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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**12/09/2014** at 02:35:50 PM  
Clerk of the Superior Court  
By Jaimie Nguyen, Deputy Clerk

5 Attorney for Plaintiff Donald Enright  
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8 ORANGE COUNTY SUPERIOR COURT, CENTRAL JUSTICE DISTRICT  
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10 DONALD ENRIGHT, an individual,

11 Plaintiff,

12 vs.

13 VIRGINIA DIANE PEYKOFF, an individual;  
and DOES 1 through 100, inclusive,

14 Defendants,  
15

CASE NO. 30-2014-00760688-CU-BC-CJC

COMPLAINT FOR MONEY DAMAGES:

1. BREACH OF CONTRACT

2. QUANTUM MERUIT

Judge Gregory H. Lewis

16 Plaintiff Donald Enright, for causes of action against Defendants, and each of  
17 them, alleges as follows:

18 1. Plaintiff Donald Enright ["Plaintiff"] is and at all times mentioned herein was  
19 an individual, licensed by the State of California as a real estate broker, with his principal  
20 place of business in the City of Newport Beach, County of Orange, State of California.

21 2. Plaintiff is informed and believes, and based thereon alleges, that  
22 Defendant Virginia Diane Peykoff is, and at all times mentioned herein was, an individual  
23 who lives in Orange County, California.

24 3. Defendants DOES 1 through 100, inclusive, are sued by such fictitious  
25 names herein for the sole reason that their true names, identities and capacities, whether  
26 individual, partnership, corporate, association or otherwise, are unknown to Plaintiff at  
27 this time. Plaintiff is informed and believes and based thereon alleges that the DOE  
28 Defendants, and each of them, are in some manner responsible and liable for the

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COMPLAINT FOR MONEY DAMAGES; BREACH OF CONTRACT, etc.

1 damages suffered by Plaintiff as more particularly hereinafter described herein. Plaintiff  
2 will and does hereby ask leave of Court to amend this pleading by inserting the true  
3 names, identities and capacities of said DOE Defendants when the same have been  
4 ascertained by Plaintiff.

5 4. Plaintiff is informed and believes and based thereon alleges that at all times  
6 mentioned herein, Defendants, and each of them, were the agents and/or employees of  
7 the other Defendants. Plaintiff is further informed and believes and based thereon  
8 alleges that the actions of the Defendants, and each of them, as more particularly  
9 described below were done within the course and scope of such agency and/or  
10 employment.

11 5. The making of all contracts, the breaches of all contracts, the making of all  
12 representations, and any other acts or omissions of the Defendants, or contacts between  
13 the Plaintiff and the Defendants, took place within Orange County, California.

14 6. On or about October 31, 2014, Plaintiff, acting through his attorney,  
15 demanded that Defendant Virginia Diane Peykoff submit this dispute to mediation by  
16 communicating this demand to her attorney. As of the date of the filing of this Complaint,  
17 neither Plaintiff nor his attorney has received any response to this demand.

#### 18 **General Allegations**

19 7. On or about February 1, 2014, Defendant Virginia Diane Peykoff entered  
20 into a written "Residential Listing Agreement (Exclusive Authorization and Right to Sell)"  
21 ["Listing Agreement"] with Plaintiff, by which Defendant Virginia Diane Peykoff retained  
22 Plaintiff to sell her real property improved with a single family home located at 1731 Port  
23 Hemley Circle, Newport Beach, California, [the "Property"]. Defendant Virginia Diane  
24 Peykoff is referred to in the Listing Agreement as "Seller". Plaintiff is referred to in the  
25 Listing Agreement as "Broker". The "Listing Period" referred to in the Listing Agreement  
26 is the period from February 1, 2014, through December 31, 2014.

27 8. Paragraph 4A of the Listing Agreement, entitled "Compensation to Broker"  
28 provides, in pertinent part, that: "Notice: The amount or rate of real estate commissions

1 is not fixed by law. They are set by each Broker individually and may be negotiable  
2 between Seller and Broker (real estate commissions include all compensation and fees  
3 to Broker.) A. Seller agrees to pay Broker as compensation for services irrespective of  
4 agency relationship(s) either 4.500 percent of the listing price (or if a purchase  
5 agreement is entered into, of the purchase price), or (blank), as follows: (1) If during the  
6 Listing Period, or any extension, Broker, cooperating broker, Seller or any other person  
7 procures a ready, willing and able buyer(s) whose offer to purchase the Property on any  
8 price and terms is accepted by Seller, provided the Buyer completes the transaction or  
9 is prevented from doing so by Seller. (Broker is entitled to compensation whether any  
10 escrow resulting from such offer closes during or after the expiration of the Listing Period,  
11 or any extension.)

## 12 **FIRST CAUSE OF ACTION**

### 13 **Breach of Written Contract Against All Defendants**

14 9. Plaintiff realleges paragraphs 1 through 8, inclusive, and by this reference  
15 incorporates those paragraphs herein as though set forth in full.

16 10. Promptly after being retained by Defendant Virginia Diane Peykoff to sell  
17 the Property, Plaintiff began marketing the Property, and obtained at least six offers on  
18 the Property, which were presented to Defendant Virginia Diane Peykoff. Defendant  
19 Virginia Diane Peykoff failed to accept any of the offers.

20 10. Plaintiff is informed and believes, and based thereon alleges, that during  
21 the Listing Period, on October 21, 2014, Defendant Virginia Diane Peykoff executed and  
22 acknowledged a Grant Deed, by which she granted the Property to Terese S. Harris,  
23 Trustee of the Terese Sue Harris Living Trust dated January 19, 2010. This Grant Deed  
24 was recorded on October 31, 2014, as Instrument No. 2014000445085 in the Orange  
25 County Recorder's Office.

26 11. Plaintiff is informed and believes, and based thereon alleges, that Terese  
27 S. Harris, Trustee of the Terese Sue Harris Living Trust dated January 19, 2010, paid  
28 Defendant Virginia Diane Peykoff \$2,160,000.00 for the Property, based upon the

1 Documentary Transfer Tax that was paid when the Grant Deed conveying the Property  
2 was recorded.

3 12. Plaintiff is informed and believes and based thereon alleges that the  
4 transfer of the Property by Defendant Virginia Diane Peykoff during the term of the  
5 Listing Agreement obligates Defendant Virginia Diane Peykoff to pay to Plaintiff the real  
6 estate commission set forth in the Listing Agreement equal to 4.5% of the total  
7 consideration received by Defendants, or \$97,200.00.

8 13. Plaintiff has demanded that Defendant Virginia Diane Peykoff pay him the  
9 agreed upon real estate commission due upon the sale of the Property during the Listing  
10 Period, but Defendant Virginia Diane Peykoff has failed and refused, and continue to fail  
11 and refuse, to perform her obligations under the Listing Agreement by paying to Plaintiff  
12 the agreed upon real estate commission.

13 14. Plaintiff is informed and believes, and based thereon alleges that the  
14 failure of Defendant Virginia Diane Peykoff to pay to Plaintiff the agreed upon real estate  
15 commission due upon the sale of the Property during the Listing Period constitutes a  
16 breach of the Listing Agreement, between Defendant Virginia Diane Peykoff and Plaintiff.

17 15. As the direct and proximate result of the breach by Defendant Virginia  
18 Diane Peykoff of the Listing Agreement, Plaintiff has been damaged in the sum of  
19 \$97,200.00, all according to proof at trial.

20 16. Paragraph 15 of the Listing Agreement provides that: "In any action,  
21 proceeding or arbitration between Owner and Broker regarding the obligation to pay  
22 compensation under this Agreement, the prevailing Owner or Broker shall be entitled to  
23 reasonable attorneys fees and costs from the non-prevailing Owner or Broker, except as  
24 provided in paragraph 19A." Paragraph 19A of the Listing Agreement obligates the  
25 Owner and Broker to submit any dispute to mediation before filing a lawsuit. It provides  
26 that, if either Owner or Broker refuses to mediate a dispute after a request has been  
27 made, then that party is not entitled to an award of attorneys fees. Plaintiff alleges that  
28 he has requested that Defendant Virginia Diane Peykoff mediate this dispute, but

1 Defendant Virginia Diane Peykoff has refused. Accordingly, Plaintiff would be entitled  
2 to an award of attorneys fees as the prevailing party in this lawsuit, and Defendant  
3 Virginia Diane Peykoff would not be entitled to an award of attorneys fees if she  
4 prevailed. Plaintiff will move the court for its order awarding him attorneys fees as the  
5 prevailing party in this action.

## 6 **SECOND CAUSE OF ACTION**

### 7 **Quantum Meruit Against All Defendants**

8 17. Plaintiff realleges paragraphs 1 through 8, and 10 through 16, inclusive,  
9 and by this reference incorporates those paragraphs herein as though set forth in full.

10 18. At the special request of Defendant Virginia Diane Peykoff, Plaintiff  
11 provided valuable real estate services to Defendant Virginia Diane Peykoff in advertising  
12 the Property and exposing it to the market, thereby conferring valuable benefits upon  
13 Defendant Virginia Diane Peykoff.

14 19. The reasonable value of the real estate services provided by Plaintiff to  
15 Defendant Virginia Diane Peykoff during the Listing Period and in connection with her  
16 sale of the Property during the Listing Period, is \$97,200.00. The reasonableness of this  
17 compensation for Plaintiff's real estate services is evidenced by the agreement of the  
18 Defendant Virginia Diane Peykoff to pay this amount to Plaintiff in the Listing Agreement  
19 signed by Defendant Virginia Diane Peykoff to obtain Plaintiff's real estate services in  
20 connection with the sale of the Property

21 20. The objective of Defendant Virginia Diane Peykoff to sell the Property  
22 during the Listing Period was accomplished, as evidenced by the Grant Deed executed  
23 and acknowledged by Defendant Virginia Diane Peykoff during the Listing Period, by  
24 which she sold the Property to Terese S. Harris, Trustee of the Terese Sue Harris Living  
25 Trust dated January 19, 2010.

26 21. Defendant Virginia Diane Peykoff would be unjustly enriched if she failed  
27 to pay to Plaintiff all of the real estate commissions he earned and to which he is entitled  
28 for all of the real estate services he provided to Defendant Virginia Diane Peykoff at her

1 request.

2 22. Accordingly, there is now due and owing to Plaintiff from Defendant  
3 Virginia Diane Peykoff the sum of \$97,200.00 for the reasonable value of the real estate  
4 services provided by Plaintiff to Defendant Virginia Diane Peykoff at her request in during  
5 the Listing Period, in connection with the sale by Defendant Virginia Diane Peykoff of the  
6 Property during the Listing Period.

7 **WHEREFORE**, Plaintiff prays judgment against the Defendants, and  
8 each of them, as follows:

9 1. On the First and Second Causes of Action, for money damages in the  
10 amount of \$97,000.00, all according to proof at trial;

11 2. On the First Cause of Action, for reasonable attorneys fees as determined  
12 by the court;

13 3. For interest on all sums awarded at the highest rate permitted by law;

14 4. For all costs of suit incurred herein;

15 5. For such other and further relief as the court deems just.

16 Dated: November 16, 2014



17 Andrew W. Couch, Attorney for Plaintiff  
18 Donald Enright

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