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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEC 13 2002
 JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

5 Attorneys for Petitioner Northwest Area Foundation

6
7 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

8
9 **CY-02-3135-AAM**

JULIO ROMERO, on behalf of
himself and all other similarly
10 situated,

No.

NOTICE OF REMOVAL

11 Plaintiff,

12 vs.

13 NORTHWEST AREA
FOUNDATION, a Minnesota Non-
14 Profit Corporation,

15 Defendant.

16
17 Petitioner Northwest Area Foundation, by its undersigned attorneys, files
18 its Notice of Removal filed pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and
19 states:

NOTICE OF REMOVAL - 1

RANDALL & DANSKIN, P.S.
ATTORNEYS AND COUNSELORS
1500 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201-0653
(509) 747-2052



1 1. Plaintiff filed a Summons in the Yakima County Superior Court,
2 Case No. 02-2-03481-0, on November 21, 2002. Plaintiff filed a First Amended
3 Complaint for Money Damages in the Yakima County Superior Court on
4 November 27, 2002. The Yakima County Superior Court is located within the
5 Eastern District of Washington as defined in 28 U.S.C. § 128(a).

6 2. As of this date, the Yakima County Superior Court has issued no
7 orders in this action.

8 3. Plaintiff Julio Romero is a resident of the state of Washington.

9 4. Petitioner Northwest Area Foundation is a Minnesota nonprofit
10 corporation with its principal place of business in St. Paul, Minnesota, and with
11 its corporate headquarters in St. Paul, Minnesota.

12 5. Complete diversity exists among the named parties to the action as
13 the Petitioner is a citizen of Minnesota and the named Plaintiff is a citizen of
14 Washington.

15 6. Plaintiff's Amended Complaint alleges that the amount in
16 controversy, exclusive of interest and costs claimed by Plaintiff, exceeds \$75,000.

17 7. The action is one in which the United States District Courts are
18 given original jurisdiction. 28 U.S.C. § 1332.
19

1 8. Petitioner first received a copy of the Amended Complaint by email
2 correspondence on December 4, 2002.

3 9. On December 6, 2002, Petitioner received a copy of the Summons
4 and Amended Complaint by Federal Express courier. A true and correct copy of
5 the Summons and Amended Complaint received by Petitioner is attached hereto
6 as Exhibit 1 and by reference made a part hereof.

7 10. Less than 30 days has elapsed since Petitioner received a copy of the
8 subject Summons and Amended Complaint, and Petitioner's Notice of Removal
9 is filed within the time allowed by law for removal of civil actions.

10 WHEREFORE, Petitioner, by its undersigned counsel, respectfully submits
11 that this Court now has subject matter jurisdiction over this removed case, *i.e.*, the
12 case styled in the Yakima County Superior Court, *Julio Romero, on behalf of*
13 *himself and all others similarly situated, Plaintiff, v. Northwest Area Foundation,*
14 *a Minnesota Non-Profit Corporation, Defendant,* Case No. 02-2-03481-0,
15 pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and requests that this Court enter
16 such further relief as Petitioner Northwest Area Foundation may properly request.

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I have read the foregoing Notice of Removal and know its contents to be true, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

RANDALL & DANSKIN, P.S.

By David Groesbeck
David J. Groesbeck, WSBA No. 24749
Peter J. Grabicki, WSBA No. 05467
Attorneys for Northwest Area Foundation


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the plaintiff, through its counsel, at the address and in the manner indicated, this 13th day of December, 2002.

Matthew N. Metz, Esq.
999 Third Ave., Suite 2525
Seattle, WA 98104

- Via First Class Mail
- Via Facsimile (206) 374-2916
- Via Overnight Mail
- Via Hand Delivery



David J. Groesbeck

17809\PLEADINGS\NOTICE OF REMOVAL:kmt

EXHIBIT 1

FILED
NOV 21 2002

KIM M. EATON, YAKIMA COUNTY CLERK

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**SUPERIOR COURT OF WASHINGTON
IN AND FOR YAKIMA COUNTY**

JULIO ROMERO, on behalf of himself and all
other similarly situated,

Plaintiff,

vs.

NORTHWEST AREA FOUNDATON,
A Minnesota Non-Profit Corporation,

Defendant.

No. 02 2 03481 0

SUMMONS

To: Defendant Northwest Area Foundation

A lawsuit has been started against you in the above-entitled court by Plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the undersigned attorney within (20) days after service

SUMMONS 1

COPY

Law Offices of Matthew N. Metz
999 Third Avenue, Suite 2525
Seattle, WA 98104
Tel. (206) 282-2405 Fax. (206) 374-2916

1 of this Summons, excluding the day of service, or sixty (60) days if this Summons is served
 2 outside the State of Washington, or a default judgment may be entered against you without notice.
 3 A default judgment is one where plaintiff is entitled to what he asks for because you have not
 4 responded. If you serve a Notice of Appearance on the undersigned attorney you are entitled to
 5 notice before a default judgment may be entered.
 6

7 You may demand that the Plaintiff file this lawsuit with the Court. If you do so, the
 8 demand must be in writing and must be served upon the Plaintiff. Within fourteen (14) days after
 9 you serve the demand, the plaintiff must file this lawsuit with the Court, or service on you of this
 10 Summons and Complaint will be void.
 11

12 If you wish to seek the advice of an attorney in this matter you should do so promptly so
 13 that your written answer, if any, may be served on time.
 14

15 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of
 16 Washington and R.C.W. 4.28.080.

17 DATED this 19 day of November, 2002

LAW OFFICES OF MATTHEW N. METZ

18
 19
 20 By: Matthew N. Metz, WSBA No. 25050
 21 Attorney for Plaintiffs
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 23
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SUMMONS 2

Law Offices of Matthew N. Metz
 999 Third Avenue, Suite 2525
 Seattle, WA 98104
 Tel. (206) 282-2405 Fax. (206) 374-2916

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FILED
NOV 27 2002

KIM M. EATON, YAKIMA COUNTY CLERK

**SUPERIOR COURT OF WASHINGTON
IN AND FOR YAKIMA COUNTY**

JULIO ROMERO, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

NORTHWEST AREA FOUNDATION,
A Minnesota Non-Profit Corporation,

Defendant.

No. 02-2-03481-0

CLASS ACTION

FIRST AMENDED COMPLAINT FOR
MONEY DAMAGES

Breach of Contract
Promissory Estoppel
Quantum Meruit
Consumer Protection Act

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff Julio Romero, on behalf of himself and all others similarly
situated, and demanding trial by jury, complains and alleges as follows:

COPY

CLASS ACTION COMPLAINT FOR MONEY
DAMAGES I

Law Offices of Matthew N. Metz
999 Third Ave., Suite 2525
Seattle, WA 98104
Tel. (206) 282-2405 Fax. (206) 374-2916

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I.
NATURE OF ACTION

1. Plaintiff Julio Romero brings this complaint as a class action pursuant to Court Rules 23(a), (b)(1), (b)(2), and (b)(3) on behalf of himself and approximately 300 other persons who participated without pay in the Yakima Valley Planning Process (hereinafter "Plaintiffs") sponsored by the Northwest Area Foundation (hereinafter "Defendant") from December, 2001 through August, 2002.

2. Beginning in December, 2002, Defendant induced Plaintiffs to participate in a comprehensive community planning process. Defendant represented that Plaintiffs who went to planning meetings would be supported by Defendant to develop a comprehensive poverty reduction plan for the Yakima Valley. Specifically, Defendant promised to provide a committee comprised of Plaintiffs with \$750,000 for use in hiring consultants to develop a comprehensive community plan to reduce poverty, and \$500,000 worth of technical and logistical support to support the planning effort. Defendant told Plaintiffs that the planning process would take approximately one year to complete. Defendant promised Plaintiffs that once the plan was complete and approved by Defendant's president, that the Yakima Valley would be one of eight communities in the Western United States to receive donations totaling \$150,000,000 over a ten year period for plan implementation. In addition, Defendant represented to Plaintiffs that the plan would be useful to them in obtaining other funding for their community.

1 3. Defendant's promises of substantial funding for economic and social development
2 planning and implementation created an enormous response in the Yakima Valley. Plaintiff
3 and more than two hundred other members of the Plaintiff Class participated in the highly
4 structured planning process designed by Defendant, which required participants to go to
5 multiple committee meetings virtually every week for the duration of the planning process.
6 Plaintiff Romero, and many other class members, personally dedicated more than 100
7 uncompensated hours each to the process, relying on Defendant's promises of funding to
8 complete a comprehensive poverty reduction plan in the Yakima Valley, and for later funding
9 to implement said plan.
10

11 4. Plaintiffs thus formed a unilateral contract with Defendant whereby Plaintiffs
12 participated in the planning process established by Defendant, and Defendant promised to
13 provide \$1,250,000 in funding and technical and logistical support to assist them to produce a
14 detailed, comprehensive community plan. By early April, 2002, Plaintiffs were midway
15 through forming a draft plan. Many of the planning subcommittees had had multiple meetings,
16 and were beginning to develop their portions of the draft plan.
17

18 5. By letter dated April 12, 2002, Defendant abruptly halted the planning process,
19 promising that the process would be restarted in 60-90 days when a new project director would
20 be hired. Defendant broke its promise and breached its contract with Plaintiffs on or about
21 August 13, 2002, when Karl Stauber, President of the Foundation, announced the Foundation's
22 cancellation of the project, and its refusal to provide the promised funding to either complete
23 the planning process or implement the plan.
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1 6. By canceling the planning process and refusing to provide promised funds, Defendant
2 wrongfully and without legal justification breached its contract with Plaintiffs to fund a
3 comprehensive poverty reduction program in the Yakima Valley.

4
5 **II.**

6 **THE PARTIES**

7 7. Plaintiff Julio Romero is a resident of Yakima, Washington. He was an unpaid
8 participant in the Yakima Valley planning process sponsored by Defendant.

9 8. Defendant Northwest Area Foundation is a Minnesota non-profit corporation with its
10 principal place of business in Saint Paul, Minnesota.

11 **III.**

12 **JURISDICTION AND VENUE**

13
14 9. Defendant is subject to jurisdiction in Washington State pursuant to Washington State's
15 "long arm" statute R.C.W. 4.28.185 because the contract between Plaintiffs and Defendant was
16 made and breached in Yakima County, Washington, because Defendant instituted a substantial
17 planning process in the Yakima Valley, and because Defendant carries out substantial
18 organizational and charitable activities in the State of Washington.

19
20 10. Venue is proper in Yakima County because the contract which is the subject of this
21 action was formed and breached in Yakima County.

22 **IV.**

23 **CLASS ACTION ALLEGATIONS**

24 11. Plaintiffs bring this action as a Class Action pursuant CR 23(a), (b)(1), (b)(2) and
25 (b)(3).
26

1 12. The Class consists of approximately 300 residents of Yakima County, Washington that
2 participated without pay in the planning process sponsored by Defendant Northwest Area
3 Foundation. The members of the Class are so numerous that joinder of all Class Members is
4 impracticable. The exact number of Class Members is not presently known to Plaintiff, but can
5 be readily determined by appropriate discovery, and is estimated to number in excess of 300
6 persons.
7

8 13. Plaintiff Julio Romero will fairly and adequately protect the interests of Class Members
9 and has retained competent counsel with prior experience in complex litigation, including class
10 actions. Plaintiff's counsel has been an attorney since 1991. Plaintiff Romero has no interests
11 that are adverse or antagonistic to those of the Class.
12

13 14. A class action is superior to other available methods for the fair and efficient
14 adjudication of this controversy. Because the damages suffered by many individual Class
15 Members are collective in nature, individual litigation would be an impossible alternative for
16 the Class Members to seek redress for the wrongful conduct alleged.

17 15. Common questions of law and fact exist as to all Class Members and predominate over
18 any questions solely affecting individual Class members. Among the questions of law and fact
19 common to the class are:
20

- 21 a. Whether Plaintiff and other members of the Plaintiff Class had a contract with
22 Defendant, and the terms of said contract;
- 23 b. Whether Defendant breached said contract;
- 24 c. Whether Plaintiff and other members of the Plaintiff class sustained injury by
25 reason of Defendant's actions.
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V.

FACTUAL BACKGROUND

Defendant's Community Ventures Program

16. Defendant Northwest Area Foundation is a St. Paul, Minnesota based foundation capitalized in 1934 with the fortune generated by James J. Hill, the founder of the Great Northern Railway. Defendant's assets as of its March 31, 2001 Fiscal Year End exceeded \$425 million. In or about 1997, Defendant initiated the Community Ventures Program. Defendant's stated purpose for the Community Ventures Program was to "form partnerships with ...communities and encourage them to identify what they need and how they want to accomplish their [poverty reduction] goals." The Community Ventures Program communities are selected based on approximately one year of intensive research by Defendant of distressed communities. According to Defendant's website, Defendant is "selecting communities [for participation in the Community Ventures Program] based on the combination of need, opportunity, and potential impact. Communities will vary in size and type. These communities will receive intensive support, totaling about \$150 million, from the Foundation."

17. Beginning in the Summer of 2000, Defendant extensively researched Yakima County to assess its suitability for participating in the Community Ventures Program. In January 2001, after determining that Yakima County fit the criteria for the Community Ventures Program, Defendant conducted a series of community meetings in Yakima County to gauge the community's interest in participating in the program. Patricia Deinhart, the Community Ventures Program team lead, was quoted as saying in January, 2001 time that "The community knows the answers [for addressing poverty], but it may not have had the resources. We will

1 bring in the resources." In or about the Summer of 2001, Defendant concluded, based on its
2 research, that Yakima County was a suitable location for the program, and began organizing
3 the community to participate in the Community Ventures Program.

4 **Defendant Initiates Planning Process and Promises \$1,250,000 in Planning Funds and**
5 **Services**

6
7 18. In November and December of 2001, Defendant contracted with a number of Yakima
8 County-based community organizers to involve the community members in the planning
9 process.

10 19. On December 15, 2001, Defendant sponsored a large regional planning meeting
11 attended by Plaintiff and more than 200 members of the Plaintiff class at which Defendant
12 explained its intent to support and underwrite the production of a comprehensive community
13 plan to address poverty in the Yakima Valley, and its intent to fund the implementation of said
14 plan. Defendant outlined a complex structure involving a coordinating committee and six
15 subcommittees which would guide the development of the plan. At this and other meetings,
16 Defendant stated that a self-selected group of community volunteers would be charged with
17 developing the content of the plan. Defendant induced Plaintiffs' participation by stating that it
18 would provide \$750,000 in planning funds and \$500,000 in direct technical and logistical
19 assistance to support Plaintiffs' efforts to develop a community plan. The \$750,000 in funds
20 were to be used as directed by committees comprised of Plaintiff and other members of the
21 Plaintiff Class to hire consultants to assist in the development of portions of the plan. Such
22 consultants would have provided detailed studies and analysis of various issues of concern to
23 the community, including the community's housing, health, and economic development needs.
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1 The \$500,000 in direct aid would have paid for such things as meeting expenses, transportation
2 expenses, and the time of Defendant's staff who supported the project.

3 20. Defendant presented a timeline to the community at the December 15, 2001 meeting
4 indicating that the "final draft plan" to be prepared by Plaintiff and other members of the
5 Plaintiff Class was to be submitted to Defendant in November, 2002. A true and correct copy
6 of said timeline is attached hereto as "Exhibit A". The timeline then shows that in January,
7 2003, "Partnership plan approved", and that in February, 2003, there would be a "Community
8 Celebration" and "Implementation Initiated". Once the plan was complete in the fourth
9 quarter of 2002, the plan would be submitted to Defendant president for final approval for a
10 formal written partnership between the Yakima Valley community and Defendant. Once
11 approved by Defendant, the Yakima Valley community would join approximately eight other
12 communities which Defendant would fund with \$150,000,000 over a 10 year period.
13 Defendant also represented to Plaintiffs that the plan itself would have substantial value to their
14 community beyond accessing donations from Defendant, in that the plan would cause the
15 community to come together around a common goal, and because the plan could be used to
16 raise funds from other donors and from governmental entities.

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20 **The Community Accepts Defendant's Offer and Embraces Planning Process**

21 21. Plaintiffs responded with great enthusiasm to Defendant's offer. Plaintiffs believed that
22 Defendant's offer was an unprecedented opportunity to improve their lives and the lives of
23 their children. More than 200 Plaintiffs regularly attended a combination of subcommittee,
24 regional meetings and associated informal meetings in accordance with Defendant's planning
25 guidelines. During the period from December, 2001 through April, 2002, more than 50
26

1 meetings were held, at which Plaintiffs provided an estimated total of more than 10,000 hours
2 of their time. Attendance at said meetings often required substantial personal sacrifice for
3 participants, including time off work, the necessity to travel 40 or more miles to the meeting
4 site and bear said travel expenses, the necessity to pay for child care, time away from home,
5 and other similar burdens. Many of the meetings lasted an entire day.
6

7 22. Defendant's promises were repeated at other gatherings. For example, at a
8 subcommittee meeting on February 9, 2002, the representative of Defendant to the Yakima
9 Valley project, repeated that the \$750,000 would be available for planning participants, and
10 that Defendant would provide additional financial support to the planning effort.
11

12 23. At no time did Defendant indicate that there was a possibility that the planning process
13 would not be completed or that its completion was conditional. All oral and written
14 communications of Defendant between December, 2001, when the planning process began,
15 through July, 2002 indicated that the planning process would continue without interruption to
16 the production of a final plan.
17

18 **Defendant's Staff Changes Halt the Project**

19 24. In or about March, 2002, Howard Valandra, the leader of Defendant's four-person team
20 assigned to the Yakima Valley project, resigned from Defendant to take another job.

21 Defendant then announced in writing a suspension of the planning process for 60 to 90 days,
22 until such time as his successor was ready to continue the work. On April 12, 2002, Lisa
23 Hinickle, another defendant executive, wrote to the Plaintiff class members announcing the
24 suspension of the project, stating that "I want to emphasize that we remain fully committed to
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26

1 working toward a plan for a partnership that will help reduce poverty in the region. The goals
2 aren't changing—just the timing.”

3 25. In June, 2002, a Defendant delegation headed by new team leader Randy Ross went to
4 Yakima County. At that time, Defendant met with the community and promised that the
5 planning process would be restarted soon.
6

7 **Defendant Stops the Planning Process and Breaches Its Contract**

8 26. On August 12, 2002, Karl Stauber, president of Defendant, announced in Yakima the
9 termination of Defendant's participation in the planning process. Defendant has since refused
10 to disburse the \$750,000 promised to complete the planning process, the \$500,000 worth of
11 support and assistance promised by Defendant to facilitate the planning process, and the
12 estimated \$10,000,000 to \$20,000,000 impliedly promised to implement said plan. Despite
13 pleas from Plaintiffs to continue the process, Defendant has asserted that its breach is final and
14 irremediable.
15

16
17 V.

18 **FIRST CAUSE OF ACTION**

19 **BREACH OF CONTRACT**
20

21 27. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and every
22 allegation of paragraphs 1 through 26.

23 28. Defendant promised Plaintiffs that it would provide them with \$750,000 in planning
24 funds and access to \$500,000 in non-cash logistical support and technical assistance if
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CLASS ACTION COMPLAINT FOR MONEY
DAMAGES 10

Law Offices of Matthew N. Metz
999 Third Ave., Suite 2525
Seattle, WA 98104
Tel. (206) 282-2405 Fax. (206) 374-2916

1 Plaintiffs would actively participate in developing a comprehensive community plan.

2 Defendant's promise constituted an offer to form a unilateral contract with Plaintiffs.

3 29. More than 300 members of the proposed Plaintiff Class accepted Defendant's offer to
4 form a unilateral contract by actively participating in the planning process.

5
6 30. By canceling the planning process and refusing to disburse promised funds, Defendant
7 breached its contract with Plaintiffs.

8 31. As a result of said breach, Plaintiffs are damaged in the amount of \$1.25 million, the
9 amount that Defendant promised to expend to support Plaintiffs in producing a
10 comprehensively researched community plan.

11
12 **VI.**

13 **SECOND CAUSE OF ACTION**

14 **PROMISSORY ESTOPPEL**

15 32. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and every
16 allegation of paragraphs 1 through 31.

17 33. Defendant, by promising to underwrite the cost of the planning process, reasonably
18 expected Plaintiffs to become fully engaged in the planning process.

19 34. Plaintiffs justifiably changed their position in reliance on Defendant's promises, by
20 expending thousands of hours implementing the community planning process designed and
21 promoted by Defendant.

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23 35. Injustice to Plaintiffs can be avoided only if Defendant's promises are enforced, and if
24 Defendant is required to expend the funds they promised to support the planning process.

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VII.

THIRD CAUSE OF ACTION

QUANTUM MERUIT

36. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and every allegation of paragraphs 1 through 35.

37. Plaintiffs performed tens of thousands of hours of planning services for Defendant's benefit and with Defendant's knowledge. Defendant derived benefit from Plaintiff class' services in that said services, *inter alia*, provided Defendant the opportunity to test and expand its "Community Venture Program" philanthropy model.

38. Defendant knew that the Plaintiffs' services were provided with the expectation of substantial financial contribution by Defendant's to the Yakima Valley planning effort.

39. Defendant should be required to pay for the reasonable value of Plaintiffs' services.

VIII.

FOURTH CAUSE OF ACTION

CONSUMER PROTECTION ACT

40. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and every allegation of paragraphs 1 through 39.

41. Defendant's actions in promising to complete the planning process and indicating that Plaintiffs' plan would be funded, then abandoning the planning process after citizens had dedicated thousands of hours of time and thousands of dollars in expenses to said process, constituted an unfair and deceptive act or practice as defined by RCW 19.86.020.

1 42. Defendant's model of "Community Venture" philanthropy constitutes trade or commerce
2 as defined by the Consumer Protection Act.

3 43. Defendant's actions affected the public interest in that they resulted in unfairness to and
4 deception of approximately 300 persons. Defendant actions are likely to further affect the public
5 interest in that it is undertaking additional "Community Venture" programs throughout the
6 Western United States, including possibly in the State of Washington.

7
8 44. Plaintiffs were injured in that they expended thousands of hours of uncompensated labor,
9 travel and child care costs, and other costs and expenses, fulfilling their part of the bargain with
10 Defendant. Plaintiffs were additionally injured in that they did not receive the benefit of the
11 bargain that they had made with Defendant, and by the harm that Defendant's action did to the
12 fabric of trust within their community.

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14 45. Plaintiffs' injury was directly related to Defendant's unfair and deceptive action of
15 promising to complete a plan and providing millions of dollars of financial assistance to the
16 community and then renegeing on said promise.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and other members of the Plaintiff class,
having asserted claims for relief, now respectfully prays that the Court enter judgment against
Defendant as follows:


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1. Award payment of damages for breach of contract, promissory estoppel and/or quantum meruit in the amount of \$1,250,000. Said damages are to be placed into a trust fund for community betterment of which Plaintiffs would be trustees;
2. Award damages under the Consumer Protection Act in the amount of three times actual damages. Said damages are to be placed into a trust fund for community betterment of which Plaintiffs would be trustees;
3. Award reasonable attorneys' fees and costs of suit and such other and further relief as the Court may deem just and equitable.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing information is true and correct to the best of my knowledge and belief.

DATED this 25 day of November, 2002.

LAW OFFICES OF MATTHEW N. METZ

By: 
 Matthew N. Metz, WSBA No. 25050
 Attorney for Plaintiff

