allred)

61. Plaintiff realleges and incorporates by reference Paragraphs 1 through 60 above as though fully set forth herein.

62. Defendant Allred entered into an oral agreement to sell Hubbell to Herold (the “Agreement”), which is a binding and enforceable contract under Arizona law.

63. Allred breached the Agreement by fraudulently misrepresenting the Hubbell’s medical condition, medical history and soundness.

64. As a direct and proximate result of Allred’s breach of the Agreement, Herold has been damaged.

65. Under Arizona law, Herold is entitled to rescind the Agreement and, in doing so, return Hubbell to Allred in exchange for return of all consideration paid to Defendants.

66. Herold is further entitled to recover rescissory damages from Allred in order to return her to the status quo ante.

WHEREFORE, Herold respectfully demands judgment against Allred as follows:

- A. For rescission of the Agreement pursuant to which Herold will return Hubbell to Allred in exchange for return of all consideration paid to Allred.
- B. For rescissory damages in an amount to be proven at trial.
- C. For reasonable attorney’s fees and costs incurred and to be incurred, pursuant to A.R.S. § 12-341 and 12-341.01;
- D. For such further relief as the Court deems appropriate.

FIFTH CLAIM FOR RELIEF

(Breach of Warranty – A.R.S. §§ 47-2313, 47-2314, 47-2315 – Defendant Allred)

67. Plaintiff realleges and incorporates by reference Paragraphs 1 through 66 above as though fully set forth herein.

68. Allred expressly warranted that Hubbell was serviceably sound and suitable as a hunter-jumper horse, jumping 3’6”.

1 69. Every horse sells with an implied warranty of fitness for a particular purpose; in this case,
2 such warranty includes Hubbell being sound and able to perform as a hunter-jumper, jumping at
3 least 3'6".

4 70. Every horse sells with an implied warranty of merchantability.

5 71. Allred have breached their express warranty, implied warranty of fitness for a particular
6 purpose, and implied warranty of merchantability, as Hubbell is not sound, and is neither capable
7 of performing or suitable as a hunter-jumper (at 3'6").

8 72. Herold has made Allred aware of the problems with Hubbell, and Allred failed to
9 adequately provide for the return of Hubbell and the purchase price.

10 73. As a direct result of Allred's breach of express warranty, implied warranty of fitness for a
11 particular purpose, and implied warranty of merchantability, Herold has been damaged in an
12 amount to be proven at trial.

13 WHEREFORE, Herold respectfully demands judgment against Allred as follows:

14 A. For compensatory damages in an amount to be proven at trial;

15 B. For reasonable attorney's fees and costs incurred and to be incurred, pursuant to A.R.S. §
16 12-341 and 12-341.01;

17 C. For such further relief as the Court deems appropriate.

18 **SIXTH CLAIM FOR RELIEF**

19 (Breach of Covenant of Good Faith and Fair Dealing – Defendant Allred)

20 74. Plaintiff realleges and incorporates by reference Paragraphs 1 through 73 above as though
21 fully set forth herein.

22 75. Arizona law implies a covenant of good faith and fair dealing in every contract, including
23 the Agreement which, among other things, requires the parties to the contract to refrain from
24 doing anything that will impair the rights of the other party under the contract.

25 76. Allred breached the covenant of good faith and fair dealing through the conduct
26 described above.

27 77. As a direct and proximate result of Allred's breach of the covenant of good faith and fair
28 dealing, Herold has been injured in an amount to be proven at trial.

1 78. Herold's claim for breach of the covenant of good faith and fair dealing arises out of a
2 contract, and therefore Herold is entitled to recover its attorneys' fees pursuant to A.R.S. §
3 12-341.01.

4 WHEREFORE, Herold respectfully demands judgment against Allred as follows:

- 5 A. For actual damages in an amount not less than \$42,189.25;
6 B. For consequential damages in an amount to be proven at trial;
7 C. For costs and reasonable attorneys' fees;
8 D. For pre- and post-judgment interest on the foregoing amounts at the highest rate allowed
9 by law; and
10 E. For such further relief as the Court deems appropriate.

11 DATED: March 9, 2017.

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