

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
DOUGLAS ELLIMAN OF WESTCHESTER LLC,

Plaintiff,

- against -

Index No. 58059/2015

**ANSWER TO THE AMENDED
COMPLAINT WITH
COUNTERCLAIMS**

LISA PERINI THEISS a.k.a. LISA HOGAN, WILLIAM
RAVEIS REAL ESTATE, INC., AND WILLIAM RAVEIS-
NEW YORK, LLC,

Defendant.

-----X
LISA PERINI THEISS a.k.a. LISA HOGAN,

Plaintiff on the Counterclaims,

- against -

DOUGLAS ELLIMAN OF WESTCHESTER LLC
and LAURA SCOTT,

Defendants on the Counterclaims.

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Defendants Lisa Perini Theiss a.k.a. Lisa Hogan (“Ms. Theiss”) and William Raveis Real Estate, Inc., and William Raveis New York, LLC (“Raveis”), by their attorneys Frumkin & Hunter LLP, answer Plaintiff Douglas Elliman of Westchester LLC’s (“Douglas Elliman”) Amended Complaint and assert Counterclaims against Douglas Elliman and Laura Scott as follows:

PRELIMINARY STATEMENT

1. Defendants deny the allegations set forth in Paragraph 1 of the Amended Complaint, except admit that Ms. Theiss was Branch Manager and an agent at Douglas Elliman’s Armonk branch and Chris Raveis and Glenn Felson are Raveis employees.

2. Defendants deny the allegations set forth in Paragraph 2 of the Amended Complaint, except admit that Ms. Theiss was Branch Manager and an agent at Douglas Elliman's Armonk branch.

3. Defendants deny the allegations set forth in Paragraph 3 of the Amended Complaint.

4. Defendants deny the allegations set forth in Paragraph 4 of the Amended Complaint.

5. Defendants deny the allegations set forth in Paragraph 5 of the Amended Complaint.

6. Defendants deny the allegations set forth in Paragraph 6 of the Amended Complaint, except Defendants refer to the email message quoted in Paragraph 6 for its contents.

7. Defendants deny the allegations set forth in Paragraph 7 of the Amended Complaint.

8. Defendants deny the allegations set forth in Paragraph 8 of the Amended Complaint.

9. Defendants deny the allegations set forth in Paragraph 9 of the Amended Complaint.

10. Defendants deny the allegations set forth in Paragraph 10 of the Amended Complaint.

11. Defendants deny the allegations set forth in Paragraph 11 of the Amended Complaint.

12. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 12 of the Amended Complaint.

THE PARTIES

13. Defendants admit the allegations set forth in Paragraph 13 of the Amended Complaint.

14. Defendants admit the allegations set forth in Paragraph 14 of the Amended Complaint.

15. Defendants admit the allegations set forth in Paragraph 15 of the Amended Complaint.

16. Defendants admit the allegations set forth in Paragraph 16 of the Amended Complaint.

JURISDICTION AND VENUE

17. Defendants aver that Paragraph 17 sets forth a conclusion of law as to which no responsive pleading is required.

18. Defendants aver that Paragraph 18 sets forth a conclusion of law as to which no responsive pleading is required.

ALLEGATIONS COMMON TO ALL CLAIMS

A. Douglas Elliman's Business

19. Defendants deny the allegations set forth in Paragraph 19 of the Amended Complaint, except admit that Plaintiff is a real estate brokerage company that owned and operated a branch office in Armonk, New York and its legal predecessor at that location was Holmes & Kennedy.

20. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 20 of the Amended Complaint, except admit that listings are a source of revenue for Douglas Elliman.

21. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 21 of the Amended Complaint.

22. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 22 of the Amended Complaint, except admits that real estate buyers work with Douglas Elliman agents in their efforts to purchase properties.

B. Douglas Elliman's Investment In, And Dependence On, Its Relationships With Its Agents

23. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 23 of the Amended Complaint.

24. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 24 of the Amended Complaint.

25. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 25 of the Amended Complaint.

26. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 26 of the Amended Complaint.

27. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 27 of the Amended Complaint.

28. Defendants deny the allegations set forth in Paragraph 28 of the Amended Complaint, except admit that Laura Scott visited the Westchester office.

C. Douglas Elliman's Reliance On Theiss To Manage Its Relationship With Its Agents

29. Defendants deny the allegations set forth in Paragraph 29 of the Amended Complaint, except admit that Ms. Theiss was manager of the Armonk office when it was an H&K office and was a Douglas Elliman employee from 2010 to March 2015.

30. Defendants deny the allegations set forth in Paragraph 30 of the Amended Complaint.

31. Defendants deny the allegations set forth in Paragraph 31 of the Amended Complaint, except admit that Ms. Theiss knew the listings of other agents at the Armonk branch.

32. Defendants deny the allegations set forth in Paragraph 32 of the Amended Complaint.

33. Defendants deny the allegations set forth in Paragraph 33 of the Amended Complaint.

D. Aided and Abetted by Raveis, Theiss Breached Her duties to Elliman By Luring Elliman's Agents To A Competitor

34. Defendants deny the allegations set forth in Paragraph 34 of the Amended Complaint.

35. Defendants deny the allegations set forth in Paragraph 35 of the Amended Complaint.

36. Defendants deny the allegations set forth in Paragraph 36 of the Amended Complaint.

37. Defendants deny the allegations set forth in Paragraph 37 of the Amended Complaint, except Defendants refer to the email message quoted in Paragraph 37 for its contents.

38. Defendants deny the allegations set forth in Paragraph 38 of the Amended Complaint, except Defendants refer to the email message quoted in Paragraph 38 for its contents.

39. Defendants deny the allegations set forth in Paragraph 39 of the Amended Complaint, except Defendants refer to the email message quoted in Paragraph 39 for its contents.

40. Defendants deny the allegations set forth in Paragraph 40 of the Amended Complaint, except Defendants refer to the email messages quoted in Paragraph 40 for their contents.

41. Defendants deny the allegations set forth in Paragraph 41 of the Amended Complaint, except admit that Ms. Theiss sent the email message quoted therein.

42. Defendants deny the allegations set forth in Paragraph 42 of the Amended Complaint, except Defendants refer to the email message quoted in Paragraph 42 for its contents.

43. Defendants deny the allegations set forth in Paragraph 43 of the Amended Complaint, except Defendants refer to the email messages quoted in Paragraph 43 for their contents.

44. Defendants deny the allegations set forth in Paragraph 44 of the Amended Complaint, except Defendants refer to the email message quoted in Paragraph 44 for its contents.

E. Theiss's Plan To Poach Douglas Elliman's Armonk Office Results In 10 Closely Timed Resignations

45. Defendants deny the allegations set forth in Paragraph 45 of the Amended Complaint.

46. Defendants deny the allegations set forth in Paragraph 46 of the Amended Complaint, except Defendants refer to the email messages quoted in Paragraph 46 for their contents.

47. Defendants deny the allegations set forth in Paragraph 47 of the Amended Complaint, except admit that she went on vacation to Puerto Rico.

48. Defendants deny the allegations set forth in Paragraph 48 of the Amended Complaint, except admit that Claudia Costa terminated her relationship with Douglas Elliman and provided her notice of termination to Ms. Theiss.

49. Defendants deny the allegations set forth in Paragraph 49 of the Amended Complaint, except admit that Jeanne Looney resigned via e-mail to Ms. Theiss and worked with Ms. Costa as partners and shared listings and commissions.

50. Defendants deny the allegations set forth in Paragraph 50 of the Amended Complaint, except admit that Lisa Koh resigned via e-mail to Ms. Theiss.

51. Defendants deny the allegations set forth in Paragraph 51 of the Amended Complaint, except admit that Lauren Goldenberg resigned via e-mail to Ms. Theiss.

52. Defendants deny the allegations set forth in Paragraph 52 of the Amended Complaint, except admit that Angela Schuler resigned via e-mail to Ms. Theiss.

53. Defendants deny the allegations set forth in Paragraph 53 of the Amended Complaint, except admit that Olga Chama resigned via e-mail to Ms. Theiss.

54. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 54 of the Amended Complaint.

55. Defendants deny the allegations set forth in Paragraph 55 of the Amended Complaint.

56. Defendants admit that Ms. Theiss posted a comment on Ms. Koh's Facebook post, and Defendants refer to the Facebook post quoted in Paragraph 56 of the Amended Complaint for its contents. Defendants deny the remainder of the allegations set forth in Paragraph 56 of the Amended Complaint.

57. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 57 of the Amended Complaint, except admit that Ms. Theiss was terminated on March 16, 2015.

58. Defendants deny the allegations set forth in Paragraph 58 of the Amended Complaint, except admit that Ms. Sporn, Ms. Miller, Ms. Freedman, and Ms. Hupfeld became employed with Raveis.

59. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 59 of the Amended Complaint, and deny that during the week of March 16, 2015, it became known in the Westchester real estate business community that Defendant Theiss was defecting to Raveis.

F. Theiss and Raveis Left Behind An Operative Inside Douglas Elliman Newly Loyal To Raveis

60. Defendants deny the allegations set forth in Paragraph 60 of the Amended Complaint.

G. Theiss Procured Non-Renewals Of Existing Listings And Delay Of New Listings

61. Defendants deny the allegations set forth in Paragraph 61 of the Amended Complaint.

H. Raveis Paid Theiss for “Actively” Sourcing and Recruiting Elliman Agents

62. Defendants deny the allegations set forth in Paragraph 62 of the Amended Complaint, except Defendants refer to the employment agreement quoted to in Paragraph 62 of the Amended Complaint.

I. Douglas Elliman Has Been Harmed By Theiss’s Actions

63. Defendants deny the allegations set forth in Paragraph 63 of the Amended Complaint.

64. Defendants deny the allegations set forth in Paragraph 64 of the Amended Complaint.

**FIRST CAUSE ACTION AGAINST DEFENDANT THEISS
(Breach of Fiduciary Duty and Duty of Loyalty)**

65. Defendants repeat and reallege their responses to the allegations set forth in Paragraphs 1 through 64 as if fully set forth herein.

66. Defendants deny the allegations set forth in Paragraph 66 of the Amended Complaint, except admit that Ms. Theiss was an employee and manager of Douglas Elliman.

67. Defendants deny the allegations set forth in Paragraph 67 and sub-paragraphs (a) through (g) of the Amended Complaint.

68. Defendants deny the allegations set forth in Paragraph 68 of the Amended Complaint.

69. Defendants deny the allegations set forth in Paragraph 69 of the Amended Complaint.

70. Defendants deny the allegations set forth in Paragraph 70 of the Amended Complaint.

SECOND CAUSE OF ACTION AGAINST DEFENDANT RAVEIS
(Aiding and Abetting Breach of Fiduciary Duty)

71. Defendants repeat and reallege their responses to the allegations set forth in Paragraphs 1 through 70 as if fully set forth herein.

72. Defendants deny the allegations set forth in Paragraph 72 of the Amended Complaint, except admit that Ms. Theiss was an employee and manager of Douglas Elliman.

73. Defendants deny the allegations set forth in Paragraph 73 and sub-paragraphs (a) through (g) of the Amended Complaint.

74. Defendants deny the allegations set forth in Paragraph 74 of the Amended Complaint.

75. Defendants deny the allegations set forth in Paragraph 75 and sub-paragraphs (i) through (v) of the Amended Complaint.

76. Defendants deny the allegations set forth in Paragraph 76 of the Amended Complaint.

77. Defendants deny the allegations set forth in Paragraph 77 of the Amended Complaint.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS THEISS AND RAVEIS
(Unfair Competition)

78. Defendants repeat and reallege their responses to the allegations set forth in Paragraphs 1 through 77 as if fully set forth herein.

79. Defendants deny the allegations set forth in Paragraph 79 of the Amended Complaint.

80. Defendants deny the allegations set forth in Paragraph 80 of the Amended Complaint.

81. Defendants deny the allegations set forth in Paragraph 81 of the Amended Complaint.

FOURTH CAUSE OF ACTION AGAINST DEFENDANTS THEISS AND RAVEIS
(Tortious Interference With Advantageous Business Relations)

82. Defendants repeat and reallege their responses to the allegations set forth in Paragraphs 1 through 81 as if fully set forth herein.

83. Defendants deny the allegations set forth in Paragraph 83 of the Amended Complaint.

84. Defendants deny the allegations set forth in Paragraph 84 of the Amended Complaint.

85. Defendants deny the allegations set forth in Paragraph 85 of the Amended Complaint.

86. Defendants deny the allegations set forth in Paragraph 86 of the Amended Complaint.

87. Defendants deny the allegations set forth in Paragraph 87 of the Amended Complaint.

88. Defendants deny the allegations set forth in Paragraph 88 of the Amended Complaint.

FIFTH CAUSE OF ACTION AGAINST DEFENDANTS THEISS AND RAVEIS
(Misappropriation)

89. Defendants repeat and reallege the allegations set forth in Paragraphs 1 through 88 as if fully set forth herein.

90. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 90 of the Amended Complaint.

91. Defendants deny the allegations set forth in Paragraph 91 of the Amended Complaint.

92. Defendants deny the allegations set forth in Paragraph 92 of the Amended Complaint.

93. Defendants deny the allegations set forth in Paragraph 93 of the Amended Complaint.

94. Defendants deny the allegations set forth in Paragraph 94 of the Amended Complaint, except admit that Ms. Theiss was an employee and manager of Douglas Elliman.

95. Defendants deny knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph 95 of the Amended Complaint.

96. Defendants deny the allegations set forth in Paragraph 96 of the Amended Complaint.

97. Defendants deny the allegations set forth in Paragraph 97 of the Amended Complaint.

98. Defendants deny the allegations set forth in Paragraph 98 of the Amended Complaint.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

99. Plaintiff's claims are barred by the doctrines of waiver, estoppel, laches and/or unclean hands.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

100. Plaintiff's Complaint fails, in whole or in part, to state a cause of action against Defendants upon which relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

101. Plaintiff's claims for damages are barred, in whole or in part, because they are too remote and speculative.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

102. Plaintiff's claims, in whole or in part, have been filed for an improper purpose and lack a reasonable and good faith basis in fact.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

103. Plaintiff's claims are barred, in whole or in part, by the doctrines of duress, frustration of purpose, lack of consideration, unconscionability, material breach of contract, and/or frustration of purpose.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

104. Plaintiff's claims are barred, in whole or in part, because of Plaintiff's own conduct and failure to act in a commercially reasonable manner.

AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE

105. Plaintiffs' claims are barred, in whole or in part, due to failure to plead fraud with particularity.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

106. Plaintiff's claims are barred, in whole or in part, because Defendant's employment with Plaintiff was terminated by Plaintiff.

COUNTERCLAIMS

NATURE OF COUNTERCLAIMS

1. These Counterclaims are brought by Plaintiff on the Counterclaim Theiss against Defendants on the Counterclaims Douglas Elliman and Laura Scott (Executive Vice President - Professional Development of Douglas Elliman) for discrimination and retaliation, in violation of the New York State Human Rights Law, N.Y. Executive Law § 296 *et seq.*, based upon her sex and in connection with the sexual harassment that Theiss was subjected to by Laura Scott, and the hostile work environment Ms. Scott created for Theiss as a result of this sexual harassment.

2. In addition, Plaintiff on the Counterclaim Theiss brings Counterclaims against Defendant on the Counterclaims Douglas Elliman for breach of contract and for violation of the New York State Labor Law (“N.Y. Labor Law”), Article 6, §§ 190, *et seq.* in connection with Douglas Elliman’s failure to properly compensate Theiss for her 2014 earned bonus.

JURISDICTION AND VENUE FOR COUNTERCLAIMS

3. The Court has jurisdiction over the Counterclaims because such claims arise out of the same transactions or occurrences as those set forth in Douglas Elliman’s Complaint. In addition, the Counterclaims arise under New York law, for which this Court has general jurisdiction.

4. Venue is proper in Westchester County because Douglas Elliman’s Armonk branch, where Theiss was employed, is located at 402 Main Street-Suite 1 Armonk, New York 10504, in the County of Westchester. In addition, Douglas Elliman has other offices in, and conducts business throughout, the County of Westchester.

PARTIES TO COUNTERCLAIMS

5. At all times relevant herein, Plaintiff on the Counterclaims Theiss is and was a natural person residing in the County of Westchester, State of New York.

6. At all times relevant herein, Plaintiff on the Counterclaims Theiss was an employee and/or former employee of Defendant on the Counterclaims Douglas Elliman.

7. At all times relevant herein, Defendant on the Counterclaims Douglas Elliman was a real estate brokerage headquartered in New York, New York with six branch offices located in Westchester.

8. At all times relevant herein, Defendant on the Counterclaim Laura Scott served as Executive Vice President - Professional Development of Douglas Elliman, and as part of her duties, was charged with supervision of the Westchester regional offices (Chappaqua, Pleasantville, Katonah, Somers, Bedford, and Armonk).

FACTUAL BACKGROUND FOR COUNTERCLAIMS

9. In September 2007, Theiss became a Sales Manager at Prudential Holmes & Kennedy in Armonk, New York, serving as a real estate agent and broker and managing a team of agents.

10. As Sales Manager of the Armonk office of Holmes & Kennedy, Theiss entered into a compensation agreement with Holmes & Kennedy and Bill Holmes, Owner.

11. The terms of this compensation agreement included a bonus agreement stating, "Bonus- The year end bonus is based on the company dollar for the Armonk office accumulated sales over \$500,000, as follows: \$500,000-\$600,000 @ 15%; \$600,000-\$800,000 @ 18%; Over \$800,000 @ 20%."

12. The terms of the bonus agreement did not reserve discretion to the employer in issuing the bonus.

13. Upon information and belief, each Holmes & Kennedy office manager had his or her own compensation and bonus agreement with Bill Holmes.

14. On December 23, 2010, Prudential Douglas Elliman acquired, took over, purchased, and/or acquired control of Prudential Holmes & Kennedy.

15. As part of this organizational change, Theiss became a Douglas Elliman employee.

16. Douglas Elliman continued the compensation and bonus structure Theiss had agreed upon with Holmes & Kennedy. Specifically, Douglas Elliman maintained, complied with, and acted in accordance with, Theiss's bonus agreement and its formula.

17. Upon information and belief, Douglas Elliman maintained, complied with, and acted in accordance with, the compensation and bonus agreements Holmes & Kennedy had with each office manager.

18. Upon information and belief, bonuses had to be approved by Howard Lorber, President and CEO of Vector Group, Douglas Elliman's holding company, and Dottie Herman, Chief Executive Officer, and were paid out by Natalie Vitebsky, Chief Financial Officer of Douglas Elliman.

19. In January 2011, Douglas Elliman held a company wide meeting with Bill Holmes, Manager; Ted Holmes, Manager; and Ms. Herman, concerning its newly acquired Westchester region.

20. At this meeting, it was announced that Ted. Holmes would become Westchester Regional Vice President.

21. Also at this meeting, Laura Scott, Executive Vice President - Professional Development of Douglas Elliman, was assigned to the Westchester region.

22. Ms. Scott is an openly homosexual woman. Upon information and belief, Ms. Scott was involved in an intra-office relationship with Toni Haber, a female Douglas Elliman employee, for nearly ten years, and would often discuss the relationship with Douglas Elliman employees.

23. The Westchester management team was comprised of Ted Holmes, Manager - Chappaqua and Pleasantville offices; Diane Cummins, Manager - Katonah and Somers offices; Barbara Plunkett, Manager - Bedford office; and Theiss, Manager - Armonk office.

24. Initially, Ms. Scott was very involved in the Westchester region, and frequently visited the branch offices for meetings, to train agents, and to meet and greet with agents and managers throughout the region.

25. In or around 2011, Ms. Scott visited the Armonk branch office to attend a branch meeting. During this visit, Ms. Scott told Theiss that she thought Theiss was “beautiful,” that she was “attracted” to Theiss, and stated, “too bad you’re straight.”

26. Theiss was disturbed by these sexual advances and comments, but did not know who the appropriate individual within Douglas Elliman was to complain to, because Theiss had never received employee policies or procedures from Douglas Elliman.

27. In addition, Theiss was also fearful to report the sexual advances and comments because Ms. Scott was her supervisor.

28. These sexual advances and comments were offensive, unwelcome and intimidated Theiss, as well as interfered with her employment. Theiss became uncomfortable interacting with

Ms. Scott in the context of their work for Douglas Elliman, specifically when Ms. Scott would visit the Armonk branch office, contact Theiss, or when the two would participate in group meetings or conversations.

29. In 2011, Douglas Elliman hosted “Reinvent,” an annual sales conference, at the Borgata hotel in Atlantic City, New Jersey. One morning during this event, Ms. Scott placed her arm around Theiss and told her, “too bad you’re married because I would want to marry you.”

30. In response, Theiss simply stated, “I am happily married,” in an attempt to shrug off the suggestive comment.

31. Theiss remained fearful of reporting the comments because Ms. Scott was her supervisor.

32. These sexual advances and comments were offensive, unwelcome and intimidated Theiss as well as interfered with her employment. Theiss became increasingly uncomfortable interacting with her in the context of their work for Douglas Elliman, specifically when Ms. Scott would visit the Armonk branch office, contact Theiss, or when the two would participate in group meetings or conversations.

33. In February 2012, following a monthly manager’s meeting at Douglas Elliman’s Manhattan headquarters (“575 Madison Avenue”), all Westchester region managers were called into Ms. Herman’s office. Ted Holmes, Ms. Cummins, Ms. Plunkett, and Theiss were present at this meeting, along with Ms. Scott.

34. During this meeting, Ms. Herman began scolding the managers for the lack of success in the Westchester region. Ms. Herman stated, “you are all too old and tired to successfully manage a real estate office in today’s time.”

35. In March 2012, Theiss received her earned 2011 bonus, pursuant to the terms and formula set forth in the 2007 bonus agreement. This bonus was approximately \$2,500.00.

36. In August 2012, Ms. Scott invited the Westchester Managers to meet Gabe Pasquale, a Licensed Real Estate Sales Person. Mr. Pasquale was introduced as a new manager in charge of new development and construction in the Westchester region. Ms. Scott also indicated that Mr. Holmes would be stepping down as regional manager.

37. Once Mr. Pasquale began working, it was apparent that he was, in fact, serving and functioning as the Westchester regional manager.

38. Douglas Elliman did not require that Mr. Pasquale become a Real Estate Broker, despite New York State's requirement that any manager of a real estate office must be a broker.

39. Over time, Ms. Scott became less involved and engaged with the Westchester region, and her visits to the branch offices began to dwindle to the point of being infrequent, if not non-existent.

40. In February or March 2013, Ms. Scott, Mr. Pasquale, Ms. Cummins, Ms. Plunkett, Jonathan Edwards (a recently hired employee at 575 Madison Avenue), and Theiss had drinks at Brasserie 8 1/2, a nearby restaurant, after a monthly manager's meeting at 575 Madison Avenue.

41. Charles Theiss, Theiss's husband, joined the group because he had planned to drive Theiss home to Westchester. This event was the first and only time Mr. Theiss encountered Ms. Scott.

42. Upon leaving the restaurant, Ms. Scott, Theiss, and Mr. Theiss began saying their goodbyes. Ms. Scott told Mr. Theiss, in front of Theiss, "I really love your wife and wanna do her."

43. Theiss was humiliated and embarrassed by this statement, both due to its content,

highly suggestive and sexual nature, and the fact that it was made in front of her husband.

44. These sexual advances and comments were offensive, unwelcome and intimidated Theiss, as well as interfered with her employment. Theiss became increasingly uncomfortable interacting with her in the context of their work for Douglas Elliman, specifically when Ms. Scott would visit the Armonk branch office, contact Theiss, or when the two would participate in group meetings or conversations.

45. Due to her discomfort with Ms. Scott's harassing behavior, Theiss informed Mr. Pasquale, her direct supervisor, that Ms. Scott made this comment in front of her husband.

46. Upon information and belief, and despite Theiss relaying Ms. Scott's comment to Mr. Pasquale, Mr. Pasquale did not inform Douglas Elliman of Ms. Scott's conduct, nor did Mr. Pasquale or Douglas Elliman take any remedial action to prevent Ms. Scott from subjecting Theiss to similar comments.

47. In March 2013, Theiss received her earned 2012 bonus, pursuant to the terms and formula set forth in the 2007 bonus agreement. This bonus was approximately \$5,000.00.

48. Throughout her employment with Douglas Elliman, and after she complained to Mr. Pasquale about Ms. Scott's harassing behavior, Theiss repeatedly voiced her desire for increased responsibility within the organization, and a promotion.

49. In particular, Theiss explained that her personal listings, which she needed to offset her income, competed with those of the agents she supervised, and resulted in an environment that prohibited top producers coming to her office.

50. For example, in March 2014, Theiss requested to meet with Ms. Scott; Amy Kane, Vice President - Director of Sales; and Mr. Pasquale, and again expressed her interest for increased responsibility within the organization, and a promotion. However, this meeting proved futile.

51. In March 2014, Theiss received her earned 2013 bonus, pursuant to the terms and formula set forth in the 2007 bonus agreement. This bonus was approximately \$15,000.00.

52. In November 2014, upon information and belief, Bill Holmes, suggested to Ms. Herman that Theiss be promoted to Manager of the Westchester region, or at least, the northern part of the Westchester region (Armonk, Chappaqua, Pleasantville, Bedford, and Katonah offices).

53. However, Theiss was overlooked by Douglas Elliman and not considered for these positions.

54. Specifically, as recently as December 22, 2014, Theiss emailed Mr. Pasquale, copying Ms. Herman and Ms. Scott on this request. However, Theiss received no response.

55. On January 8, 2015, Theiss met with Ms. Herman at 575 Madison Avenue, after a monthly manager's meeting. After waiting over three hours to meet with Ms. Herman, Theiss requested a performance review and expressed her dissatisfaction with the fact that she had not received such a review or a salary increase in over four years, despite her successes in recruiting, retaining, and retraining agents at the Armonk branch office.

56. During this meeting, Ms. Herman agreed to provide Theiss with a salary increase, but did not specify what it would be, and indicated that they would "continue the conversation" the following week.

57. Approximately three weeks later, Ms. Herman called Theiss and informed her that “the city” did not think Theiss was capable of handling more than management of the Armonk branch office.

58. Upon information and belief, “the city” meant Stephen Kolter, Chief Operating Officer of Douglas Elliman, and Ms. Scott.

59. Mr. Kolter and Ms. Scott had never attended Theiss’s sales meetings, business business reviews with her agents, her training sessions, or assistance at listing presentations.

60. During this conversation, Theiss again reiterated that having personal listings as a branch office manager had a negative impact on the success of the office, and that it would be in everyone’s best interest for Theiss to receive a salary increase so she could stop listing properties in an effort to offset her income.

61. Ms. Herman then disclosed that Ms. Scott was also on the call, and informed Ms. Scott that “if we were all going to work together we needed to be honest with one another.” Ms. Herman also told Ms. Scott to “be truthful” and that “Lisa cannot see the faces you are making.”

62. Throughout the remainder of the conversation, Ms. Scott continued to defend Mr. Pasquale and his abilities as Westchester regional manager, in an effort to undercut Theiss and discount her qualifications for a promotion or salary increase.

63. In particular, Ms. Scott questioned whether Ted Holmes would accept Theiss as his Manager, despite Theiss and Holmes’ seventeen year relationship in the industry as colleagues.

64. Theiss found this accusation to be especially offensive and designed to undermine her attempt to obtain a promotion or salary increase.

65. Throughout her employment with Douglas Elliman, Theiss remained compensated at the same salary.

66. Upon information and belief, other branch managers received increases in salary over time.

67. Throughout her employment with Douglas Elliman, and after she complained to Mr. Pasquale about Ms. Scott's harassing behavior, Theiss repeatedly requested performance reviews to provide her with an evaluation and assessment of her managerial performance. However, Theiss never received such performance reviews, and her requests were frequently left unanswered.

68. On March 16, 2015, Theiss was terminated by Ken Haber, Executive Vice President & General Counsel at Douglas Elliman. Mr. Haber informed Theiss she was allegedly being terminated for cause pending further investigation.

69. On March 18, 2015, two days after her termination, Theiss was supposed to be paid her 2014 earned bonus.

70. In 2014, total company dollar of the Armonk branch office amounted to \$719,326.00. Pursuant to the 2007 bonus agreement, Theiss was entitled to approximately \$36,462.48 as her 2014 earned bonus.

71. The following week, Mr. Kotler called a meeting with Ms. Scott, Mr. Pasquale, and Theiss's former team at the Armonk branch office.

72. During this meeting, Mr. Kotler informed the group that Theiss was terminated with cause and falsely informed them that Theiss "forfeited a robust bonus."

73. Theiss has not received her 2014 earned bonus.

AS AND FOR A FIRST COUNTERCLAIM
***(Discrimination Under the NYSHRL - Sexual Harassment and Hostile Work Environment
Against Defendant on the Counterclaims Douglas Elliman)***

74. Theiss alleges and incorporates by reference the allegations in all preceding paragraphs.

75. Ms. Scott's unwelcome and offensive conduct, sexual advances, sexually suggestive and/or explicit comments and physical contact, as Theiss's supervisor and based upon Theiss's sex, resulted in a hostile work environment.

76. These sexual advances and comments were unwelcome, offensive, and intimidated Theiss, as well as interfered with her employment. Theiss became increasingly uncomfortable interacting with her in the context of their work for Douglas Elliman, specifically when Ms. Scott would visit the Armonk branch office, contact Theiss, or when the two would participate in group meetings or conversations.

77. Douglas Elliman, as Theiss and Ms. Scott's employer, is liable for the hostile work environment and sexual harassment perpetrated by Ms. Scott.

78. Further, upon information and belief, and despite Theiss relaying Ms. Scott's comment to Mr. Pasquale, her direct supervisor, Mr. Pasquale did not inform Douglas Elliman of Ms. Scott's conduct, nor did Mr. Pasquale or Douglas Elliman take any remedial action to prevent Ms. Scott from subjecting Theiss to similar comments

79. By adversely affecting the terms, conditions and privileges of her employment because of her sex, Douglas Elliman violated the New York State Human Rights Law.

80. As a direct and proximate result of said acts, Theiss has suffered and continues to suffer damages, including, but not limited to, pain and suffering, humiliation, mental anguish, emotional distress and loss of enjoyment of life.

81. As a result, Theiss is entitled to compensatory damages, damages for emotional distress and humiliation, and pre-judgment interest and post-judgment interest calculated at the prevailing rate.

AS AND FOR A SECOND COUNTERCLAIM
(Discrimination Under the NYSHRL - Sexual Harassment and Hostile Work Environment in Against Defendant on the Counterclaim Laura Scott)

82. Theiss alleges and incorporates by reference the allegations in all preceding paragraphs.

83. Ms. Scott's unwelcome and offensive conduct, sexual advances, sexually suggestive and/or explicit comments and physical contact as Theiss's supervisor, and based upon Theiss's sex, resulted in a hostile work environment.

84. These sexual advances and comments were unwelcome, offensive, and intimidated Theiss, as well as interfered with her employment. Theiss became increasingly uncomfortable interacting with her in the context of their work for Douglas Elliman, specifically when Ms. Scott would visit the Armonk branch office, contact Theiss, or when the two would participate in group meetings or conversations.

85. Ms. Scott is subject to personal liability under the New York State Human Rights Law for the hostile work environment and sexual harassment she perpetrated against Theiss.

86. Ms. Scott is Executive Vice President - Professional Development of Douglas Elliman and serves in a supervisory role over the Westchester region of offices, as well as in an executive capacity at Douglas Elliman.

87. By adversely affecting the terms, conditions and privileges of Theiss's employment because of her sex, Ms. Scott individually violated the New York State Human Rights Law.

88. As a direct and proximate result of said acts, Theiss has suffered and continues to suffer damages, including, but not limited to, pain and suffering, humiliation, mental anguish, emotional distress and loss of enjoyment of life.

89. As a result, Theiss is entitled to compensatory damages, damages for emotional distress and humiliation, and pre-judgment interest and post-judgment interest calculated at the prevailing rate.

AS AND FOR A THIRD COUNTERCLAIM
(Retaliation Under the NYSHRL - Sexual Harassment and Hostile Work Environment
Against Defendant on the Counterclaims Douglas Elliman)

90. Theiss repeats and re-alleges each and every allegation contained in paragraphs 1 through 88 as if fully set forth herein.

91. Douglas Elliman's diminution of Theiss which culminated in her termination was a deliberate act of retaliation in response to Theiss's complaint and opposition to Douglas Elliman and Laura Scott's unlawful discrimination under the NYSHRL

92. By terminating Theiss in retaliation for her good faith complaint and opposition to Douglas Elliman and Laura Scott's unlawful discrimination, Douglas Elliman has violated the anti-retaliation provisions of the NYSHRL.

93. As a direct and proximate result of said acts, Theiss has suffered and continues to suffer damages, including, but not limited to, pain and suffering, humiliation, mental anguish, emotional distress and loss of enjoyment of life.

94. Theiss seeks compensatory damages, including emotional distress and loss of enjoyment of life, and costs.

AS AND FOR A FOURTH COUNTERCLAIM
***(Retaliation Under the NYSHRL - Sexual Harassment and Hostile Work Environment in
Against Defendant on the Counterclaim Laura Scott)***

95. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 93 as if fully set forth herein.

96. Laura Scott's role in Douglas Elliman's diminution of Theiss which culminated in her termination was a deliberate act of retaliation in response to Theiss's complaint and opposition to Douglas Elliman and Laura Scott's unlawful discrimination under the NYSHRL.

97. By terminating Theiss in retaliation for her good faith complaint and opposition to Douglas Elliman and Laura Scott's unlawful discrimination, Laura Scott has violated the anti-retaliation provisions of the NYSHRL.

98. As Executive Vice President - Professional Development of Douglas Elliman, Laura Scott has the power to do more than carry out the personnel decisions of others and therefore, is subject to personal liability under the NYSHRL.

99. As a direct and proximate result of said acts, Theiss has suffered and continues to suffer damages, including, but not limited to, pain and suffering, humiliation, mental anguish, emotional distress and loss of enjoyment of life.

100. Theiss seeks compensatory damages, including emotional distress and loss of enjoyment of life, and costs.

AS AND FOR A FIFTH COUNTERCLAIM
(Breach of Contract Against Defendant on the Counterclaims Douglas Elliman)

101. Theiss alleges and incorporates by reference the allegations in all preceding paragraphs.

102. As Sales Manager of the Armonk office of Holmes & Kennedy, Theiss entered into a compensation and bonus agreement with Holmes & Kennedy and Bill Holmes, Owner.

103. The terms of the bonus agreement stated, "Bonus- The year end bonus is based on the company dollar for the Armonk office accumulated sales over \$500,000, as follows: \$500,000-\$600,000 @ 15% ; \$600,000-\$800,000 @ 18%; Over \$800,000 @ 20%."

104. The terms of the bonus agreement did not reserve discretion to the employer in issuing the bonus.

105. In late 2010 or early 2011, when Prudential Douglas Elliman acquired, took over, purchased, and/or acquired control of Prudential Holmes & Kennedy, Theiss became a Douglas Elliman employee.

106. Douglas Elliman and Theiss entered into a bonus agreement when Theiss became a Douglas Elliman employee and continued the compensation structure Theiss had with Holmes & Kennedy, maintained, complied with, and acted in accordance with, Theiss's bonus agreement and its formula.

107. Upon information and belief, bonuses had to be approved by Mr. Lorber and Ms. Herman, and were paid out by Ms. Vitebsky.

108. Douglas Elliman confirmed the existence of the bonus agreement, and performed under the agreement, by issuing Theiss bonus checks in March 2012 (2011 earned bonus, approx. \$2,500.00); March 2013 (2012 earned bonus, approx. \$5,000.00); and March 2014 (2013 earned bonus, approx. \$15,000).

109. Douglas Elliman further confirmed the existence of the bonus agreement in or around late March 2015, when Mr. Kotler called a meeting with Ms. Scott, Mr. Pasquale, and Theiss's former team at the Armonk branch office, and falsely informed the group that Theiss "forfeited a robust bonus."

110. Douglas Elliman calculated and paid these bonuses to Theiss for three consecutive years based upon the formula set forth in the 2007 bonus agreement Theiss entered into with Holmes & Kennedy.

111. Theiss fully performed her obligations as Manager of the Armonk branch under the Agreement.

112. Despite this, Theiss was terminated on March 16, 2015, merely two days before she was scheduled to receive her 2014 earned bonus.

113. By failing to pay Theiss her 2014 earned bonus, Douglas Elliman breached its agreement with Theiss.

114. As a result of Douglas Elliman's breach, Theiss is owed approximately \$36,462.48 as her 2014 earned bonus..

115. As a result of Douglas Elliman's breach and its failure to pay Theiss bonuses owed, Theiss seeks and is entitled to her bonuses, and such other legal and equitable relief as the Court deems necessary.

AS AND FOR A SIXTH COUNTERCLAIM
(Unpaid Wages in Violation of New York Labor Law Against Defendant on the Counterclaims Douglas Elliman)

116. At all times relevant, Theiss was employed by Douglas Elliman within the meaning of New York Labor Law § 190(2).

117. Theiss's bonuses constitute wages under New York Labor Law §§ 190(1), 198.

118. Theiss's bonuses were calculated based upon a formula pertaining to the annual company dollar for the Armonk office accumulated sales over \$500,000.

119. Douglas Elliman failed to compensate Theiss for bonuses earned in her capacity as Manager of the Armonk branch office.

120. Douglas Elliman acknowledged the 2014 earned bonus owed to Theiss in or around late March 2015, when Mr. Kotler called a meeting with Ms. Scott, Mr. Pasquale, and Theiss's former team at the Armonk branch office subsequent to Theiss's termination, and falsely informed the group that Theiss "forfeited a robust bonus."

121. Accordingly, Douglas Elliman's failure to compensate Theiss for her outstanding bonus was willful in nature.

122. As a result of Douglas Elliman's failure to pay Theiss her 2014 earned bonus, which constitutes wages under New York law, Theiss seeks and is entitled to her unpaid bonus, 100% liquidated damages, reasonable attorneys' fees and costs, and such other legal and equitable relief from Douglas Elliman's unlawful and willful conduct as the Court deems just and proper pursuant to New York Labor Law § 198(1)-a.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on the Counterclaims Theiss respectfully requests the following relief:

A. Dismissal of the Douglas Elliman's Complaint in its entirety;

ON THE FIRST, SECOND, THIRD, AND FOURTH COUNTERCLAIMS

B. Compensatory damages in an amount to be determined at trial for all damages;

- C. Damages for emotional distress and humiliation;
- D. Pre-judgment interest and post-judgment interest on the amount described above calculated at the prevailing rate;
- E. Such other and further relief as seem just and proper to this Court.

ON THE FIFTH COUNTERCLAIM

- F. Compensation for bonuses owed;
- G. Pre-judgment interest and post-judgment interest on the amount described above calculated at the prevailing rate;
- H. Such other and further relief as seem just and proper to this Court.

ON THE SIXTH COUNTERCLAIM

- I. Compensation for bonuses owed pursuant to New York Labor Law § 198(1)-a;
- J. Liquidated damages in the amount of 100% of the bonuses due, pursuant to New York Labor Law § 198(1)-a;
- K. Pre-judgment interest and post-judgment interest on the amount described above calculated at the prevailing rate;
- L. Reasonable attorney's fees and costs of the action; and,
- M. Such other and further relief as seem just and proper to this Court.

Dated: December 14, 2015
White Plains, New York

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