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7 **BEFORE THE ADMINISTRATIVE LAW JUDGE**
8 **FOR A HUMAN RIGHTS COMMISSION HEARING**

9 WASHINGTON STATE HUMAN
10 RIGHTS COMMISSION, presenting
11 the case in support of the complaint
12 filed by SUNSHINE LEON ANDREW
13 HARMON, LANA CHANEY-
14 HARMON, and AIDAN CHANEY-
15 DRINARD

16 Complainant,

17 v.

18 BENJAMIN A. THOMAS, JR., LINDA
19 FERRIS, and the BENJAMIN A.
20 THOMAS, SR. CREDIT SHELTER
21 TESTAMENTARY TRUST

22 Respondents.

WSHRC Case No.08HCNRZ-0537-15-6 &
08HCNRZ-0536-15-6

OAH Docket No. 12-2018-HRC-00004

SECOND AMENDED COMPLAINT

23 Complainant Washington State Human Rights Commission (“the Commission”) submits
24 this amended complaint and states as follows:

25 **I. UNFAIR PRACTICES ALLEGED**

26 1. This is an action under the Washington Law Against Discrimination to correct
27 unlawful and discriminatory employment practices, and to provide appropriate relief to
28 Sunshine Harmon, Lana Chaney-Harmon, and Aidan Chaney-Drinard (“the Harmons”), who

1 were adversely affected by such practices. The Washington State Human Rights Commission
2 (the “Commission”) alleges that Respondent Benjamin A. Thomas, Jr. (“Thomas”) unlawfully
3 discriminated against the Harmons, by harassing them, by restricting their use of their real
4 property, and applying different terms and conditions to them because of Sunshine’s race or
5 color, in violation of RCW 49.60.030(1)(c), RCW 49.60.220, RCW 49.60.222, and RCW
6 49.60.2235.

7 **II. JURISDICTION**

8 2. The Commission has jurisdiction to prosecute this case. RCW 49.60.240; RCW
9 49.60.250. RCW 49.60.240 authorizes the Commission to investigate complaints of
10 discrimination and, once it makes a finding of reasonable cause to believe discrimination has
11 occurred, to seek relief for such discrimination. If an agreement to eliminate the unfair practice
12 is not reached, RCW 49.60.250 allows the Commission to request appointment of an
13 administrative law judge to hear its complaint.

14 **III. FACTUAL BASIS FOR ALLEGATIONS**

15 3. Thomas and his sister, Linda Ferris, are co-trustees of the Benjamin A. Thomas
16 Sr. Credit Shelter Testamentary Trust (“Trust”). The Trust owns land in Woodland, Washington.
17 In 2014, Thomas started clearing and subdividing the Trust’s land into lots to create a housing
18 development.

19 4. Sunshine “Sunny” Harmon and Lana Chaney-Harmon are a racially mixed
20 married couple. Sunny is Creole and Native American and Lana is white. Aidan is Lana’s adult
21 daughter and is white. Bo is Sunny and Lana’s biracial minor son.

22 5. In June of 2014, the Harmons offered to purchase one of the lots in the Trust’s
23 subdivision. Mary Meeker (“Meeker”) served as both the buying agent for Respondents and
24 the selling agent for the Harmons, and arranged for Thomas to meet the Harmons in person.

1 6. At the in-person meeting, Thomas told the Harmons that he met with every
2 potential buyer of his land to ensure his neighbors would be “characters to his liking.”
3 Specifically, Thomas said he would not allow any person of Apostolic Lutheran religion,
4 Russian, or Mexican descent to move in.

5 7. After the in-person meeting, Thomas attempted to make it more difficult for the
6 Harmons to purchase the subdivided lot.

7 8. On August 17, 2014, for example, Meeker informed the Harmons that
8 Respondents had received another offer on the subdivided lot. The Harmons reminded Meeker,
9 however, that Respondents could not consider another offer because their closing date had not
10 yet expired.

11 9. On September 18, 2014, shortly after Thomas asked to see a picture of the
12 Harmons’ dog, Meeker informed them that Respondents had revised the lot’s Codes,
13 Covenants, and Restrictions (“CCRs”) to prohibit pit bulls, pit bull crossbreeds, wolves and
14 wolf crossbreeds. The Harmons informed Meeker, however, that their dog was an American
15 bull dog, not a pitbull, wolf, or crossbreed.

16 10. On September 30, 2014, the Harmons’ purchase of the lot closed and they were
17 the first family to move into the subdivision.

18 11. Shortly after the Harmons moved in, Thomas asked Sunny what his ethnicity
19 was; to which Sunny responded that he was Creole.

20 12. After learning that Sunny was Creole, Thomas started harassing the Harmons.
21 Specifically, Thomas told the Harmons to get rid of their dogs or else he would come and shoot
22 them when they were not home. He also threatened to use his tractor bulldozer to run over
23 Aidan and her small dog. He further encouraged the Harmons’ neighbors to shoot their dogs,
24

1 complain to animal control, and/or complain to Cowlitz County about the state of the Harmons'
2 property.

3 13. Respondents also started to apply the development's CCRs in a manner that
4 interfered with the Harmons' right to use their lot. The CCRs placed several restrictions on the
5 Harmons' lot. In addition to the prohibition on pit bulls, the CCRs included the following:

6 a. **Outbuildings.** It required barns, garages, and recreational vehicle storage
7 buildings "be constructed in a permanent fashion" and "compliment (i.e., be
8 similar to) the house style in material, color and design."

9 b. **Mobile homes.** It prohibited the use of motor homes or recreational vehicles
10 for more than ten days. But, it allowed for owners to live in a motor home or
11 trailer during the construction of a residence for up to six months.

12 c. **Commercial Vehicles.** It prohibited commercial home businesses that required
13 the operation of equipment or display of materials outside or visible from any
14 other lot. Any activity related to a home business is required to occur within a
15 structure on the lot.

16 14. On October 27, 2014, less than a month after the Harmons moved onto the lot,
17 Respondents sent the Harmons a letter alleging that the Harmons were (a) using a motor home
18 for more than ten days, (b) parking multiple business trucks and equipment on the lot, and (c)
19 living in a motor home or trailer without any construction permits, in violation of the CCRs.

20 15. On November 13, 2014, the Harmons responded that they were not in violation
21 of the CCRs as they were living in the motor home during the construction of their home and
22 that all relevant construction permits on their home had been obtained. The Harmons agreed
23 that their personal vehicles advertised their commercial business, but that they were not used
24 for commercial purposes on the lot. The Harmons also informed Respondents that they were

1 in the process of constructing a pole building, as Thomas had suggested to them earlier, to
2 store their work trailer.

3 16. On September 9, 2015, Meeker e-mailed the Harmons expressing Respondents'
4 concerns that a storage container and trailer on their lot violated the CCRs. Meeker stated she
5 did not want Respondents to get an attorney involved, and asked when the Harmons could
6 comply with the CCRs.

7 17. On September 10, 2015, the Harmons responded that Thomas had approved of
8 the storage container and trailer while construction on the pole building was ongoing.

9 18. On October 7, 2015, Respondents' attorney accused the Harmons of (a) living
10 in the trailer for more than six months, (b) maintaining temporary structures on the land, and
11 (c) driving too fast in the subdivision, in violation of the CCRs and/or nuisance laws.
12 Respondents' attorney demanded the Harmons comply with the CCRs and nuisance laws, and
13 warned them that their failure to do so could lead to litigation.

14 19. On December 14, 2015, Respondents' attorney again demanded the Harmons
15 remove the trailer and all temporary structures from the property. This time, Respondents'
16 attorney attached a draft complaint to be filed if the Harmons failed to comply with the CCRs.

17 20. On December 31, 2015, the Harmons responded and denied the motor home
18 violated the CCRs, denied having work vehicles or trailers visible from other lots, indicated
19 that they had removed the storage container, and requested clarification as to any other
20 temporary structure of concern.

21 21. On February 23, 2016, Respondents sued the Harmons in Cowlitz County
22 Superior Court alleging violations of the CCRs. Respondents' complaint alleged the Harmons
23 (a) maintained temporary structures on the property, and (b) had built a pole barn with roofing
24 and siding different in material and design from the house.

1 22. Respondents did not sue to enforce the CCRs against any other lot owner in the
2 development. This is despite the fact that several other owners in the development built pole
3 barns similar to the Harmons and maintained temporary structures on the property.

4 23. Respondents applied the CCRs against the Harmons because they were a
5 racially mixed couple and he wanted to force the Harmons to sell and move elsewhere.

6 24. In April 2016, the Harmons filed a petition for a restraining order in Cowlitz
7 County Superior Court.

8 25. Several neighbors and acquaintances witnessed Thomas's disparate treatment
9 and harassment of the Harmons due to Sunny's race, including:

- 10 a. **Jamie Schmitz.** Schmitz owned property nearby and was, at one point,
11 interested in purchasing a lot from Thomas. In discussing the proposed
12 purchase, Thomas told Schmitz he was not going to sell to any Russians,
13 Mexicans or blacks, and that one family was already presenting a problem.
14 Schmitz heard Thomas make discriminatory remarks about Sunny and Bo with
15 regard to their race; specifically, stating that he should never have sold to them
16 due to their race and he would not make that same mistake again. Thomas told
17 Schmitz that the Harmons' lot looked the way it did and their dogs always
18 barked because of Sunny's race, and that the Harmon children were of "mixed
19 race," "retarded," and "slow." More than once, Thomas asked Schmitz to
20 "dispatch," or shoot, the Harmons' dogs if they came off of their property, to
21 call animal control on the Harmons, and also encouraged her to complain to
22 Cowlitz County about the Harmons' barn, trailers, containers, and trenching of
23 their property. Because he was determined to get the Harmons out of the
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1 development, Thomas encouraged Schmitz to use land near the Harmons' lot
2 for shooting practice to further disturb the Harmons.

3 b. **Eric Lingo.** Lingo lives nearby Thomas's development and was, at one point,
4 interested in purchasing a lot from Thomas. In discussing the proposed
5 purchase, Thomas told Lingo that he did not want anyone of different races to
6 live in the development, that he wanted a more Caucasian neighborhood, and
7 that he did not want to sell to gays, blacks, or Russians. Thomas told Lingo that
8 the Harmons were a "pain in [his] ass", that he regretted selling to them, and
9 that he was trying to get rid of them. Thomas also asked Lingo to shoot the
10 Harmons' dogs if they were ever off their property. In November 2015, Thomas
11 asked Lingo to contact Cowlitz County and "make false accusations regarding
12 the state of Harmons's house and property." Thomas also asked Lingo to
13 contact animal control regarding the Harmons' dogs, and write a statement that
14 Lingo did not want to purchase land near the Harmons' property.

15 c. **Heidi Wilson.** Wilson is an acquaintance of the Harmons from church. Wilson
16 declared that when she visited Harmons at their home, she witnessed Thomas
17 drive nearby their home, park his car, and stare at the Harmons and their guests.
18 The attention made Wilson "feel uncomfortable and scared."

19 d. **Patrick Fahey.** Fahey is a neighbor living nearby Thomas's development.
20 Fahey frequently ran into Thomas and heard Thomas use the n-word. Thomas
21 also told Fahey that he did not like Russians, Mexicans, or African-Americans,
22 and did not like the Harmons, often times referring to Sunny's race.
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1 e. **Frank Rumpel.** Rumpel is a friend of the Harmons. Thomas stopped Rumpel
2 when Rumpel was on his way to the Harmons' lot. Thomas said the Harmons'
3 lot was "a pig sty" and said the Harmons were "despicable."

4 26. All of the witnesses above submitted declarations in support of the Harmons'
5 request for a protection order against Thomas. On April 22, 2016, the Cowlitz County Superior
6 Court issued an order restraining Thomas from making any attempt to contact the Harmons,
7 except through an attorney, and restraining Thomas from surveilling the Harmons for one year.

8 27. On October 25, 2017, in Respondents' lawsuit to enforce the CCRs, the Cowlitz
9 County Superior Court granted Respondents' motion for partial summary judgment and
10 enjoined the Harmons from placing temporary structures on the lot in the future and ordered
11 the Harmons to re-clad their existing barn in compliance with the CCRs. On February 22, 2018,
12 the Harmons stipulated to dismissing their counterclaims against Respondents. An appeal of
13 the court's partial summary judgment order is pending.

14 **IV. FIRST CAUSE OF ACTION**
15 **(Violations of the Washington Law Against Discrimination – Racial Harassment)**

16 28. The Commission realleges and incorporates by reference the allegations set
17 forth in each of the preceding paragraphs of this Amended Complaint.

18 29. Respondents subjected the Harmons to unwelcome conduct based on race.
19 Thomas's actions were so severe and/or pervasive that it altered the terms and/or conditions of
20 the Harmons' housing and created a hostile environment. *See* RCW 49.60.222(1)(b).
21 Respondents' actions violated the WLAD.

22 30. As a proximate cause of Respondents' actions, the Harmons have suffered
23 damages including lost opportunity to use and enjoy the full benefits of their housing, expenses
24 incurred due to Respondents' discrimination, inconvenience caused by participating in the

1 investigation and prosecution of their discrimination complaint, pain and suffering, financial
2 hardship, embarrassment, humiliation, emotional distress, and other damages to be proved at
3 the hearing.

4 31. On information and belief, Respondents have not ceased the policy and practice
5 of harassing the Harmons.

6 32. Accordingly, the Commission requests an order that will eliminate and/or
7 prevent recurrence of the above-described discriminatory practices.

8 **V. SECOND CAUSE OF ACTION**
9 **(Violations of the Washington Law Against Discrimination – Unequal Treatment)**

10 33. The Commission realleges and incorporates by reference the allegations set
11 forth in each of the preceding paragraphs of this Amended Complaint.

12 34. Respondents' decision to apply and/or enforce the CCRs against the Harmons—
13 and not others residing in the development--was based on race. In so doing, Respondents violated
14 the WLAD. *See* RCW 49.60.222(1)(b) (prohibiting any person from “discriminat[ing] against
15 a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of
16 facilities or services in connection therewith”).

17 35. As a proximate cause of Respondents' actions, the Harmons have suffered
18 damages including lost opportunity to use and enjoy the full benefits of their housing, expenses
19 incurred due to Respondents' discrimination, inconvenience caused by participating in the
20 investigation and prosecution of their discrimination complaint, pain and suffering, financial
21 hardship, embarrassment, humiliation, emotional distress, and other damages to be proved at
22 the hearing.

23 36. On information and belief, Respondents have not ceased the policy and
24 practice of discriminating against the Harmons.

1 37. Accordingly, the Commission requests an order that will eliminate and/or
2 prevent recurrence of the above-described discriminatory practices.

3 **VI. THIRD CAUSE OF ACTION**
4 **(Violations of the Washington Law Against Discrimination – Retaliation)**

5 38. The Commission realleges and incorporates by reference the allegations set
6 forth in each of the preceding paragraphs of this Amended Complaint.

7 39. Respondents intimidated, threatened, and/or interfered with the Harmons's
8 exercise or enjoyment of rights regarding real estate transactions. *See* RCW 49.60.22235.

9 40. As a proximate cause of Respondents' actions, the Harmons have suffered
10 damages including lost opportunity to use and enjoy the full benefits of their housing, expenses
11 incurred due to Respondents' discrimination, inconvenience caused by participating in the
12 investigation and prosecution of their discrimination complaint, pain and suffering, financial
13 hardship, embarrassment, humiliation, emotional distress, and other damages to be proved at
14 the hearing.

15 41. On information and belief, Respondents have not ceased his policy and practice
16 of discriminating against the Harmons.

17 42. Accordingly, the Commission requests an order that will eliminate and/or
18 prevent recurrence of the above-described discriminatory practices.

19 **VII. FOURTH CAUSE OF ACTION**
20 **(Violations of the Washington Law Against Discrimination – Discriminatory Statements)**

21 43. The Commission realleges and incorporates by reference the allegations set
22 forth in each of the preceding paragraphs of this Amended Complaint.

23 44. Respondents' repeated statements that he did not want to sell to Russians,
24 Mexicans, blacks, and Apostolic Lutherans violate the WLAD. *See* RCW 49.60.222(1)(g)

1 (declaring it an unfair practice to make a record or inquiry in connection with a prospective
2 real estate transaction, which indicates, directly or indirectly, an intent to discriminate).

3 45. As a proximate cause of Respondents' actions, the Harmons have suffered
4 damages including lost opportunity to use and enjoy the full benefits of their housing, expenses
5 incurred due to Respondents' discrimination, inconvenience caused by participating in the
6 investigation and prosecution of their discrimination complaint, pain and suffering, financial
7 hardship, embarrassment, humiliation, emotional distress, and other damages to be proved at
8 the hearing.

9 46. On information and belief, Respondents have not ceased the policy and practice
10 of discriminating against the Harmons.

11 47. Accordingly, the Commission requests an order that will eliminate and/or
12 prevent recurrence of the above-described discriminatory practices.

13 **VIII. FIFTH CAUSE OF ACTION**
14 **(Violations of the Washington Law Against Discrimination – Aiding and Abetting)**

15 48. The Commission realleges and incorporates by reference the allegations set
16 forth in each of the preceding paragraphs of this Amended Complaint.

17 49. Respondents attempted to encourage neighbors and others residing in the
18 development to harass the Harmons based on race. In so doing, Respondents violated the
19 WLAD. *See* RCW 49.60.220 ("It is an unfair practice for any person to aid, abet, encourage, or
20 incite the commission of any unfair practice").

21 50. As a proximate cause of Respondents' actions, the Harmons have suffered
22 damages including lost opportunity to use and enjoy the full benefits of their housing, expenses
23 incurred due to Respondents' discrimination, inconvenience caused by participating in the
24 investigation and prosecution of their discrimination complaint, pain and suffering, financial

1 hardship, embarrassment, humiliation, emotional distress, and other damages to be proved at
2 the hearing.

3 51. On information and belief, Respondents have not ceased the policy and
4 practice of encouraging others to discriminate against the Harmons.

5 52. Accordingly, the Commission requests an order that will eliminate and/or
6 prevent recurrence of the above-described discriminatory practices.

7 IX. REQUEST FOR RELIEF

8 53. The Harmons should be awarded damages for lost opportunity to use and enjoy
9 the full benefits of their housing; necessary expenses in defending Respondents' lawsuit;
10 inconvenience caused by participating in the investigation and prosecution of the
11 discrimination complaint; pain and suffering; financial hardship; embarrassment; emotional
12 distress; and other damages to be proved at hearing.

13 54. Respondents should be required to pay a civil penalty of ten thousand dollars
14 (\$10,000) as provided by RCW 49.60.225 for their knowing and intentional violations.

15 55. Thomas should be ordered to attend a complete session of fair housing training
16 approved by the Commission and/or the Attorney General's Civil Rights Unit.

17 56. Respondents' should be enjoined from discriminating against, retaliating
18 against, and/or harassing persons based on race, national origin, or religion, and should be
19 required to change its policies and procedures to comply with this injunction.

20 57. Other equitable relief should be ordered which this tribunal finds necessary to
21 eliminate the effects of past discrimination, to prevent future discrimination, and to position
22 the Harmons as close as possible to the situation she would have been in but for Respondents'
23 discrimination. This includes retaining jurisdiction if necessary to fully effectuate this
24 tribunal's order.

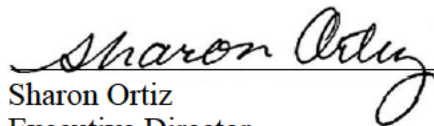
1
2 DATED this 4th day of January, 2019

3
4 ROBERT W. FERGUSON
Attorney General

5
6 s/ Marsha Chien
Marsha Chien, WSBA # 47020
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1 I, Sharon Ortiz, Executive Director of the Commission, verify that I have reviewed the above
2 amended complaint and that the unfair practices charged, the factual allegations set forth, and
3 the relief requested are true, correct and appropriate to the best of my knowledge and belief.

4 Signed this 4th day of January, 2019

5 
6 Sharon Ortiz
7 Executive Director
8 Washington State Human Rights Commission
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1 **CERTIFICATE OF SERVICE**

2 I, Vanessa Salinas, declare under penalty of perjury under the laws of the State of
3 Washington that at all times hereinafter mentioned, I am a resident of the State of Washington,
4 over the age of eighteen (18) years, not a party to the above-entitled action, and competent to
5 be a witness herein.

6 On January 4, 2019, I caused a copy of the following document to be served via
7 electronic service and U.S. Mail, on the individuals identified below:

8 1. Second Amended Complaint

9 Jeana K. Poloni
10 Loeffler Law Group, PLLC
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12 Seattle, WA 98101
206-443-8678
206-443-4545 fax
jpoloni@loefflerlegal.com

13 DATED this 4th day of January, 2019, at Seattle, Washington.

14 

15 VANESSA SALINAS
16 Legal Assistant