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| DISTRICT COURT, ADAMS COUNTY, COLORADO  Address: 1100 Judicial Center Drive  Brighton, CO 80601  Phone Number: (303) 6558-1161 | DATE FILED: January 30, 2017 3 FILING ID: 4FDC22BABCAEB CASE NUMBER: 2016CV31654 |
| Plaintiff: **KAREN KALAVITY and PATRICIA BABBITT,** |  |
| v. | **COURT USE ONLY** |
| Defendants: **JOSEPH D. FINDLEY, individually; KAUFMAN & FINDLEY, P.C., A COLORADO PROFESSIONAL CORPORATION; LONGMONT PROFESSIONALS, INC., a/k/a REMAX TRADITIONS, INC., a/k/a REMAX TRADITIONS COMMERCIAL;**  **KEITH KANEMOTO, an individual; ALAN JONES, an individual; COLDWELL BANKER, LLC; COLDWELL BANKER RESIDENTIAL; COLDWELL BANKER RESIDENTIAL REAL ESTATE, LLC; COLDWELL BANKER REAL ESTATE, LLC; CBRE INC., ROBERT**  **A. KOROSEC, an individual; and JOHN J. TROHA, an individual.** |  |
| John B. Dougherty, Esq. #13202 357 S. McCaslin Blvd., Suite 200  Louisville CO 80027  Phone: 303-870-8492  Fax Number: 303 648-4473 [jbdlawyer@yahoo.com](mailto:jbdlawyer@yahoo.com) | Case Number: 2016CV031654 Division: A |
| **FIRST AMENDED COMPLAINT AND JURY DEMAND** | |

Plaintiffs, by and through their below signed attorney, hereby state for their First Amended Complaint and Jury Demand as follows:

# JURISDICTION AND VENUE

1. Jurisdiction and venue are proper in this Court pursuant to C.R.C.P.

98, as the Estate referenced herein was opened in this County.

1. This Court has subject matter jurisdiction and is vested with

authority to hear the matter as the estate forming the basis for the complaint was subject to probate in this County.

# PARTIES

1. Plaintiff, Karen Kalavity and Plaintiff Patricia Babbitt, are individuals who reside in Colorado, and at all relevant times were the daughters of the Decedent, Jerry F. Kalavity (the “Decedent” or “Mr. Kalavity”).
2. Plaintiffs Karen Kalavity and Patricia Babbitt were two of four heirs to Decedent.
3. Mr. Kalavity died intestate on April 26, 2014, without a will or instrument directing the affairs of his estate.
4. On or about June 12, 2014, Steven Kalavity nominated Defendant Joseph D. Findley ("Defendant Findley"), to be personal representative of the estate of Mr. Kalavity.
5. All heirs renounced any right to appointment as the personal representative of the estate.
6. Defendant Findley is a licensed attorney in Colorado and a shareholder of the law firm of Kaufman & Findley P.C., a law firm located in Loveland, Colorado.(collectively, Defendant Findley and Defendant Kaufman & Findley are referred to hereinafter as the “Findley Defendants”)
7. Defendant, Kaufman & Findley, P.C, is vicariously liable as a matter of law for any actions and/or omissions of Defendant Joseph D. Findley and all resulting damages to the Plaintiffs as, at all times relevant, Defendant Findley was acting as an employee and servant, of Defendant Kaufman & Findley, P.C with the consent and authorization of Defendant Kaufman & Findley, P.C.
8. On or about June 27, 2014, the Adams County Probate Court, in a case fashioned as “*In* the Matter of Jerry Francis Kalavity, a/k/a Jerry F. Kalavity, a/k/a J.F. Kalavity Case *Number 2014 PR 30341,* " ( the “Estate”) appointed Defendant Findley to be the personal representative of the estate.
9. Defendant Findley assumed all duties of a personal representative of the estate under Colorado law.
10. Among these duties, Defendant Findley owed all Plaintiffs a duty of fiduciary care to administer the Estate with care and prudence, to act impartially, and to put the interests of the Estate and Plaintiffs ahead of his own interest.
11. Defendant Longmont Professionals, Inc., a/k/a Re Max Traditions Inc., a/k/a Re Max Traditions Commercial (“Defendant Re Max”) with offices located at 2204 18th Ave., Longmont Co, through its agents Defendant Keith Kanemoto (“Defendant Kanemoto”) and Defendant Alan Jones (“Defendant Jones”), both licensed Colorado real estate brokers (collectively Defendants Re Max, Defendant Kanemoto and Defendant Jones are the “ Re Max Defendants”) entered into an exclusive listing agreement with the estate to market the primary asset of the Estate, a 15.2 acre parcel real estate, located at 14031 N. Washington Street, Broomfield, Colorado 80023, located in unincorporated Adams County (the “subject property”). Defendants Kanemoto and Jones also presented opinions of the value of the subject property to the Probate Court.
12. Defendant Re Max is vicariously liable as a matter of law for all errors, omissions and negligent or otherwise unlawful acts of Defendants Keith Kanemoto and Alan Jones because both were agents or employees acting with the consent and authorization of Defendant Re Max as set forthherein.
13. Defendant CBRE Inc. (“Defendant CBRE”), is a valuation and advisory service located at various addresses including at 1225 17th Street, #1570, Denver, CO 80202, which, through its related divisions and/or entities referenced but not identified throughout the appraisal/ valuation study prepared regarding the subject property herein , agents and/ or Employees Defendants Robert Korosec a Colorado Certified General Appraiser, No. CGO1321656, and John Toha, also a Colorado Certified General Appraiser, No. CG01326112, both licensed appraisers, (Defendant CBRE, its related divisions and/or entities referenced but not identified on page 1 and throughout the appraisal/ valuation study, and on the subject property, Defendants Robert Korosec and John Toha are collectively the “CBRE Defendants”) performed an appraisal of the subject property which valued the subject property at $600,000.
14. Defendant CBRE is vicariously liable as a matter of law for all errors, omissions and negligent or otherwise unlawful acts of the CRBE Defendants, and Defendants Robert Korosec and John Toha because each held themselves out to be representatives, agents and/or employees, or were otherwise authorized to act on its behalf of Defendant CRBE and were acting within the scope of their duties as such.
15. Defendant Alan Jones (“Defendant Jones”), is a licensed real estate agent with offices located at 100 W 29th Street, Loveland, Colorado, who, on information and belief may be employed by or an affiliated with Coldwell Banker, LLC,; Coldwell Banker Residential; Coldwell Banker Residential Real Estate, LLC and /or ReMax Traditions, Inc and entered into an exclusive listing agreement with the estate to market the subject property of the Estate. Defendant Jones also presented an opinion of the value of the subject property to the Probate Court.
16. Defendant Keith Kanemoto (“Defendant Kanemoto ”), is a licensed real estate agent with offices located with offices located at 2204 18th Ave., Longmont Co, who, on information and belief may be employed by or an affiliated with Coldwell Banker, LLC,; Coldwell Banker Residential; Coldwell Banker Residential Real Estate, LLC and /or Defendnat Re Max and entered into an exclusive listing agreement with the estate to market the subject property of the Estate. Defendant Kanemote also presented an opinion of the value of the subject property to the Probate Court.
17. Defendants Coldwell Banker, LLC, Coldwell Banker Residential, Coldwell Banker Residential Real Estate, LLC ; (collectively hereinafter “Defendant Coldwell Banker”) is/are vicariously liable as a matter of law for all errors, omissions and negligent or otherwise unlawful acts of Defendants Alan Jones and Keith Kanemeoto because Defendant Jones and Defendant Kanemoto were agents and/or employees, or otherwise authorized to act on behalf of Defendant Coldwell Banker because all names appeared on Exclusive Right to Sell Listing Contract referenced herein. (collectively, Defendants Coldwell Banker, LLC,; Coldwell Banker Residential; Coldwell Banker Residential Real Estate, LLC,Defendant Jones and Defendant Kanemoto are referred to as the “Coldwell Banker Defendants ”)

# GENERAL ALLEGATIONS

1. Plaintiffs re-allege the allegations found in all preceding paragraphs, as if set forth

fully herein.

1. At the death of Decedent, the subject property was encumbered by a reverse mortgage, in the approximate principal amount of $290,000.00.
2. Plaintiffs Karen Kalavity and Patricia Babbitt advised Defendant Findley that, during Decedent's lifetime, several investors approached Decedent and offered to purchase the subject property from Decedent for approximately $600,000.00 to $700,000.00 and that the Descendent declined such offers from would be investors.
3. Decedent, during his life, made it clear to Plaintiff Karen Kalavity that evidence in the form of a valuation study, and other evidence existed to show the property was valued at a much higher amount than the offers made to him
4. Plaintiffs Karen Kalavity and Patricia Babbitt provided this information to Defendant Findley before the sale of the property.
5. Defendant Findley, nor any of the other Defendants never adequately inquired, investigated or considered the valuation of approximately $2,000,000.00 referenced by Plaintiff Karen Kalavity, as told to her by Decedent.
6. Instead, Defendant Findley obtained other valuations of the subject property from real estate agents and appraisers, which valued the property at substantially less than the

$2,000,000 valuation.

1. Defendant Findley hired real estate agents Defendant Re Max and Defendant Coldwell Banker, Defendants Keith Kanemoto and Alan Jones to market the property without consulting with Plaintiffs
2. In particular, the Exclusive Right to Sell Listing Contract, signed on or around September 5, 2014, contained a provision (paragraph 28 therein) to market the property initially at the price of $1,500,000.00, and to rapidly have the listing price decline such that by October 31, 2014 the price would be reduced to $700,000.00 less than half

the original listing price set on or around September 24, 2014.

1. These rapid scheduled price reductions were not approved by any of the Plaintiffs and were presumably based upon the erroneous conclusion advanced by Defendant Findley and supported by others including Defendants Kanemoto and Jones that the property absolutely had to be under contract for sale by October 31, 2014, or other reasons which were not in the best interest of Plaintiffs.
2. Defendant Findley, and Defendant Re Max, Defendant Coldwell Banker and Defendants Kanemoto and Jones failed to take reasonable steps to attempt to explore an extension of time from the reverse mortgage lender, instead rushing the sale through the probate process, obtaining approval of sale from the probate court the probate court based upon this false premise presented in Court by Defendants Findley, Defendant Re Max and Defendants Kanenote and Jones.
3. Kanemoto and Jones, on information and belief acting unlawfully in concert, breached their respective duties to Plaintiffs by committing various unlawful acts, including, but not limited to, abandoning any efforts to allow the subject property to be marketed for a reasonable period of time, resulting in a sale of the property for substantially less that its fair market value.
4. Plaintiffs advised Defendant Findley, Defendant Re Max, Defendant Coldwell Banker and Defendants Kanemoto and Jones that it would be possible to obtain extensions of time to pay the reverse mortgage up to and including 1 year from the date of death of Decedent or April, 2015, thereby alleviating any alleged requirement from the lender to sell the property by Oct 31,2014
5. On information and belief, Defendants Findley, Defendant Coldwell Defendant Re

Max and Defendants Kanemoto and Jones made insufficient efforts to extend the deadline of payment on the reverse mortgage.

1. Instead, Defendants Findley, Defendant Re Max, Defendants Coldwell Banker and Defendants Kanemoto and Jones listed the property for sale and did not properly market the subject property.
2. Defendants Findley, Defendant Re Max, Defendant Coldwell Banker and Defendants Kanemoto and Jones and the breached their fiduciary duties of care and loyalty, as well as perform contractual and other duties and other legal duties to the Plaintiffs by committing various unlawful acts, including, but not limited to, failing to take reasonable efforts to market the property for a reasonable time period, instead marketing the property for barely six weeks; not making reasonable efforts to extend the reverse mortgage deadline, or otherwise extend the marketing period to allow the subject property’s value to be maximized.
3. Additionally, Defendants Findley, Defendant Re Max, Defendant Coldwell Banker, and Defendants Kanemoto and Jones breached their fiduciary duties of care and loyalty to the Plaintiffs.
4. Defendant Findley presented evidence of value of the property to the Probate Court hearing, which he knew was substantially below the fair market value of the property.
5. Based upon the evidence presented by Defendants Findley, Defendant Re Max and Defendant Kanemoto and Defendant Jones, Defendant Coldwell Banker, the Court Ordered the sale of the Property to go forward.

# FIRST CLAIM FOR RELIEF

**(Breach of Fiduciary Duty– Findley Defendants)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-referenced First Amended Complaint.
2. Defendant Findley owed Plaintiffs, as heirs of the Estate, a fiduciary duty of care and loyalty as the Estate’s personal representative. Defendant Kaufman& Findley P.C. is vicarious liable to Plaintiffs for these breaches of fiduciary duties.
3. Defendant Findley breached the duties to Plaintiffs among other ways by his failure to administer the Estate with proper care and prudence and by putting his own interests ahead of the Estate, its heirs and the Plaintiffs, resulting in damages to the Plaintiffs.

# SECOND CLAIM FOR RELIEF

**(Negligent misrepresentation –Findley individually)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. Defendant Findley negligently misrepresented to, or omitted or concealed material existing facts from the Plaintiffs and the Court, regarding the value of the subject property which he knew, or should have known, were false.
3. The named Plaintiffs were aware that there was a valuation of the estate and subject property but that the valuation was in the possession of Defendant Findley.
4. The Plaintiffs reasonably relied upon and had no reasonable opportunity to refute or rebut the truth or accuracy of the documents supplied by Defendant Findley to the

estate and the court.

1. At the time the statements of valuation were submitted to the estate and the court, Defendant Findley knew or should have known that the reports submitted were materially incorrect.
2. As a result of Defendant Findley’s actions, the named Plaintiffs were injured as described herein and damaged in an amount to be proven at trial.

# THIRD CLAIM FOR RELIEF

**(Negligence – Findley Individually)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. Defendant Findley owed a duty to the estate and the heirs of the estate to inventory, including but not limited to, safeguard and obtain, where necessary, value consideration for those portions of the estate subject to sale or disposition.
3. Defendant Findley did not properly investigate the value of the subject property, and, on information and belief, despite having information from Plaintiffs and the estate inventory, which would have included a valuation report in the possession of Decedent at the time of his death, ignored the report and caused separate reports to be made which valued the property at substantially lower amounts.
4. Defendant Findley was aware, or reasonably should have been aware that the separately commissioned reports were in error or were so different from the valuation report already in Defendant Findley’s possession that he reasonably should have known that the commissioned reports were in error.
5. Despite such knowledge, Defendant Findley used the valuation reports that he commissioned and submitted them to the Court and the heirs, including Plaintiffs, in breach of his duty to the estate.
6. That the use of valuation reports resulted in the sale of a property for an amount substantially lower than it should have sold for but for Defendant Findley’s breach of duty.
7. The Plaintiffs have been damaged by the sale of the subject property for substantially less than its actual value, constituting economic loss, in an amount to be proven at trial.

# FOURTH CLAIM FOR RELIEF

**(BREACH OF CONTRACT – THIRD PARTY BENEFICIARY – ALL DEFENDANTS)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. Plaintiffs were heirs to the estate of Decedent.
3. Defendant Findley undertook responsibilities to administrate the estate as a personal representative. Those duties included, among others; the obligation to collect and inventory the assets of the estate; manage the assets of the estate during the probate process; make distributions to the heirs or beneficiaries of the estate; and to close the estate once all distributions have been completed.
4. Defendant Findley was aware of his obligations to the estate and knew or reasonably should have known that he has a duty to the heirs of the estate pursuant to his role as personal representative and pursuant to rule or law.
5. Defendant Findley contracted with Defendants Remax, Keith Kanemoto, Alan Jones, Defendant Coldwell Banker , CBRE Inc. and Robert Koresec and John Troha,

who, on, information and belief, all acted in concert to evaluate, market and sell a property of the estate for which Defendant Findley was Personal Representative. Both Findley and the other Defendants breached these contracts

1. Defendant was aware, as were all defendants, that, as a personal representative, Findley was acting for the estate and the heirs of the estate.
2. The various contracts were valid and binding.
3. The contracts for valuation, marketing and sale and related services were intended to benefit the heirs of the estate as third parties, including the Plaintiffs.
4. The benefit to the third parties are and were both clear and direct as payment from the sale of the property was to go to the heirs.
5. The intended beneficiaries were more than incidental.
6. Findley and all Defendants knew of the intended beneficiaries, or reasonably should have known, and owed the intended beneficiaries a duty to perform pursuant to their individual and contractual obligations, as a duty owing to the third party beneficiaries.
7. Defendant Findley contracted with the various above-named Defendants and sold a property for substantially less than it was worth, thereby breaching his duty to the contract third party beneficiaries.
8. The breach of Defendant Findley’s duty to the third party beneficiaries, including Plaintiffs, caused damages, including economic damages in an amount to be proven at trial.

# FIFTH CLAIM FOR RELIEF

**(Breach of Fiduciary Duty– Re Max Defendants)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. As real estate brokers and agents for the estate, Re Max Defendants owed the heirs of the estate a duty of fiduciary care.
3. This duty includes, but is not limited to, using the utmost good faith, loyalty, care and fidelity to represent Plaintiffs.
4. For multiple reasons including, but not limited to, not attempting to maximize the value of the subject property and failing to attempt to market the property at a higher price for a reasonable time, not marketing the property for its highest and best use, the Re Max Defendants breached their fiduciary duties to the Plaintiffs, resulting in damages to Plaintiffs in an amount to be determined at trial.

# SIXTH CLAIM FOR RELIEF

**(Negligence –Re Max Defendants)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. The Re Max Defendants owed a duty of reasonable care required of licensed real estate agents/brokers to the estate and the heirs of the estate to properly value, take reasonable steps to assist in maximizing the value of the subject property for the Estate and Plaintiffs inventory.
3. The Re Max Defendants, acting through its employees/ and authorized agents Defendant Keith Kanemoto and Defendant Alan Jones breached this duty of care by failing

to take steps required of licensed real estate agents/brokers to investigate the value of the subject property, improperly valued the property for sale and failed to reasonable and prudently market the subject property.

1. The Plaintiffs have been damaged by negligence of the Re Max Defendants resulting in the sale of the subject property for substantially less than its actual value, constituting economic loss, in an amount to be proven at trial.

# SEVENTH CLAIM FOR RELIEF

**(Breach of Contract –Third Party Beneficiary- Re Max Defendants)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. Defendant Findley entered into an agreement with Defendant Remax.
3. Defendant Re Max by and through its agents /employees Defendants Kanemoto and Jones, breached the express and implied terms of this agreement.
4. As a direct and proximate result of the breach of the Agreement, Plaintiff have suffered losses in an amount to be determined at trial.

# EIGHTH CLAIM FOR RELIEF

**(Breach of Warranty – Re Max Defendants**)

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. Defendant Findley entered into an agreement, containing express and implied warranties with Defendant Remax, to which Plaintiffs were intended third party

beneficiaries.

1. Defendant Re Max by and through its agents /employees Defendants and Defendants Kanemoto and Jones, breached the express and implied warranties either set forth or implied in the Agreement or otherwise provided by law.
2. As a direct and proximate result of the breach of these warranties, Plaintiff have suffered losses in an amount to be determined at trial.

# NINTH CLAIM FOR RELIEF

**(Breach of Fiduciary Duty– Coldwell Banker Defendants)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. As real estate brokers and agents for the estate, the Colwell Banker Defendants, including Defendant Coldwell Banker, Defendants Jones and Defendant Kanemoto, owed the heirs of the estate a duty of fiduciary care.
3. This duty includes, but is not limited to, using the utmost good faith, loyalty, fidelity and care to represent the Plaintiffs.
4. For multiple reasons including, but not limited to, not attempting to maximize the value of the subject property and failing to attempt to market the property at a higher price for a reasonable time, not marketing the property for its highest and best use, the Coldwell Banker Defendants breached their fiduciary duties to the Plaintiffs, resulting in damages to Plaintiffs.

# TENTH CLAIM FOR RELIEF

**(Negligence –Coldwell Banker Defendants)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. Defendant Coldwell Banker, and its authorized agents Defendant Jones and Defendant Kanemoto, owed a duty of reasonable care required of licensed real estate agents/brokers to the estate and the heirs of the estate breached this duty of care by failing to take steps required of licensed real estate agents/brokers to investigate the value of the subject property, improperly valued the property for sale and failed to reasonable and prudently market the subject property.
3. Defendant Coldwell Banker and its authorized agents Defendant Jones and Defendant Kanemoto, as described herein, breached this duty of care by failing to take reasonable steps to value the property for sale and failed to reasonable and prudently market the subject property to investigate the value of the subject property, and failed to reasonable and prudently market the subject property
4. The Plaintiffs have been damaged by negligence of the Coldwell Banker Defendants the sale of the subject property for substantially less than its actual value, constituting economic loss, in an amount to be proven at trial.

# ELEVENTH CLAIM FOR RELIEF

**(Breach of Contract –Third Party Beneficiary- Coldwell Banker Defendants)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. Defendant Findley entered into an agreement with Defendant Coldwell Banker Defendants to which, as set forth above, Plaintiffs were intended third party beneficiaries..
3. Defendant Coldwell Banker by and through its authorized agents /employees

Defendants and Defendants Kanemoto and Jones, breached the express and implied terms of this agreement.

1. As a direct and proximate result of the breach of the Agreement, Plaintiff have suffered losses in an amount to be determined at trial.

# TWELFTH CLAIM FOR RELIEF

**(Breach of Warranty – Coldwell Banker Defendants**)

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned Complaint.
2. Defendant Findley entered into an agreement, containing express and implied warranties with Defendant Remax, to which Plaintiffs were intended third party beneficiaries.
3. Defendant Re Max by and through its agents /employees Defendants and Defendants Kanemoto and Jones, breached the express and implied warranties either set forth or implied in the Agreement or otherwise provided by law.
4. As a direct and proximate result of the breach of these warranties, Plaintiff have suffered losses in an amount to be determined at trial.

# THIRTEENTH CLAIM FOR RELIEF

**(Negligence– CBRE Defendants)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. The CBRE Defendants, including Defendant CBRE Inc., and its unnamed divisions referenced in the appraisal, Defendants Robert Korosec and John Toha, owed

Plaintiffs a duty of care to exercise the care, skill and diligence required of licensed appraisers in preparing the appraisal report for the Estate.

1. The appraisal report was relied upon in determining the sales price of the subject property and by the Court in approving the sale of the subject property.
2. The CBRE Defendants breached its duty(ies) of care as described herein to the Plaintiffs by failing to adhere to industry protocols and standards, and otherwise not properly preparing its appraisal with the requisite care, diligence, and skill in the preparation of its

appraisal.

1. Plaintiffs have suffered losses and damages as a result of these breaches of duty(ies) in an amount to be determined at trial.

# FOURTEENTH CLAIM FOR RELIEF

**(Breach of Warranty –CBRE Defendants)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. Defendant Findley entered into an agreement to obtain valuation study/ appraisal on the subject property, containing express and implied warranties with the Defendant CBRE, to which Plaintiffs were intended third party beneficiaries.
3. Defendant CBRE by and through its agents / employees Defendants Korosec and Troha and its affiliates/divisions mentioned but not identified in its appraisal, (the “CBRE Defendants”) breached the express and implied warranties either set forth and/or implied in the Agreement or otherwise provided by law.
4. Specifically by way of illustration, according to the Agreement terms, the report

generated by Defendant CBRE through its authorized agents/ employees Defendants Korosec and Troha stated that performance would be made by the standards set forth therein including, but not limited to the CBRE’s warranty that all statements of facts therein were true.

1. As a direct and proximate result of the breach of these warranties, Plaintiff have

suffered losses in an amount to be determined at trial.

# FIFTEENTH CLAIM FOR RELIEF

**(Breach of Contract –Third Party Beneficiary- CBRE Defendants)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. Defendant Findley entered into an agreement with Defendant CBRE to which, as set forth above, Plaintiffs were intended third party beneficiaries.
3. Defendant CBRE by and through its authorized agents /employees Defendants Korsec and Troha breached the express and implied terms of this agreement.
4. As a direct and proximate result of the breach of the Agreement, Plaintiff have suffered losses in an amount to be determined at trial.

# SIXTEENTH CLAIM FOR RELIEF

**(Vicarious Liability—All Corporate/ Entity Defendants)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned First Amended Complaint.
2. All corporate defendants herein, including Defendant Kaufman & Findley , P.C., Re Max Traditions, Inc, Coldwell Banker, LLC,; Coldwell Banker Residential; Coldwell Banker Residential Real Estate, LLC, CBRE Inc. and all corporate/ entity

defendants listed herein ( collectively the “corporate defendants”) named are vicariously liable for the actions of the individual defendants identified as their employees or agents because there is and was at all relevant times, a master/servant relationship created and in existence at the time of wrongdoing herein alleged

1. All corporate defendants herein named are vicariously liable for the actions of the individual defendants identified as their employees or agents, because there is and was at all relevant times, an agency/principal relationship created and in existence at the time of wrongdoing herein alleged.
2. All corporate defendants herein named are vicariously liable for the actions of the individual defendants identified as their employees or agents, because there is and was at all relevant times, an employee/employer relationship created and in existence at the time of wrongdoing herein alleged.
3. All corporate defendants herein named are vicariously liable for the actions of the individual defendants identified as their employees or agents, because there is and was at all relevant times, an agency/principal relationship created and in existence at the time of wrongdoing herein alleged.
4. All corporate defendants herein named are vicariously liable for the actions of the individual defendants identified as their employees or agents, because there is and was at all relevant times, an employee/employer relationship created and in existence at the time of wrongdoing herein alleged.

# SEVENTEENTH CLAIM FOR RELIEF

**(Civil Conspiracy – All Defendants)**

1. Plaintiffs incorporate by reference all prior allegations of the afore-mentioned

First Amended Complaint.

1. All Defendants, acting in concert, agreed by words and/or conduct through the various unlawful means described in this complaint to accomplish unlawful goals including, but not limited to:
   1. Devalue and/or waste the assets of the Estate;
   2. Breach fiduciary duties to the Plaintiffs and/or heirs of the estate;
   3. Provided minimal evidence of and inaccurate value of the estate assets to the Probate Court;
   4. Failure to present evidence of higher value of property;
   5. Failure to market the property at a reasonable price for a reasonable length of time;
   6. Failure to pursue alternatives to having to selling property by October 31, 2014 – obtaining and/or applying for extensions to loan being due leading to rapid reductions in the sale price and value of the subject property ;

120. One or more unlawful acts were performed to accomplish one or more of the above referenced unlawful goals, causing Plaintiffs to suffer lossesdamages **WHEREFORE**, Plaintiffs request damages, as permitted under Colorado law, jointly and

severally against any or all Defendants where permitted under C.R.S. Sect 13-21-111.5 and otherwise, against all Defendants including, but not limited to Compensatory damages, Exemplary damages, interest as allowable by law, costs and fees, including attorney’s fees, together with all other relief permitted by Colorado law and all relief which the Court deems appropriate and proper.

Plaintiffs demand a jury trial on all issues.

**Dated**: January 30, 2017

/s/ Original signature on file John B. Dougherty

Attorney for Plaintiffs

Plaintiff Karen Kalavity 3731 W. 91st Place Westminster Co 80031

Plaintiff Patricia Babbitt 309 Scott Avenue

Ft Collins 80521