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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING**

LANE POWELL, PC, an Oregon professional corporation,

Plaintiff,

v.

MARK DECOURSEY and CAROL DECOURSEY

Defendants

No. 11-2-34596-3 SEA

**DEFENDANT DECOURSEYS'
ANSWER AND COUNTERCLAIMS**

Defendants Mark and Carol DeCoursey ("DeCourseys") submit the following Answer, Affirmative Defenses, and Counterclaims to Plaintiff's Complaint dated October 5, 2011. Except as expressly admitted below, DeCourseys deny each and every allegation against them including any allegation or inference that may be drawn from Plaintiff's demand for relief in the Complaint.

I. ANSWERS

1. In response to Paragraph 1.1, DeCourseys are presently without knowledge or information sufficient to know the truth or falsity of Plaintiff's places of business or where it is incorporated, so deny said allegations. DeCourseys admit the events at issue

1 took place primarily in King County, Washington.

2 2. In response to Paragraph 1.2, Defendants Mark DeCoursey and Carol DeCoursey are
3 married, reside in King County, Washington, and constitute a marital community under
4 the laws of the State of Washington. All of other allegations in this paragraph are
5 denied.

6 3. In response to Paragraph 2.1, admit this court has jurisdiction over this action.

7 4. In response to Paragraph 2.2, admit that venue in this court is appropriate.

8 5. In response to Paragraph 3.1, denied. DeCourseys admit they signed a retainer
9 agreement with Lane Powell PC on September 19, 2007 (hereinafter, the "9/19/2007
10 Agreement") and an amendment to that agreement on December 30, 2008 (hereinafter,
11 the "12/30/2008 Amendment") for representation in Case No. 06-2-24906-2 SEA
12 ("Windermere lawsuit"). Together, the documents constitute the contract between the
13 parties (hereinafter, the "Retainer Agreement"). Lane Powell cites to the 12/30/2008
14 Amendment in Paragraph 3.4 and admits its binding force upon the parties as a part of
15 the Retainer Agreement.

16 6. In response to Paragraph 3.2, DeCourseys admit that the Agreement speaks for itself.
17 The 12/30/2008 Amendment incorporates by quote and reference the Washington Rules
18 of Professional Conduct ("RPC"), making adherence to the RPC integral to the
19 Agreement and an enforceable term of the Agreement. Except as expressly admitted,
20 DeCourseys deny the remaining allegations in this paragraph.

21 7. In response to Paragraph 3.3, admit in part and deny in part. Admit the dollar amounts
22 were awarded for damages and fees. Lane Powell failed to seek approximately
23 \$28,368.50 in fees and \$21,977.82 in costs invoiced to DeCourseys and taxable to
24 Windermere. Lane Powell also failed to seek CPA treble damages from the trial court.
25 Lane Powell fumbled and lost the costs award and failed to seek other fees and costs on
26 appeal. Lane Powell failed to consider the tax consequences of the attorney fee award.

1 Because of Lane Powell's violation of the Agreement and its duties to DeCourseys,
2 DeCourseys have lost hundreds of thousands of dollars. Except as otherwise expressly
3 admitted, DeCourseys deny the allegations in this paragraph.

4 8. In response to Paragraph 3.4, admit in part and denied in part. DeCourseys admit that
5 on December 30, 2008, DeCourseys signed the 12/30/2008 Amendment, to which
6 Plaintiff is possibly referring. Deny that the 12/30/2008 Amendment is predicated to
7 any degree on "any payment of the judgment." Deny that the Retainer Agreement
8 obligates DeCourseys to accept discounted or partial payments of the judgment. Deny
9 that Lane Powell's forbearance is any less than a formal term of the Retainer
10 Agreement. Deny that the Retainer Agreement required DeCourseys to pay invoices
11 within 30 days of receipt; the 12/30/2008 Amendment specifically modified that term in
12 the September 19, 2007 Retainer Agreement. Deny that the Retainer Agreement was
13 enforceable after Lane Powell's own breaches of the Retainer Agreement in February
14 2011 and other previous occasions. This lawsuit is specifically precluded by the
15 Retainer Agreement, and is breach of the Retainer Agreement's forbearance clause. See
16 also facts alleged in the counterclaim regarding issues with Lane Powell's
17 representation. Except as otherwise expressly admitted, DeCourseys deny the
18 allegations in this paragraph.

19 9. In response to Paragraph 3.5, admit in part and deny in part. Lane Powell did not
20 vigorously defend DeCourseys' awards, gave away more than \$100,000 in the appeals,
21 refused to follow DeCourseys' instructions, and did not pursue case arguments and
22 theories, in violation of the Agreement and in violation of its duties to DeCourseys.
23 Except as otherwise expressly admitted, DeCourseys deny the allegations in this
24 paragraph.

25 10. In response to Paragraph 3.6, DeCourseys are presently without knowledge or
26 information sufficient to know the truth or falsity relating to the communications

1 between Lane Powell and Windermere's insurer and therefore deny same. Knowledge
2 of those matters was improperly withheld from DeCourseys by Lane Powell until
3 August 2. The Agreement does not provide for partial payments, and does not require
4 DeCourseys to sacrifice their own interests to expedite payment to Lane Powell. In
5 view of Lane Powell's demonstrable falsehoods, its frequent disregard of DeCourseys
6 best interests, bill padding, failure to keep DeCourseys informed of negotiations with
7 Windermere, its negotiations to accept a "partial" payment on behalf of DeCourseys,
8 and DeCourseys' identification of suitable replacement counsel, DeCourseys prudently
9 protected themselves from further losses by discharging Lane Powell. Except as
10 otherwise expressly admitted, DeCourseys deny the allegations in this paragraph.

11 11. In response to Paragraph 3.7, denied.

12 12. In response to Paragraph 3.8, DeCourseys admit that Lane Powell has filed a lien for
13 \$384,881.66 and deny all other allegations and inferences in this paragraph.

14 13. In response to Paragraph 3.9, denied.

15 14. In response to Paragraph 3.10, admit in part and denied in part. DeCourseys have not
16 "repudiated" or "breached" the Agreement. Admit that DeCourseys have not paid Lane
17 Powell since December 2008, but this is in accordance with the Agreement. Deny that
18 the Agreement requires DeCourseys to accept anything less than the full award to
19 expedite the payment of Lane Powell's invoice or for any other purpose. Except as
20 otherwise expressly admitted, DeCourseys deny the allegations in this paragraph.

21 15. In response to Paragraph 3.11, admit in part and deny in part. Admit only that Lane
22 Powell sent both "statements" and "invoices" to DeCourseys and that the bottom line
23 shown on the September 10, 2011 statement was \$389,042.68. All other statements and
24 inferences are denied.

25 16. In response to Paragraph 3.12, denied.

26 17. In response to Paragraph 3.13, DeCourseys admit that Lane Powell is not entitled the

1 amount it claims. Except as otherwise expressly admitted, DeCourseys deny the
2 allegations in this paragraph.

3 18. In response to Paragraph 4.1, no answer is required. DeCourseys incorporate their
4 previous responses into this paragraph.

5 19. In response to Paragraph 4.2, denied. DeCourseys' termination of Lane Powell's legal
6 representation is expressly permitted by the terms of the Agreement, which provided
7 that "Both you and we have right at any time to terminate the attorney-client
8 relationship."

9 20. In response to Paragraph 4.3, denied.

10 21. In response to Paragraph 4.4, denied.

11 22. In response to Paragraph 5.1, no answer is required. DeCourseys incorporate their
12 previous responses into this paragraph.

13 23. In response to Paragraph 5.2, DeCourseys admit that the verdict was for \$522,200 and
14 the amount of fees and costs awarded to date is \$522,006.50.¹ The DeCourseys further
15 admit that because of LP's representation, the DeCourseys have lost hundreds of
16 thousands of dollars. Despite Lane Powell's obvious pride in the result, Lane Powell
17 fired Brent Nourse or forced him to resign a year later. Neither Nourse nor Lane Powell
18 has consented to discuss the circumstances of Nourse's departure. Except as expressly
19 admitted, DeCourseys deny all remaining allegations in this paragraph.

20 24. In response to Paragraph 5.3, DeCourseys admit that the verdict was for \$522,200 and
21 the amount of fees and costs awarded to date is \$522,006.50. The DeCourseys further
22 admit that because of LP's representation, the DeCourseys have lost hundreds of
23 thousands of dollars. Except as expressly admitted, DeCourseys deny all remaining
24 allegations in this paragraph.

25 ¹ This figure does not include \$45,442 that was originally awarded by the trial court and remanded for
26 recalculation by the Court of Appeals. It also does not include more than \$22,000 invoiced to DeCourseys as
"costs advanced" but not documented in such form as may be recovered on remand.

1 25. In response to Paragraph 5.4, denied.

2 26. In response to Paragraph 6.1, no answer is required. DeCourseys incorporate their
3 previous responses into this paragraph.

4 27. Paragraph 6.2, asks for a conclusion of law and no answer is required. The DeCourseys
5 admit that LP submitted a lien. Except as expressly admitted, DeCourseys deny all
6 remaining allegations in this paragraph.

7 28. In response to Paragraph 6.3, admit.

8 29. In response to Paragraph 6.4, denied. Lane Powell knows DeCourseys are not in
9 possession of the asset on which Lane Powell would foreclose.

10 30. The remainder of the *Complaint* constitutes Lane Powell's prayer for relief for which an
11 answer is not required. To the extent to which an answer is deemed required,
12 DeCourseys deny that Lane Powell is entitled to any relief. Lane Powell has not
13 provided a basis in law or equity for its demand for costs and attorney fees.

14 II. AFFIRMATIVE DEFENSES

15 31. Paragraphs 1 through 30 are incorporated herein as though fully set forth.

16 32. DeCourseys' termination of Lane Powell's legal representation was expressly permitted
17 by the Agreement, which provided that "Both you and we have right at any time to
18 terminate the attorney-client relationship."

19 33. **Failure of Consideration and/or Prior Breach and/or Breach of Contract.** A contract
20 is an agreement for an exchange of valuable consideration between two parties. When
21 one party breaches the agreement, the other is no longer bound. Lane Powell breached
22 the Agreement on multiple occasions prior to DeCourseys' alleged breach, and cannot
23 now call DeCourseys to account on the strength of that contract. This lawsuit is another
24 breach of the Agreement. This is not to any degree an admission that DeCourseys
25 breached the Agreement.

26 34. **Legal Fee Creep.** The Agreement for attorney fees began at the rate of \$275 per hour.

1 While DeCourseys were locked into the case and the representation, Lane Powell
2 escalated its fees year by year and person by person until it was billing steadily at \$440
3 per hour, with some hours billed at \$470.

4 35. Each such increase was effectively an amendment to the Retainer agreement, and Lane
5 Powell should have notified prior to each increase and advised DeCourseys to seek
6 independent legal advice prior to acceptance.

7 36. **Estoppel.** On August 8, 2011, a special panel of Supreme Court judges, including the
8 chief judge, determined the rates invoiced by Lane Powell “to frankly be excessive.”
9 That panel found “substantial merit and force to the Petitioners’ objection as to the
10 hourly rate claimed, and ... reduced it appropriately” by almost a third to approximately
11 \$315 per hour. Even if Lane Powell were not in breach of the Agreement, Lane
12 Powell’s *quantum meruit* claim for \$440 per hour is not supportable.

13 37. **Unclean hands.**

14 38. **Malice.** Lane Powell’s lawsuit at this time is completely unnecessary given Lane
15 Powell’s lien on the judgment currently in place that protects its interests, as Lane
16 Powell admitted in Paragraph 3.8 of the *Complaint*. Lane Powell knows or should
17 know that a suit of this type might eventually breach, and therefore is intended to
18 breach, attorney-client privilege concerning its legal representation in the Windermere
19 lawsuit, prior to the final judgment in that lawsuit. Evidence will show malice in this
20 and other matters. The suit is treachery and betrayal.

21 39. **Fraud.**

22 40. **Illegality.**

23 41. **Duress and/or Coercion.**

24 42. Lane Powell has failed to state a claim upon which relief may be granted.

25 **III. COUNTERCLAIMS: INTRODUCTION**

26 43. New to Washington, in 2004 Mark & Carol DeCoursey were persuaded to accept a

1 home purchase/renovation package put together by a Windermere real estate agent. But
2 the agent did not tell DeCourseys that the contractor he brought into the deal was (a)
3 unlicensed and (b) was his business partner. DeCourseys bought the home for \$280,000
4 and let the contractor renovate the home. Among other things, the contractor caused
5 structural damage and otherwise ruined the value of the home.

6 44. Legal proceeding began DeCourseys were sued by the electrical subcontractor who
7 claimed he hadn't been paid. Forced to answer the suit, DeCourseys approached
8 Windermere, but they refused to remedy, saying DeCourseys would have to sue
9 Windermere.

10 45. DeCourseys filed a Consumer Protection Act (CPA) lawsuit. The CPA protects the
11 public-interest: it gives the ordinary citizen access to justice by providing an attorney
12 fee and cost award.

13 46. On September 19, 2007, after having represented themselves pro se for 18 months,
14 DeCourseys signed a Retainer Agreement with Lane Powell, a large law firm in Seattle.
15 The case was assigned to Lane Powell's Construction and Environmental group, headed
16 by Grant Degginger, then Mayor of Bellevue, currently Bellevue City Councilman.

17 47. In October, 2008, the case when to trial. Windermere had no defense. A 12-person jury
18 awarded DeCourseys approximately half a million dollars in damages. The judge
19 awarded DeCourseys another half a million dollars in attorney fees and costs.

20 48. But Windermere agents regularly violated real estate law and the Consumer Protection
21 Act -- apparently with the acquiescence of the regulators in the Department of
22 Licensing. And Windermere knew how to make the civil law -- the Consumer
23 Protection Act -- ineffective.

24 49. By using certain frivolous courtroom maneuvers, defense against which is not covered
25 by the CPA's costs and fees provisions, Windermere's lawyers sent the DeCourseys
26 legal fees into the stratosphere.

1 50. Throughout, Lane Powell did not attempt to use the tools provided by the Washington
2 courts to curtail these frivolous maneuvers (e.g., CR 11). In fact, one of Lane Powell's
3 top attorneys told DeCourseys that the Windermere lawyers "were just doing their job."
4 51. Lane Powell repeatedly answered the frivolous court filings, and their bills went up and
5 up. As experts in the law, Lane Powell surely knew much of their work would not be
6 covered by the CPA fee/cost provision. By these and other acts and omissions, Lane
7 Powell cost DeCourseys hundreds of thousands of dollars in losses.
8 52. In fact, Lane Powell planned to deduct the overages directly from DeCourseys damages
9 award. Effectively, then, Lane Powell was benefiting from Windermere's abuse of the
10 system. Thus, Windermere's lawyers were "just doing their job."
11 53. In July, 2011, before the judgment had been entered -- and without telling DeCourseys -
12 - Lane Powell negotiated with Windermere for a "partial" payment of the judgment. On
13 August 3, 2011, DeCourseys, having found suitable alternative counsel, terminated
14 Lane Powell's services.
15 54. By that time, DeCourseys had already paid Lane Powell more than \$313,000. The day
16 Lane Powell received its notice of termination, it filed a lien on DeCourseys upcoming
17 judgment for an additional \$384,881.66. That's almost \$700,000 in legal fees ... and
18 DeCourseys paid \$280,000 for the home ...
19 55. Nice work if you can get it: No wonder Lane Powell said that the Windermere lawyers
20 were "just doing their job."
21 56. Thus we see how Lane Powell makes the Consumer Protection Act "work" -- for them.
22 57. DeCourseys attempted to negotiate with Lane Powell to resolve their differences. But
23 without warning, on October 5, 2011, Lane Powell filed a lawsuit against DeCourseys --
24 for terminating their services!
25 58. The lawsuit also attempts to foreclose on Lane Powell's lien -- yet not one cent of the
26 Windermere judgment has been paid out.

1 59. If the DeCourseys don't answer the suit, Lane Powell will win by default. On the other
2 hand, DeCourseys are concerned that this lawsuit will cause a breach in attorney client
3 privilege in the Windermere lawsuit.

4 60. Lane Powell's lawyer, Robert Sulkin, has promised that Lane Powell is willing to spend
5 \$800,000 to recover "\$300,000." That is, Lane Powell is willing to wipe out
6 DeCourseys entire award defending against Lane Powell's suit, and take a huge loss
7 itself in the process. How is this consistent with prudent self-interest?

8 61. During the course of their ordeal, DeCourseys discovered that Windermere wronged
9 other customers, forced those customers to sue, and then lost the cases in court.
10 Despite the court-proven cases, the Department of Licensing typically refuses to
11 sanction the Windermere agents. When DeCourseys complained to Attorney-General
12 (AG) Rob McKenna, McKenna took DOL's side and defended the agency. DeCourseys
13 and other Windermere victims complained to the State Auditor, Brian Sonntag, about
14 the DOL and AG's refusal to enforce the law. The Auditor's Office completed its
15 report in May, 2011, but the Attorney General -- who is the official attorney for the
16 Auditor's Office -- refuses to allow the report to be released.

17 **IV. COUNTERCLAIMS: FACTS**

18 62. The previous paragraphs are incorporated herein as though fully set forth.

19 63. DeCourseys are unable to state all counterclaims at this time because the final judgment
20 on the Windermere lawsuit has not been entered. DeCourseys are concerned that this
21 lawsuit will cause a breach in attorney-client privilege in the Windermere lawsuit.

22 64. DeCourseys reserve the right to amend or supplement this pleading at a later date.

23 65. The following is pleaded without waiving attorney-client privilege.

24 66. Brent Nourse of Lane Powell was DeCourseys' attorney of record.

25 67. On or about September 19, 2007, Lane Powell accepted a retainer and became the legal
26 counsel and legal representative for DeCourseys in the Windermere lawsuit.

1 68. On or about September 19, 2007, Lane Powell signed a contract of services with
2 DeCourseys obligating itself to perform the functions described therein (the "9/19/2007
3 Agreement").

4 69. When Lane Powell signed that 9/19/2007 Agreement, it fully intended to carry out the
5 obligations listed therein.

6 70. The contract Lane Powell presented for signature contains no provision for the award of
7 attorney fees in case of a dispute over the agreement.

8 71. Lane Powell, as a full service law firm, had superior knowledge about what terms would
9 be required to protect DeCourseys should a dispute arise between Lane Powell and
10 DeCourseys eventuate over the agreement.

11 72. The lack of such a provision is a decided disadvantage to DeCourseys in Lane Powell's
12 lawsuit.

13 73. The 9/19/2007 Agreement provides that, "Both you and we have right at any time to
14 terminate the attorney-client relationship."

15 74. At the time of signing the 9/19/2007 Agreement, DeCourseys had asserted claims the
16 City of Redmond.

17 75. Nourse's practice group was chaired by Grant Degginger, who also served as the mayor
18 of Redmond's neighboring city, the City of Bellevue.

19 76. Neither Lane Powell's web page nor firm's resume disclosed Degginger's political ties.

20 77. Lane Powell dismissed DeCourseys' claims against the City of Redmond for certain
21 considerations; no money changed hands.

22 78. As mayor of Bellevue, Degginger's office was promoting unprecedented real estate
23 development in Bellevue. Quoting the City's own web page for May 22, 2007, "The
24 Eastside's largest city has seen bursts of growth before, but Bellevue is undergoing an
25 unprecedented construction boom now. Downtown bristles with construction cranes,
26 and a record number of new office buildings, restaurants, houses and shopping and

1 apartment complexes are going up around the city.”

2 79. Degginger’s cordial relationship with various figures of the construction and real estate
3 development created a positional conflict of interest with vigorously representing,
4 prosecuting DeCourseys’ interests, and defending the awards.

5 80. Though Degginger billed more than \$10,186.50 to the case, Degginger’s name never
6 appeared on the pleadings filed with the court.

7 81. Grant Degginger’s name appears for the first time on the signature line of the lien on the
8 judgment.

9 82. Lane Powell knew or should have known of Degginger’s actual and potential conflicts
10 of interest in directing DeCourseys Consumer Protection Act lawsuit (the Windermere
11 lawsuit).

12 83. Lane Powell knew or should have known of the tax consequences and impact of an
13 attorney fee award under the CPA.

14 84. Lane Powell was obligated to inform the court of the tax consequences, and to advocate
15 for grossing up the award to compensate to satisfy the intent of the CPA.

16 85. During the term of Lane Powell’s representation, Windermere filed a number motions
17 and arguments that were not based on existing law, or were interposed for improper
18 purpose such as harassment or unnecessary delay or needlessly increasing the cost of
19 litigation.

20 86. Washington courts have provided tools such as Civil Rule 11 for parties to protect
21 themselves from abusive litigation practices such as those described in Paragraph 85.

22 87. Lane Powell did not attempt to use CR 11 or other existing court remedies to curb
23 Windermere’s toxic litigation waste.

24 88. DeCourseys complained to Dennis Strasser, attorney and “counsel to the firm” at Lane
25 Powell about Windermere’s abusive practice and its impact on Lane Powell’s invoice.
26 Strasser responded to that Windermere’s lawyers were “just doing their job.”

1 89. Lane Powell invoiced DeCourseys for opposing each of Windermere's abusive actions
2 described in Paragraph 85.

3 90. Windermere failed to cooperate with DeCourseys' discovery requests, did not return
4 written interrogatories, and failed to provide a CR 36(b) witness.

5 91. Washington courts have provided tools such as Civil Rule 37, and King County courts
6 with LCR 37, to enable parties to enforce discovery.

7 92. Lane Powell did not attempt to use the existing court remedies to compel Windermere
8 to cooperate with DeCourseys' discovery requests.

9 93. Lane Powell invoiced DeCourseys for the time spent in failed negotiations with
10 Windermere urging cooperation with those discovery requests.

11 94. Lane Powell profited from Windermere's abusive litigation practices.

12 95. The purpose of the courts and the justice system is to distribute justice in society.

13 96. The court system is not designed to provide a handsome living for attorneys.

14 97. Lane Powell acknowledged the high purpose of the legal profession in the 12/30/2008
15 Amendment.

16 98. During the summary judgment hearings, Lane Powell did not ask the court to rule that
17 Windermere's failures to deny DeCourseys' counterclaims were admissions under
18 CR 8(d).

19 99. In other ways, Lane Powell failed to rein in Windermere's expensive litigation tactics
20 (litigation attrition warfare).

21 100. Lane Powell's "failures" to act in this regard extended the lawsuit unnecessarily.

22 101. Lane Powell's "failures" to act in this regard fattened Lane Powell's invoices.

23 102. By the time of final judgment in February 2009, Lane Powell had invoiced DeCourseys
24 for more than \$480,000.

25 103. At that time, DeCourseys had already paid about \$313,253 to Lane Powell.

26 104. When the parties went to pre-trial mediation, Windermere did not pay a share of the

1 fees, burdening DeCourseys with more than \$500 of its costs.

2 105. Lane Powell never insisted that Windermere pay its share of the fees for the mediation,
3 and never mentioned the subject to the courts.

4 106. DeCourseys studied Windermere's litigation tactics and publicly compared them to
5 attrition warfare, showing that it was a pattern of behavior that Windermere habitually
6 used on customers that Windermere had betrayed.

7 107. Washington regulatory agencies such as the Washington Department of Licensing
8 ("DOL") and the Office of the Attorney General ("AG") have been alerted to the abuse
9 by a number of Windermere's victims over the last decade.

10 108. Neither the DOL nor the AG have enforced the applicable laws or moved to protect the
11 Washington public from those abuses despite multiple alerts from multiple parties and a
12 number of private court cases wherein the abuse was proven.

13 109. Privately and in court, Windermere's attorneys alerted Lane Powell to DeCourseys' web
14 sites at <http://RenovationTrap.com> and <http://Windermere-Victims.com> wherein this
15 information is amply documented.

16 110. Two of those other Windermere victims attended the trial and introduced themselves to
17 Lane Powell's lawyers.

18 111. Degginger's wife was or had previously been an attorney working with the Office of the
19 Attorney General.

20 112. Given the political climate and Degginger's personal ambitions and political ties, Lane
21 Powell should not have permitted or assigned Degginger to supervise this case.

22 113. Courts can modify the interpretation of law.

23 114. Shortly before trial, Lane Powell excused the electrical subcontractor (plaintiff in the
24 case) with the agreement that the remaining claims between the contractor and
25 DeCourseys would be settled in binding arbitration.

26 115. Lane Powell did not ensure that the electrical contractor had tendered DeCourseys'

1 claims to its insurance carrier.

2 116. Lane Powell did not serve or contact the insurance carrier in Paragraph 115 concerning
3 DeCourseys' claims or the lawsuit.

4 117. Lane Powell knew or should have known that the insurance carrier in Paragraph 115
5 would later be able to claim that it had no liability for the damages because it had not
6 been notified of the claim or the lawsuit.

7 118. On or about December 30, 2008, Lane Powell and DeCourseys signed a "Letter or
8 Agreement" amending the 9/19/2007 Agreement (the "12/30/2008 Amendment").

9 119. When Lane Powell signed the 12/30/2008 Amendment, it fully intended to carry out the
10 obligations listed therein.

11 120. The 12/30/2008 Amendment amended one or more terms of the 9/19/2007 Agreement.

12 121. The two documents cannot be interpreted separately and constitute a single contract for
13 legal services (the "Retainer Agreement").

14 122. If one party fundamentally breaches one or more terms of an agreement, the other party
15 is not bound by the agreement.

16 123. The 12/30/2008 Amendment does not amend the clause in the 9/19/2007 Agreement
17 that provides, "Both you and we have right at any time to terminate the attorney-client
18 relationship."

19 124. The Retainer Agreement does not require DeCourseys to accept a partial payment of the
20 awards.

21 125. The Retainer Agreement does authorize Lane Powell to accept a partial payment of the
22 awards.

23 126. The Retainer Agreement does not require DeCourseys sacrifice their own lawful
24 interests to expedite payment to Lane Powell.

25 127. The 12/30/2008 Amendment cites the Washington Bar's Rules for Professional Conduct
26 ("RPC") and quotes some of the preamble.

- 1 128. By incorporating the RPC, the 12/30/2008 Amendment makes the RPC a contractual
2 element in the Retainer Agreement between DeCourseys and Lane Powell.
- 3 129. The specific words quoted from the RPC in the 12/30/2008 Amendment makes plain
4 that one of the goals of DeCourseys litigation with Windermere was to protect the
5 public interest.
- 6 130. Another stated purpose of the 12/30/2008 Amendment was to ensure the power of the
7 purse would not impede the administration of justice.
- 8 131. The 12/30/2008 Amendment incorporated the Rules of Professional Conduct into the
9 Agreement, making the RPC a contractual term.
- 10 132. The 12/30/2008 Amendment acknowledged that Lane Powell had “special
11 responsibility for the quality of justice.”
- 12 133. The 12/30/2008 Amendment acknowledged that Lane Powell had a responsibility to
13 “seek improvement of the law, access to the legal system, the administration of justice.”
- 14 134. Windermere was found by the jury and the court to be in violation of the Washington
15 Consumer Protection Act (“CPA”).
- 16 135. Lane Powell did not apply to the court or move the court to award DeCourseys triple
17 damages, available in under the CPA law.
- 18 136. On January 9, 2009, Lane Powell filed and argued the brief, “Plaintiff’s Motion in
19 Support of an Award of Attorneys’ Fees and Costs,” with a declaration and redacted
20 fees for approximately \$356,142.45 with a multiplier of 1.5.
- 21 137. Neither the motion nor the accompanying affidavit in Paragraph 136 itemized or taxed
22 approximately \$21,977.82 in “costs advanced” that Lane Powell invoiced to
23 DeCourseys.
- 24 138. Lane Powell invoiced DeCourseys for approximately \$28,368.50 in services between
25 November 11, 2008 and the final judgment on February 27, 2009.
- 26 139. In its affidavit to the court for attorney fees, Lane Powell did not include the sum named

1 in Paragraph 136.

2 140. Since the court awarded a 1.3 multiplier on the fees awarded, the omission of the sum
3 named in Paragraph 136 resulted in loss to DeCourseys of approximately \$36,879.05.

4 141. At the time of final judgment, Windermere had filed notice of intent to appeal.

5 142. At the hearing for entry of the judgment on November 14, 2008, Judge Fox ruled the
6 post-judgment interest rate would be 12%.

7 143. At the time of final judgment, the statutory post-judgment interest rate for an October
8 2008 tort verdict was 3.935%.

9 144. In the final judgment document, Lane Powell specified the post-judgment interest rate
10 of 3.49%.

11 145. Between the final judgment and the day Windermere filed a supercedas bond, Lane
12 Powell performed certain actions to collect on the award from the Windermere lawsuit.
13 When the bond was filed, Lane Powell performed other actions to stop and clean up the
14 first set of actions.

15 146. For the work described in Paragraph 141, Lane Powell invoiced DeCourseys
16 approximately \$4,946.00.

17 147. Lane Powell made no effort to collect the sum cited in Paragraph 146 from
18 Windermere.

19 148. In the *Complaint*, Lane Powell cites the results of the Windermere lawsuit as though it
20 were a point of pride.

21 149. In November 2009, just a year later, Lane Powell fired the attorney of record Brent
22 Nourse.

23 150. In the alternative, Lane Powell made it impossible for Nourse to continue working at
24 Lane Powell.

25 151. Neither Nourse nor Lane Powell will agree to discuss the circumstances of Nourse's
26 departure.

1 152. At the time of signing the 9/19/2007 Agreement, DeCourseys' attorney of record, Brent
2 Nourse, was billing at the rate of \$275 per hour.

3 153. Year by year, Lane Powell increased the attorney fee rate invoiced to DeCourseys until
4 in 2011, Lane Powell was steadily billing DeCourseys for attorney work at the rate of
5 \$440 per hour and \$470 per hour.

6 154. Lane Powell never notified DeCourseys in advance of an increase, but always in
7 retrospect of six to eight weeks after the service was delivered and billed.

8 155. The Supreme Court ruled on August 8, 2011 that the attorney work done by Lane
9 Powell was not worth more than about \$315 per hour.

10 156. The Retainer Agreement required Lane Powell to assist DeCourseys in their motion for
11 fees and costs of the suit and possible appeals with regard to the damage and fee awards
12 as necessary to prevail in or retain the awards discussed.

13 157. Windermere continued its scattergun litigation strategy in the appeals, requesting
14 multiple extensions, filing overlength briefs, and citing dozens of errors and issues on
15 appeal. The courts did not find validity in any of it.

16 158. Lane Powell did nothing to discourage Windermere's actions in the courts of appeal.

17 159. Lane Powell's failure to act to curb Windermere's litigation excesses, both at trial and
18 appeal court level, is a violation of the Retainer Agreement, in which Lane Powell
19 promises that "the administration of justice will not be impeded in this case by
20 Windermere attempting to prevail by the muscle of the purse."

21 160. The Court of Appeals overruled the Superior Court with regard to \$45,442 in costs that
22 the trial court had awarded.

23 161. According to its affidavits, Lane Powell spent \$101,019 (\$95,219 + \$3,600 + \$2,200) at
24 the Court of Appeals, not including the Motion to Publish.

25 162. Of that sum invoiced to DeCourseys, Lane Powell did not request from the court
26 \$3,600.

1 163. The Court of Appeals disallowed \$48,219 of the sum Lane Powell requested for the
2 work at the Court of Appeals level.

3 164. Lane Powell failed to ask for a reconsideration of that limited fee award and the
4 disallowance of trial court costs.

5 165. Lane Powell failed to cross-petition those losses to the Supreme Court in February
6 2011.

7 166. Lane Powell's failures cited in Paragraphs 164 and 165 were fundamental breaches of
8 the Retainer Agreement with DeCourseys.

9 167. Though Lane Powell was in fundamental breach of the Retainer Agreement,
10 DeCourseys lacked suitable replacement counsel and were unable to discharge the firm.

11 168. Lane Powell could have argued for a reversal of those losses (Paragraphs 160 and 163)
12 by arguing for a literal application of the CPA language for an award of the "costs of the
13 suit" rather than a cramped cherry-picking of costs and segregation of fees as the courts
14 currently read that law.

15 169. Lane Powell demonstrated the validity of those arguments to strengthen the CPA in its
16 brief opposing Windermere's motion to amend the Supreme Court's fee award.
17 Windermere argued for segregation of fees and Lane Powell opposed the motion.

18 170. The Supreme Court certified the validity of those arguments when it agreed with Lane
19 Powell's arguments in August 2011 that segregation of fees was not appropriate.

20 171. If the CPA were strengthened with a precedent to help individual consumers in suits
21 against large corporations, it would potentially impact Lane Powell's other clients.

22 172. Lane Powell's currently advertized client base includes such mega-corporations as
23 Nike, Home Depot, Eli Lilly, Tesoro, and Wells Fargo.

24 173. Lane Powell's current client base created a positional conflict of interest for Lane
25 Powell when it was considering (in February 2011) whether to argue in a cross-petition
26 for non-segregation of fees and thereby establish a published Supreme Court precedent.

1 174. For Lane Powell, this failure to act in DeCourseys' best interests is a consequence of an
2 undisclosed conflict of interest.

3 175. For opposing Windermere's petition, filing a costs bill, and opposing Windermere's
4 motion to modify the costs award, Lane Powell billed DeCourseys about \$28,195.25,
5 then refunded to DeCourseys \$5,555.

6 176. In the affidavit for attorney fees and costs, LP claimed only \$17,818.46 for taxing to
7 Windermere, leaving DeCourseys with a shortfall of about \$2,176.79.

8 177. During the month of July 2011, Lane Powell negotiated with Windermere for a "partial
9 payment" of the award

10 178. Lane Powell did not inform DeCourseys of these negotiations until August 2011.

11 179. Lane Powell's repeated breaches of the Retainer Agreement, its breaches of fiduciary
12 duty, and its disregard for DeCourseys' best interest in the Windermere lawsuit made
13 necessary the termination of the attorney-client relationship as soon as possible.

14 180. At issue still to be resolved in the Windermere lawsuit were the post-judgment interest
15 and the remanded costs.

16 181. Both of the above issues involved large sums of money and on both subjects Lane
17 Powell had previously demonstrated indifference to the point of professional negligence
18 and/or malpractice.

19 182. On August 2, 2011, the work at the Supreme Court was done, the parties were preparing
20 for the remand and final judgment, and DeCourseys located suitable substitute counsel.

21 183. On August 2, 2011, more than \$100,000 in interest and remanded costs were yet to be
22 decided in the case, and Lane Powell had already demonstrated disinterest or negligence
23 in those awards.

24 184. On August 3, 2011, DeCourseys terminated Lane Powell's representation of
25 DeCourseys in the Windermere lawsuit, citing the clause in the Retainer Agreement that
26 states, "Both you and we have right at any time to terminate the attorney-client

1 relationship.”

2 185. Lane Powell immediately filed an attorney lien on the judgment, protecting its claims.

3 186. For more than seven weeks from the date DeCourseys terminated Lane Powell’s
4 services, Lane Powell made no attempt to contact DeCourseys to ask why DeCourseys
5 terminated Lane Powell’s services or resolve the issues.

6 187. For more than seven weeks from the date DeCourseys terminated Lane Powell’s
7 services, Lane Powell made no attempt to contact DeCourseys to settle their differences
8 with DeCourseys.

9 188. On September 22, 2011, DeCourseys approached Lane Powell, attempting to negotiate
10 the parties’ differences.

11 189. On September 28, 2011, Lane Powell responded to DeCourseys’ letter.

12 190. On October 5, 2011, without further notice and without warning, Lane Powell filed this
13 suit against DeCourseys.

14 191. On October 5, 2011, Windermere had not yet paid any of the awards, nor had the
15 Windermere lawsuit gone to remand or final judgment.

16 192. On October 5, 2011, when Lane Powell filed this suit against DeCourseys, Lane Powell
17 knew that Windermere had not yet paid any of the awards, nor had the Windermere
18 lawsuit gone to remand or final judgment.

19 193. Lane Powell knew or should have known that filing a lawsuit against its former client
20 prior to final judgment in the underlying lawsuit could breach or provoke a breach of
21 attorney-client privilege.

22 194. Lane Powell knows or should know that a breach of attorney client privilege could have
23 deleterious effects on the disposition of the Windermere lawsuit.

24 195. In its discovery requests served with the *Complaint*, Lane Powell requests impossible
25 volumes of information.

26 196. Lane Powell can fulfill the voluminous discovery requests from its own files of the

1 Windermere lawsuit.

2 197. Lane Powell alleges it has spent \$10,942.44 for “reproduction costs” allegedly essential
3 to the case. To fulfill Lane Powell’s discovery requests would arguably cost at least that
4 much money.

5 198. Lane Powell’s discovery requests give further evidence that a major purpose of the
6 lawsuit is to harass DeCourseys.

7 199. On or about October 6, 2011, Robert Sulkin, representing Lane Powell in its lawsuit,
8 placed a telephone call to Paul Fogarty, Esq.

9 200. At the time of that call, Paul Fogarty was not representing DeCourseys in Lane Powell’s
10 lawsuit against DeCourseys. Mr. Fogarty had not entered a Notice of Appearance.

11 201. When he made the call, Sulkin knew that Fogarty was not representing DeCourseys in
12 the Lane Powell lawsuit.

13 202. During the call, Robert Sulkin did not attempt to mediate the dispute between Lane
14 Powell and DeCourseys or offer any compromise solutions.

15 203. During the call, Sulkin told Fogarty that Lane Powell was “willing to spend \$800,000 to
16 recover \$300,000” from DeCourseys.

17 204. The sum of \$800,000 and \$300,000 is roughly equivalent to the sum awarded
18 DeCourseys in damages and attorney fees.

19 205. In effect, Lane Powell threatens to wipe out DeCourseys entire award through abusive
20 litigation if DeCourseys do not pay Lane Powell whatever Lane Powell demands.

21 206. This threat is, effectively, extortion, albeit mouthed by a member of the Washington
22 Bar.

23 207. Lane Powell knew DeCourseys could not afford legal representation in the Lane Powell
24 lawsuit.

25 208. Lane Powell knew or should have known its threat would cause DeCourseys emotional
26 distress.

- 1 209. Lane Powell's threat to spend \$800,000 to recover "\$300,000" is an abrogation of the
2 December 30, 2008 amendment in which Lane Powell's promised not to let "the power
3 of the purse" prevail against the DeCourseys.
- 4 210. Lane Powell's threat is a statement that Lane Powell would be willing to take a large
5 financial loss to consume any benefit DeCourseys might receive from the Windermere
6 award.
- 7 211. Lane Powell's threat is clear evidence that Lane Powell's lawsuit is motivated not by
8 prudent self-interest, but by malice.
- 9 212. Lane Powell's threat is a statement that Lane Powell is in violation of, and further
10 intends to violate, the harassment clause of CR 11.
- 11 213. In making the threat, Sulkin showed that he knew of DeCourseys' exhausted financial
12 state, information received by Lane Powell under attorney-client privilege.
- 13 214. Lane Powell did not have consent from DeCourseys to pass this or any other
14 information to Sulkin and his law firm.
- 15 215. This unauthorized dissemination of information by Lane Powell was a breach of the
16 Retainer Agreement and of Lane Powell's fiduciary duty.
- 17 216. This lawsuit is redundant to the lien, which already protects Lane Powell's claims in the
18 judgment.
- 19 217. The judgment in the Windermere lawsuit has not yet been paid.
- 20 218. This lawsuit could potentially interfere with the payment of the Windermere judgment.
- 21 219. Lane Powell's lawsuit is in violation of the Retainer Agreement clause that states, "Lane
22 Powell PC agrees to forebear for a reasonable time on collecting the balance and ..."
- 23 220. Both parties understood the "reasonable time" to mean until payout of the awards from
24 the Windermere lawsuit.
- 25 221. Lane Powell's understanding of those words is confirmed in Lane Powell's actual
26 forbearance for the last three years and Lane Powell's own statement of its meaning in

1 the *Complaint*.

2 222. On October 5, 2011, when Lane Powell filed its lawsuit, Lane Powell knew that
3 Windermere had not yet paid any of the awards, nor had the Windermere lawsuit gone
4 to remand or final judgment.

5 223. In further violation of the Retainer Agreement, Lane Powell has improperly denied to
6 DeCourseys all documentation of "costs advanced" itemized on the Lane Powell
7 invoices.

8 224. Lane Powell did not document or categorized these costs with the proper anticipation
9 that they must align with and conform to RCW 4.84.010 for recovery in a CPA suit.

10 225. Disparate activities are assigned the same category, and similar activities are assigned to
11 disparate categories.

12 226. These costs that potentially were recoverable from Windermere are now not
13 recoverable, constituting an unnecessary and preventable error in case management.

14 227. Lacking the documents and organized information for remand, DeCourseys have been
15 unable to assert proper claims on remand. Those failed claims become damages in this
16 case.

17 228. In the judgment in February 2009, Lane Powell had stated an incorrect post-judgment
18 interest rate involving tens of thousands of dollars.

19 229. These factors (Paragraphs 227 and 228) have unnecessarily incurred additional legal
20 fees for DeCourseys to sort out these issues of the case.

21 230. Over the course of this suit, Lane Powell has invoiced DeCourseys for more than
22 \$700,000. Of that amount, DeCourseys have paid about \$313,253.

23 231. According to the Retainer Agreement, unpaid balances incur 9% interest annually.

24 232. According to the invoices, of the \$700,000 billed to DeCourseys by Lane Powell, more
25 than \$65,000 is interest.

26 233. Lane Powell knew or should have known that the DeCourseys would not receive post-

1 judgment interest of 9% per annum.

2 234. The invoices include about \$21,977.82 in "costs advanced."

3 235. Of "costs advanced," a number of items are improbable or impossible.

4 236. For example, Lane Powell alleges having spent \$10,942.44 for "reproduction costs"
5 (photocopying) during the Windermere lawsuit, a sum not credible even at a dollar per
6 page.

7 237. Some photocopying charges were invoiced to the case when such charges would have
8 been reckless or inappropriate. For example, the August 2011 invoice covers the time
9 responding to Windermere's motion to the Supreme Court to modify the attorney fee
10 award. That invoice includes a charge of \$73.62 for "Reproduction costs."

11 238. Lane Powell has billed DeCourseys for courier and messenger, \$3,539.50; facsimile
12 \$489.60; long distance phone, \$36.34; and travel, \$646.73.

13 239. In the invoices, \$1,280.19 is assigned to "computer legal research." In some invoices,
14 costs are assigned to this category in months when legal research on the case was
15 unnecessary and inappropriate, and/or not performed.

16 240. Lane Powell handled the case inefficiently.

17 241. More than 25 timekeepers billed to the case at various times.

18 242. Each new person coming onto the case required time to become familiar with the issues,
19 billing that time to the case.

20 243. The presence of such a large crew on a single case is inefficient and wasteful. Lane
21 Powell billed with a heavy pencil.

22 244. More than 25 timekeepers billed to the case at various times. Each new person coming
23 onto the case would require time to become familiar with the issues, time that was
24 presumably also billed to the case. The presence of such a large crew on a single case is
25 inefficient and wasteful. Lane Powell billed with a heavy pencil.

26 245. Degginger and/or Lane Powell failed to provide adequate supervision for the junior

1 associates who were running the case, creating an environment of insufficient care in
2 which ordinary errors occurred such as those listed above.

3 246. Degginger billed to the case regularly, totaling more than \$10,000 in the course of the
4 case. But Degginger did not perform any visibly useful work or sign any of the
5 pleadings or declarations.

6 247. The fact that Degginger was not working for DeCourseys is apparent from the
7 invisibility of his charges on the affidavits for fees submitted to the courts of appeal.

8 248. Degginger has recently announced he will not be seeking reelection to the Bellevue city
9 council / mayoralty position following conflict of interest allegations involving his
10 partnership in Lane Powell.

11 249. At 9% interest in the current financial climate, Lane Powell has a greater financial
12 interest in preventing or delaying the Windermere payment than facilitating it.

13 **V. FIRST CAUSE OF ACTION**
14 **Breach of Fiduciary Duty**

15 250. DeCourseys reallege all previous paragraphs as though fully set forth herein.

16 251. Each failure to act in DeCourseys' best interests is a breach of fiduciary duty.

17 252. With its superior knowledge of the practice of law, only Lane Powell knew when and
18 what to do in each the various aspects of the case, regardless of specific request by
19 DeCourseys to do so.

20 253. By not taking the actions that only Lane Powell knew when and how to perform, Lane
21 Powell damaged DeCourseys efforts to recover from the specific losses that formed the
22 basis of the Windermere lawsuit.

23 **VI. SECOND CAUSE OF ACTION**
24 **Breach of Contract**

25 254. DeCourseys reallege all previous paragraphs as though fully set forth herein.

26 255. This lawsuit itself is a fundamental breach of the Retainer Agreement, wherein Lane

1 Powell promised not to attempt collection until the Windermere judgment became
2 available.

3 256. Other breaches include Lane Powell's failures to attempt the specific goals named in the
4 Retainer Agreement, including the public interest goals called out specifically in the
5 Retainer Agreement.

6 257. Fees incurred with Allied Law group correcting the mismanagement of the Windermere
7 lawsuit are direct damages in this case.

8 258. This lawsuit being itself a breach of the Agreement, DeCourseys' legal fees incurred in
9 answering this lawsuit are direct damages of the breach.

10 **VII. THIRD CAUSE OF ACTION**
11 **Malpractice and/or Professional Negligence**

12 259. DeCourseys reallege all previous paragraphs as though fully set forth herein.

13 260. DeCourseys reserve the right to amend the counterclaim at a later date and time more
14 appropriate.

15 261. DeCourseys were damaged by Lane Powell's malpractice and/or negligence in handling
16 the Windermere lawsuit.

17 **VIII. FOURTH CAUSE OF ACTION**
18 **Undisclosed Conflict of Interest**

19 262. DeCourseys reallege all previous paragraphs as though fully set forth herein.

20 263. Lane Powell as a legal firm and specific staff members had undisclosed conflicts of
21 interest that interfered with their duties and loyalties to DeCourseys' goals in the
22 Windermere lawsuit.

23 264. Those conflicts of interest led Lane Powell to act in a manner contrary to DeCourseys'
24 best interests and interfered with its ability to accomplish DeCourseys' goals for the
25 Windermere lawsuit.

26 265. DeCourseys were damaged thereby in an amount to be determined at trial.

1 **IX. FIFTH CAUSE OF ACTION**
2 **Consumer Protection Act Violation**

3 266. DeCourseys reallege all previous paragraphs as though fully set forth herein.

4 267. By its acts and omissions, Lane Powell has breached the Consumer Protection Act.

5 268. DeCourseys were damaged thereby in an amount to be determined at trial.

6 269. DeCourseys should be awarded treble damages as provided by the CPA.

7 **X. SIXTH CAUSE OF ACTION**
8 **Malicious Prosecution**

9 270. DeCourseys reallege all previous paragraphs as though fully set forth herein.

10 271. Lane Powell suing DeCourseys prior to the final judgment of the Windermere lawsuit is
11 unnecessary, potentially damaging, and clearly an act of malice.

12 272. DeCourseys were damaged by this suit in an amount to be determined at trial.

13 **XI. SEVENTH CAUSE OF ACTION**
14 **Unjust Enrichment**

15 273. DeCourseys reallege all previous paragraphs as though fully set forth herein.

16 274. By these and other breaches of contract and fiduciary duty, Lane Powell sought and
17 brought to itself unjust enrichment in representing itself in the Windermere lawsuit.

18 275. DeCourseys were damaged by this suit in an amount to be determined at trial.

19 **XII. OTHER CAUSES OF ACTION**

20 276. DeCourseys reallege all previous paragraphs as though fully set forth herein.

21 277. DeCoursey reserve the right to amend this counterclaim later to include other damages
22 and causes of action.

23 **XIII. PRAYER FOR RELIEF**

24 WHEREFORE, Defendants pray for the following relief:

25 278. All damages suffered by DeCourseys in an amount to be proven at trial.

26 279. Dismissal of Lane Powell's claims against DeCourseys under the contract that Lane
Powell itself breached.

- 1 280. Dismissal of Lane Powell's lien.
- 2 281. Legal fees and costs incurred by DeCoursey to correct Lane Powell's mismanagement
- 3 of the Windermere lawsuit.
- 4 282. Legal fees incurred by DeCourseys prior to the lawsuit researching Lane Powell's
- 5 mismanagement of the case and attempting to negotiate with Lane Powell.
- 6 283. Legal fees and costs incurred by DeCourseys.
- 7 284. Treble damages under CPA.
- 8 285. All fees and costs of this suit under CPA.
- 9 286. Such other remedy as is found just by the court.

10 DATED this 25 day of October, 2011

11 Carol DeCoursey
12 *Carol DeCoursey*
13 Pro se

Mark DeCoursey
Mark DeCoursey
Pro se

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