

**United States Bankruptcy Court
District of Idaho**

Complete this form and mail to: **U.S. Bankruptcy Court 801 E. Sherman St. Pocatello, ID 83201**

PROOF OF CLAIM

THIS SPACE IS FOR COURT USE ONLY

U.S. COURTS

Name of Debtor: **John L. Merzlock**

Case Number: **03-41775JDP 03**

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Chapter: **13**

Trustee: **Fitzgerald**

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to U.S.C. §503

Name of Creditor (The person or other entity to whom the debtor owes money or property): **Darren G. Kuhn**

**c/o Bron Rammell
attorney for creditor
216 w. Whittman
Pocatello, Id. 83204**

- Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
- Check box if you have never received any notices from the bankruptcy court in this case.
- Check box if the address differs from the address on the envelope.

Account or other number by which identifies debtor:

Check here if this claim: Replaces Amends a previously filed claim dated:

1. Basis for Claim Goods Sold Services Performed Money Loaned Personal Injury/Wrongful Death Taxes
 Retiree benefits as defined in 11 U.S.C. §1114 (a) Other (please describe): **Judgement against debtor as a result of real estate fraud. Punitive damages included**
 Wages, Salaries and compensation: Your Social Security Number: _____ (date) to _____ (date)
 Unpaid Compensation for services performed from _____ (date) to _____ (date)

2. Date debt was incurred: August 1997

3. If court Judgment, date obtained: June 19, 2003

4. SECURED CLAIM

Check box if your claim is secured by collateral (including a right of setoff)
Brief Description of Collateral:
 Real Estate Motor Vehicle
 Other **commissions and interest in Partnership**
 Value of Collateral \$ over \$1,000,000
 Amount of arrearage and other charges at time the case was filed included in secured claim, if any: \$ 896,531.70

5. UNSECURED PRIORITY CLAIM

Check box if you have an unsecured priority claim
 Amount entitled to priority \$ _____
SPECIFY PRIORITY OF CLAIM
 Wages, Salaries, or commissions (up to \$4650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier. (11 U.S.C. § 507 (a)(3))
 Contributions to an employee benefit plan (11 U.S.C. § 507 (a)(4))
 Up to \$2100* of deposits toward purchase, lease, or rental of property or services for personal, family or household use (11 U.S.C. § 507 (a)(6))
 Alimony, maintenance, or support owed to a spouse, former spouse or child (11 U.S.C. § 507 (a)(7))
 Taxes or penalties owed to governmental units (11 U.S.C. § 507 (a)(8))
 Other - Specify applicable paragraph of (11 U.S.C. § 507 (a)()

6. TOTAL AMOUNT OF CLAIM AT TIME CASE WAS FILED

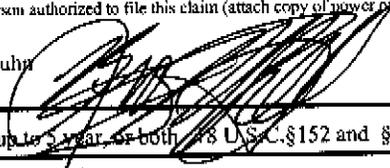
UNSECURED \$ _____ SECURED \$ 896,531.70
 PRIORITY \$ _____ TOTAL \$ 896,531.70
 Check box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.

**Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

- 7. Credits:** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.
- 8. Supporting Documents:** Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. **DO NOT SEND ORIGINAL DOCUMENTS.** If the documents are not available, please explain. If the documents are voluminous, attach a summary.
- 9. Date Stamped Copy:** To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

DATE
October 20, 2003

Sign and print the name and title, if any of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)

 By Bron Rammell Attorney for Darren G. Kuhn 

Penalty for presenting fraudulent claims: Fine up to \$500,000 or imprisonment for up to 5 year, or both, 18 U.S.C. §152 and §3571

**IN THE SIXTH JUDICIAL DISTRICT COURT
BANNOCK COUNTY, IDAHO**

The Honorable Peter D. McDermott

JUN 20 2003

FILED
LARRY W. GHAN
CLERK OF THE COURT
03 JUN 19 AM 9 23
DEPUTY CLERK

DARREN G. KUHN, an individual,
SCHEI DEVELOPMENT
CORPORATION, an Idaho corporation,
ROGER J. SCHEI, an individual, and
FRANCES R. SCHEI, an individual,

Plaintiffs,

vs.

COLDWELL BANKER LANDMARK,
INC., aka LANDMARK REAL ESTATE,
INC. dba KELLER WILLIAMS REALTY
EAST IDAHO; TODD BOHN; JOHN
MERZLOCK; and KELLY FISHER,

Defendants.

Case No. CVOC-0002226A

**SECOND AMENDED
RESTATED JUDGMENT**

COPY

The Court having previously entered its Judgment on Verdict and its Amended Restated Judgment herein; and the Plaintiffs and Defendants Bitton and Professional Escrow Services, Inc. having compromised and settled the issues between them and issued a satisfaction of judgment as between them; and the Court having held a hearing and heard oral argument on May 19, 2003 on the post-verdict motions of the parties; and the Court having issued its memorandum decision and orders on the post-verdict motions of the parties on June 11, 2003, awarding taxable costs and attorney fees to the Plaintiffs; and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Plaintiffs have judgment against the Defendants Coldwell Banker Landmark, Inc., aka Landmark Real Estate, Inc. dba Keller Williams Realty East Idaho; Todd Bohn; John Merzlock; and Kelly Fisher; as follows:

1. **Judgement for Darren G. Kuhn of \$896,531.70.** The Plaintiff Darren G. Kuhn shall have judgment against Defendants Todd Bohn, John Merzlock, Kelly Fisher, and Landmark Real Estate, Inc. dba Keller Williams Realty East Idaho in the total sum of \$896,531.70 as follows:

(A) Against Defendants Todd Bohn, John Merzlock, Kelly Fisher, and Landmark Real Estate, Inc. dba Keller Williams Realty East Idaho, for breach of fiduciary duty and/or negligence, the sum of \$25,834 reduced by 10% for a net of \$23,250.60 as previously reflected in the Partial Satisfaction of Judgment recorded June 9, 2003; and

(B) Against Defendants Todd Bohn, John Merzlock, Kelly Fisher, and Landmark Real Estate, Inc., dba Keller Williams Realty East Idaho, for breach of express or implied contract, the sum of \$154,419.00; and

(C) Punitive damages of \$558,088.00 as follows:

- Against Defendant Todd Bohn - \$41,250.00
- Against Defendant John Merzlock - \$16,838.00
- Against Defendant Landmark Real Estate, Inc. dba Keller Williams Realty East Idaho, - \$500,000.00; and

(D) Taxable Costs against Defendants Todd Bohn, John Merzlock, Kelly Fisher, and Landmark Real Estate, Inc., dba Keller Williams Realty East Idaho in the sum of \$14,256.60 representing:

- \$10,107.26 incurred by Mr. Hawkes' office, and
- \$4,152.34 incurred by Mr. Rammell's office; and

(E) Attorney Fees against Defendants Todd Bohn, John Merzlock, Kelly Fisher, and Landmark Real Estate, Inc., dba Keller Williams Realty East Idaho in the sum of \$146,517.50 representing:

- for Mr. Hawkes in the sum of \$64,242.50
- for Mr. Rammell in the sum of \$82,275.00; and

2. **Judgement for Scheis of \$494,033.74.** The Plaintiffs Roger Schei,

Frances Schei, and Schei Development Corporation shall have judgment against

Defendants Coldwell Banker Landmark, Inc., aka Landmark Real Estate, Inc. dba Keller

Williams Realty East Idaho; Todd Bohn; John Merzlock; and Kelly Fisher in the total

sum of \$494,033.74 as follows:

(A) Against Defendants Todd Bohn, John Merzlock, Kelly Fisher, and Landmark Real Estate, Inc. dba Keller Williams Realty East Idaho, for breach of fiduciary duty and/or negligence, the sum of \$47,540.00 reduced by 13% for a net of \$41,359.80; and

(B) Against Defendants Todd Bohn, John Merzlock, Kelly Fisher, and Landmark Real Estate, Inc. dba Keller Williams Realty East Idaho, for breach of express or implied contract in the sum of \$28,446.00; and

(C) Against Defendant Landmark Real Estate, Inc. dba Keller Williams Realty East Idaho for refund of the real estate commission paid, the sum of \$11,825.00; and

(D) Punitive damages as follows:

- Against Defendant Todd Bohn - \$22,500.00
- Against Defendant John Merzlock - \$41,535.00
- Against Defendant Landmark Real Estate, Inc. dba Keller Williams Realty East Idaho - \$300,000.00; and

(E) Taxable Costs in the sum of \$5,727.94; and

(F) Attorney Fees for Mr. Reece in the sum of \$42,640.00.

This Second Amended Restated Judgment shall bear interest at the applicable judgment rate from the date of the jury's Special Verdict on Saturday, February 1, 2003, as to all sums except the additional awards herein of taxable costs and attorney fees which shall bear interest at the applicable judgment rate from the date of entry of this Second Amended Restated Judgment as stated below.

DATED this 19th day of June, 2003.

BY THE COURT:

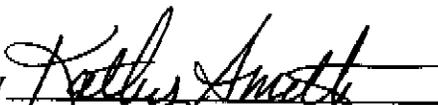

PETER D. McDERMOTT, District Judge

CLERK'S CERTIFICATE OF SERVICE

I certify that on this 19th day of June, 2003 I mailed copies of the foregoing Restated Judgment, first class postage prepaid, to counsel of record as follows:

Lowell N. Hawkes of Lowell N. Hawkes, Chartered, 1322 East Center, Pocatello, ID 83201; Bron M. Rammell, of Dial, May & Rammell, P.O. Box 370, Pocatello, ID 83204-0370; Norman G. Reece, Jr., of Norman G. Reece, P.C., 151 North 3rd Avenue, Suite 204, Pocatello, ID 83201; David C. Nye and Thomas J. Lyons of Merrill & Merrill, Chartered, 109 North Arthur, P.O. Box 991, Pocatello, ID 83204-0991.

LARRY GHAN, Clerk of the Court

By 
Deputy Clerk