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6 MILTON JOHNS

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC 30 2010

ALAN CARLSON, Clerk of the Court

A. Rincon
BY A. RINCON

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF ORANGE**

9 THIRD LAGUNA HILLS MUTUAL, a)
10 California non-profit corporation,)

11 Plaintiff.)

12 v.)

13 PROFESSIONAL COMMUNITY)
14 MANAGEMENT, INC., a California)
15 corporation, also known as PCM; MILT)
16 JOHNS, an individual; JANET PRICE, an)
17 individual and DOES 1 to 20, inclusive,)

18 Defendants.)

19

MILTON JOHNS, an individual,)

20 Cross-Complainant.)

21 v.)

22 ✓ PROFESSIONAL COMMUNITY)
23 MANAGEMENT OF CALIFORNIA, INC.,)
24 a California corporation, also known as)
25 PCM; RUSS DISBRO, an individual;)
26 ✓ DONNY DISBRO, an individual; PAUL)
27 ✓ VAN HOOMISSEN, an individual;)
28 ✓ JACKSON, DEMARCO, TIDUS,)
PECKENPAUGH, a California Law)
Corporation; MUCH, SHELIST, FREED)
DENENBERG, AMENT & RUBENSTEIN,)
an Illinois Corporation doing business in)
California; THIRD LAGUNA HILLS)
MUTUAL, a California non-profit)
corporation, GOLDEN RAIN)

Case No. 30-2010 00380231

**CROSS-COMPLAINT AND DEMAND
FOR JURY TRIAL**

1. BREACH OF CONTRACT;
2. BREACH OF IMPLIED-IN-FACT CONTRACT;
3. AGE-BASED DISCRIMINATION (GOVT CODE §§ 12940 ET SEQ);
4. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
5. INTERFERENCE WITH CONTRACTUAL RELATIONS;
6. BREACH OF FIDUCIARY DUTY; and
7. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

1 FOUNDATION OF LAGUNA WOODS, a)
 2 California non-profit corporation; ROBERT)
 3 HATCH, an individual; JIM MATSON, an)
 4 individual; and ROES 1 to 150, inclusive,)
 5 Cross-Defendants.)
 6 _____)
 7)
 8)
 9)

6 **GENERAL ALLEGATIONS**

- 7 1. At all times material to this Cross-Complaint, Cross-Complainant Milton Johns (hereinafter
 8 "Johns"), a 52-year old male, was a resident of Orange County, California.
- 9 2. At all times material to this Cross-Complaint, Defendant and Cross-Defendant Professional
 10 Community Management of California, Inc. is a California corporation doing business in Orange County,
 11 California (hereinafter "PCM").
- 12 3. At all times material to this Cross-Complaint, Cross-Defendant Russ Disbro was a resident of
 13 Orange County, California (hereinafter "R. Disbro").
- 14 4. At all times material to this Cross-Complaint, Cross-Defendant Donny Disbro was a resident of
 15 Orange County, California (hereinafter "D. Disbro").
- 16 5. At all times material to this Cross-Complaint, Cross-Defendant Paul Van Hoomissen, an attorney,
 17 was a resident of Orange County, California (hereinafter "Van Hoomissen").
- 18 6. At all times material to this Cross-Complaint, Cross-Defendant Jackson, DeMarco, Tidus, &
 19 Peckenpough is a California law corporation doing business in Orange County, California (hereinafter
 20 "JDTP").
- 21 7. At all times material to this Cross-Complaint, Cross-Defendant Much, Shelist, Freed, Denenberg,
 22 Ament, & Rubenstein is an Illinois corporation doing business in Orange County, California (hereinafter
 23 "MSFDAR").
- 24 8. At all times material to this Cross-Complaint, Plaintiff and Cross-Defendant Third Laguna Hills
 25 Mutual is a California non-profit corporation doing business in Orange County, California (hereinafter
 26 "Third").
- 27 9. At all times material to this Cross-Complaint, Cross-Defendant Golden Rain Foundation of Laguna
 28

1 “GRF”).

2 10. At all times material to this Cross-Complaint, Cross-Defendant Robert Hatch was a resident of
3 Orange County, California (hereinafter “Hatch”) and a member of the Board of Directors of GRF.

4 11. At all times material to this Cross-Complaint, Cross-Defendant Jim Matson was a resident of
5 Orange County, California (hereinafter “Matson”) and a member of the Board of Directors of GRF.

6 12. Johns is informed and believes, and thereon alleges, that Cross-Defendants, and each of them,
7 including those designated herein as ROES 1 through 150, inclusive, are responsible in some manner for the
8 occurrences and happenings, as well as such acts and omissions as are more fully alleged herein, and that
9 Johns’ injuries, damages and losses, as alleged below, were and are the direct and proximate result of the
10 actions or omissions of said Cross-Defendants.

11 13. Furthermore, each of the Cross-Defendants are sued as the principals, agents, partners, servants,
12 employees, officers, directors, subsidiaries, corporate affiliates, alter egos, conspirators and co-conspirators,
13 joint ventures of each of the remaining Cross-Defendants. Each of the Cross-Defendants were acting within
14 the course, scope and authority of such relationship, and with the knowledge, consent, approval or
15 ratification of the remaining Cross-Defendants.

16 14. ROES 1 through 150 are sued under the fictitious names pursuant to the Code of Civil Procedure
17 section 474. Johns is informed and believes and on that basis alleges, that each Cross-Defendant sued
18 under such fictitious names is in some manner responsible for the wrongs and damages as alleged below,
19 and in so acting was functioning as the agent, servant, partner, employee, and/or conspirator of the other
20 Cross-Defendants and in doing the actions mentioned below was acting within the course and scope of his
21 or her authority as such agent, servant, partner, employee, and/or conspirator with the permission and
22 consent of the other Cross-Defendants.

23 15. PCM is a corporation that manages properties throughout California. PCM is the manager of four
24 non-profit corporations which comprise Laguna Woods Village, a senior community in Orange County.
25 These four corporations are United Laguna Hills Mutual, GRF, Third, and Mutual 50.

26 16. Johns was employed by PCM for nearly twenty-five years. Because Johns was such an excellent
27 employee, he was consistently promoted, and eventually became the General Manager for PCM in or
28 around 2000.

1 17. Immediately after being offered the position of General Manager with PCM in 2000, Johns
2 expressed apprehension to R. Disbro about taking the position, which was very political, subject to the
3 whims of the boards of the corporations and which always received a great deal of media attention. At this
4 time, R. Disbro, Chief Executive Officer/owner of PCM, assured Johns that he would always have a senior
5 executive position with the company, even if he had to someday be removed as General Manager, and that,
6 upon R. Disbro's retirement, Johns would take over the position of PCM's Chief Executive Officer
7 ("CEO"). For over nine (9) years, R. Disbro constantly assured Johns that he would always have an
8 executive position with PCM.

9 18. While operating as General Manager for PCM, Johns performed his job duties very capably, and
10 even received letters, emails and voice mails from upper management commending his performance. In
11 fact, Johns' performance was so superb, and his relationship with R. Disbro so close, that he was told by R.
12 Disbro that he did not even need annual reviews. Instead, Johns and R. Disbro would meet for breakfast
13 and R. Disbro would tell Johns that he was doing an excellent job and would reaffirm his promises to Johns
14 about a senior executive position. Johns' continuous bonuses and raises given to him by R. Disbro,
15 reflected R. Disbro's high opinion of Johns' work.

16 19. Johns relied on the promises made by R. Disbro and continued in his position as the General
17 Manager of PCM. In 2008, R. Disbro suggested to Johns and D. Disbro that they make an offer to purchase
18 PCM. During this time, R. Disbro explained to Johns that Johns would become Co-CEO of PCM as long
19 as he remained in the General Manager position until a sale of PCM was consummated. Johns accepted this
20 offer by remaining as the General Manager of PCM.

21 20. On April 9, 2009, Johns and D. Disbro memorialized the agreement to make Johns Co-CEO of
22 PCM as of May 1, 2009. Upon returning from New Orleans, and before Johns had made any complaints
23 concerning D. Disbro's illegal behavior in New Orleans, Johns sent an e-mail to R. Disbro finalizing the
24 terms of his move to Co-CEO of PCM.

25 21. With events that began in 2009, R. Disbro's promises to Johns began to unravel and PCM through
26 R. Disbro and D. Disbro began to discriminate against Johns based on his age and retaliate against Johns for
27 complaints he made concerning violations of state and/or federal law.

28 22. D. Disbro and Johns went on a trip to China on behalf of PCM in early 2009. During this trip, D.

1 Disbro demeaned Johns by telling Johns that he was an "old man," because Johns refused to go out with D.
2 Disbro to find prostitutes.

3 23. Then, during the last week of April 2009, Johns, D. Disbro, and Chuck Holland ("Holland"), PCM's
4 Chief Information Officer, attended a conference in New Orleans, Louisiana on behalf of PCM.

5 24. During this week, D. Disbro frequented multiple strip bars along with Holland on Bourbon Street in
6 the French Quarter. D. Disbro again demeaned Johns on this trip by telling him that he was an "old man,"
7 because Johns refused to go out with D. Disbro to find prostitutes. D. Disbro, on the other hand, did go out
8 in the French Quarter to find prostitutes. Indeed, D. Disbro told Johns that he authorized Holland to use his
9 PCM corporate credit card to pay for services at the strip clubs. During one trip to a strip club, D. Disbro
10 propositioned an individual to have sexual relations with him in his hotel room. This individual turned out
11 to be an African-American transvestite (the "transvestite hooker").

12 25. On the last night that the group was in New Orleans, D. Disbro again propositioned the transvestite
13 hooker and asked the transvestite hooker to meet him in D. Disbro's hotel room. On this occasion, while D.
14 Disbro was in the restroom, prior to "services" being rendered, the transvestite hooker stole money from D.
15 Disbro's wallet and left the hotel room. Upon learning of this, D. Disbro, in a drunken state, went back to
16 the strip club in search of the transvestite hooker. Eventually, D. Disbro was arrested and taken to jail for
17 disorderly conduct.

18 26. The next morning, D. Disbro contacted Johns and requested that Johns bail him out of jail. During
19 the taxi ride to the airport after bailing D. Disbro out of jail, D. Disbro told Johns about the events of the
20 prior two evenings in graphic detail, including details regarding D. Disbro's sexual relations with the
21 transvestite hooker. Johns was disgusted with D. Disbro's behavior during this trip, and urged D. Disbro to
22 reconcile the situation with PCM and to make sure that PCM be reimbursed. Johns told D. Disbro that his
23 actions were not acceptable and that his actions could endanger PCM's business. In response D. Disbro
24 indicated that he was just following in his father's footsteps, and that this behavior was "just part of doing
25 business." Moreover, Johns relayed to D. Disbro that his actions violated state and federal law.

26 27. Upon returning from New Orleans, Johns told the story of what occurred in New Orleans to other
27 executives at PCM, but no investigation was ever conducted.

28 28. Soon thereafter, at the end of May/beginning of June 2009, Johns was approached by R. Disbro

1 concerning his promotion to Co-CEO. During this conversation, R. Disbro told Johns that he believed that
2 Johns was "burned out" due to his age and that D. Disbro, who is substantially younger than Johns, was
3 being promoted to CEO instead of Johns. However, R. Disbro also indicated that due to Johns' gifted
4 ability to lead and run operations, he would be given a job as a senior executive in the company when the
5 time was right. Johns was shocked by this news and expressed his disappointment, but indicated that he
6 would be happy to serve the company in a senior executive capacity. At that point, the Johns continued in
7 his position as General Manager for PCM and D. Disbro became CEO. At the time, Johns is informed and
8 believes and thereon alleges that D. Disbro was 37 years old and substantially younger than Johns.

9 29. Johns also became aware that D. Disbro was obtaining cash from PCM by submitting expense
10 reports so that D. Disbro could obtain "walking around and getting laid money." This activity by D. Disbro
11 was done so that his spouse did not become suspicious of credit card charges.

12 30. Again, Johns complained to D. Disbro about what he reasonably believed to be a violation of both
13 state and federal law. D. Disbro continued his activity.

14 31. In January 2010, Johns sent an email to D. Disbro indicating that Johns believed that the Incentive
15 Plan created by R. Disbro in or around 1996 and applied to United Laguna Hills Mutual, GRF Third, and
16 Mutual 50 might have violated state law and urged D. Disbro to have the company's attorney double check
17 the Incentive Plan. This email greatly angered D. Disbro, who verbally threatened Johns with termination
18 for even raising this issue.

19 32. Then, in February 2010, D. Disbro approached Johns regarding Johns' continued employment with
20 PCM. D. Disbro told Johns that he believed Johns was "burned out" as General Manager and that he was
21 making the decision to replace Johns with a younger, cheaper employee. Johns was shocked and reminded
22 D. Disbro of R. Disbro's numerous promises that Johns would always have a senior management position
23 with PCM. D. Disbro advised Johns that R. Disbro "had changed his mind" and neither of the Disbros
24 would honor the promises and commitments made by R. Disbro to Johns.

25 **EXHAUSTION OF ADMINISTRATIVE REMEDIES AND GOVERNMENT TORT CLAIM**
26 **REQUIREMENTS.**

27 33. On or about November 15, 2010, Johns had a complaint filed against PCM with California's
28

1 Department of Fair Employment and Housing (“DFEH”) alleging multiple violations of California’s Fair
2 Employment and Housing Act (“FEHA”). Johns immediately received a Right To Sue letter from the
3 DFEH.

4 **FIRST CAUSE OF ACTION**
5 **BREACH OF CONTRACT**

6 (Against Cross-Defendants PCM, R. Disbro, D. Disbro and ROES 1-50)

7 34. Johns realleges and incorporates herein by reference each of the allegations set forth above as if
8 fully set forth herein.

9 35. Johns and PCM, D. Disbro, R. Disbro and ROES 1-50 entered into a written contract wherein Johns
10 would be the Co-CEO of PCM as of May 1, 2010.

11 36. As Co-CEO, Johns would be responsible for PCM’s financial services, regional operations for the
12 Inland Empire, Orange County, and San Diego, and for all staff related to those business units.

13 37. Johns was to remain as Co-CEO of PCM until he chose to retire.

14 38. As Co-CEO, Johns was to earn his then base salary of \$275,000 per year and benefits. He was also
15 entitled to a bonus equivalent to 20% of PCM’s EBITDA.

16 39. Johns undertook to duly perform all of the conditions of the contract and was at all times capable of
17 fulfilling the terms of the contract to be performed by him.

18 40. Cross-Defendants breached the aforementioned written employment contract by clearly and
19 positively indicating, by words or conduct, that they would not meet the contract requirements. Indeed, R.
20 Disbro told Johns at the end of May 2009 that he would not become the Co-CEO of PCM. However, PCM
21 honored its commitment with D. Disbro to make him CEO of PCM.

22 41. As a direct and proximate result of the conduct of PCM, R. Disbro, D. Disbro and their agents,
23 Johns has suffered and continues to suffer general damages in an amount according to proof with interest
24 thereon but in excess of the jurisdictional minimums of this Court.

25 42. As a further direct and proximate result of the conduct of PCM, R. Disbro, D. Disbro and their
26 agents, Johns has suffered and continues to suffer economic and/or special damages in an amount according
27 to proof with interest thereon.

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SECOND CAUSE OF ACTION
BREACH OF IMPLIED IN FACT CONTRACT
(Against Cross-Defendants PCM and ROES 1-50)

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2
3 43. Johns realleges and incorporates herein by reference each of the allegations set forth above as if
4 fully set forth herein.

5 44. During the entire course of Johns' employment with PCM, there existed an express and/or implied-
6 in-fact employment contract between Johns and PCM, as well as ROES 1 through 50. Pursuant to that
7 contract, Johns agreed to work for PCM, and PCM agreed to pay Johns' salary and benefits. The
8 employment contract included, but was not limited to, the following terms and conditions:

9 a. PCM would pay Johns a salary and benefits;

10 b. PCM would not evaluate Johns' job performance, or potential job performance, in
11 an arbitrary, untrue or capricious manner;

12 c. PCM would provide Johns with the necessary support so that he could carry out his
13 job responsibilities;

14 d. Johns would continue his employment with PCM and always have a position as a
15 senior executive, as long as he carried out his duties in a competent and proper manner;

16 e. Johns would not be terminated without sufficient or proper notice;

17 f. Johns would not be discharged, demoted, or otherwise disciplined without good
18 cause;

19 g. Johns would be disciplined in a progressive manner and given sufficient opportunity
20 to correct any alleged performance problems;

21 h. Johns would have a sufficient opportunity to present any grievances and/or
22 explanations in his defense and to have such grievances and/or explanations thoroughly reviewed and
23 appropriately considered before his employment could be terminated;

24 i. PCM would take no action calculated to deny Johns his raises and other
25 compensation due him pursuant to his employment;

26 j. Johns would not be discriminated against by PCM due to his age;

27 k. Johns would not be retaliated against for his complaints about illegal behavior by
28 D. Disbro and PCM;

1 1. PCM would render employment-related decisions without regard to Johns' age,
2 but solely on the basis of his performance and abilities;

3 m. PCM would follow their own policies when terminating their employees;

4 n. PCM would not terminate Johns' employment in violation of applicable law; and

5 o. PCM would not terminate Johns to avoid paying him benefits due and owing to
6 him.

7 45. The aforementioned employment agreement was evidenced by various written and verbal
8 representations and expressions of policy made to Johns by PCM through their agents and representatives.
9 Such representations included acknowledgments by R. Disbro that Johns was doing a great job, had an
10 excellent reputation, was a valuable member of the team, and would always be assured of a senior
11 management position. But, Johns' employment was terminated despite these numerous reassurances.

12 46. Johns' reliance on, and belief in, and acceptance in good faith of all PCM's assurances, promises
13 and representations led Johns, throughout his employment with PCM, to reasonably believe that his
14 employment was secure and that there existed a contract of continuous employment. As evidence of Johns'
15 reliance thereon, Johns, while employed with PCM, refrained from seeking employment with other
16 companies.

17 47. Johns undertook and continued his employment and duly performed all of the conditions of the
18 contract to be performed by him.

19 48. Despite the representations made to Johns and his reliance upon them, PCM failed to carry out its
20 responsibilities under the terms of the employment contract in the following ways:

21 a. By denying Johns the reasonable and necessary support so he could carry out his job
22 duties and responsibilities in a satisfactory manner;

23 b. By failing to follow its own rules, regulations, and policies, which were applicable to
24 Johns;

25 c. By terminating Johns without sufficient or proper notice;

26 d. By discharging Johns without good cause;

27 e. By discriminating against Johns due to his age;

1 f. By retaliating against Johns due to complaints about D. Disbro's and PCM's
2 illegal behavior;

3 g. By failing to render employment-related decisions without regard to Johns' age,
4 but solely on the basis of his performance and abilities;

5 h. By failing to follow PCM's own policies when terminating their employees;

6 i. By terminating Johns to avoid paying him benefits due and owing to him; and

7 j. By unlawfully discharging Johns from his employment on or about February 28,
8 2010.

9 49. PCM breached the aforementioned implied-in-fact employment contract by arbitrarily and
10 wrongfully terminating Johns' employment without regard to or in compliance with the requirements of the
11 aforesaid agreement, as set forth herein.

12 50. PCM's termination of Johns' employment was without good cause, and without compliance with or
13 regard for the terms, conditions, and requirements of the employment agreement which existed between
14 Johns and PCM.

15 51. As a direct and proximate result of the conduct of PCM and their agents, Johns has suffered and
16 continues to suffer general damages in an amount according to proof with interest thereon but in excess of
17 the jurisdictional minimums of this Court.

18 52. As a further direct and proximate result of the conduct of PCM and their agents, Johns has suffered
19 and continues to suffer economic and/or special damages in an amount according to proof with interest
20 thereon.

21 **THIRD CAUSE OF ACTION**

22 **AGE-BASED DISCRIMINATION (GOVT CODE §§ 12940 ET SEQ)**

(Against Cross-Defendants PCM and ROES 1-50)

23 53. Johns realleges and incorporates herein by reference each of the allegations set forth above as if
24 fully set forth herein.

25 54. At all times herein mentioned, the FEHA, embodied in Government Code section 12940 was in full
26 force and effect. This Act prohibits employers from refusing to hire, refusing to re-hire, terminating, or
27 otherwise discriminating against employees in the terms, conditions or privileges of employment because of
28

1 their age if the individual is age 40 or older.

2 55. At the time of his termination, Johns was 51 years old.

3 56. Johns believes and thereon alleges that PCM is a qualified employer subject to the requirements of
4 FEHA.

5 57. Johns further believes and thereon alleges that PCM, and each of them, discriminated against him
6 on the basis of his age. The discrimination included, but is not limited to, R. Disbro discriminating against
7 Johns by favoring his younger son over Johns and by stating that Johns was "burned out" due to his age at a
8 meeting with Johns in May 2009. Further, D. Disbro made similar comments to Johns, in front of other
9 employees of PCM, describing Johns as "burned out" due to his age later in 2009 and in 2010. Other
10 instances of age discrimination against Johns include verbal harassment, unequal application of PCM
11 policies that benefitted Johns' younger counterparts and disadvantaged Johns and eventually led to his
12 termination.

13 58. D. Disbro also demeaned Johns while in New Orleans and in China on business. He would tell
14 Johns that he was an "old man," because Johns refused to go out with D. Disbro to find prostitutes.

15 59. Johns is informed and believes and thereon alleges that his age was a substantial motivating factor
16 in PCM's decision to fail to promote Johns to Co-CEO of PCM and to terminate his employment with PCM
17 all in violation of FEHA.

18 60. As a result of the discriminatory acts, Johns suffered from stress and anxiety which has negatively
19 impacted his physical and emotional condition.

20 61. Johns believes and thereon alleges that any claims of misconduct or performance issues as PCM's
21 basis for any disciplinary actions against Johns are pretextual and meant to disguise the discriminatory
22 reasons for his treatment. Indeed, on or around February 25, 2010, D. Disbro made statements that Johns
23 was "not fired," and that his replacement as General Manager of PCM was not due to competency.

24 62. As a direct and proximate cause of the discrimination, Johns has suffered and continues to suffer
25 general, compensatory, and special damages, including lost wages and benefits, future loss of wages and
26 benefits, and emotional distress and physical illness in an amount unknown, but according to proof at trial.

27 63. Moreover, Johns is entitled to attorneys' fees and costs for bringing suit alleging these violations.
28 Johns has incurred and continues to incur legal expenses and attorneys' fees as a result of his FEHA claims

1 against PCM, and the other Cross-Defendants. Johns is presently unaware of the precise amount of these
2 expenses and fees, but seeks an award of attorneys' fees and costs according to proof at trial.

3 64. The conduct by PCM of terminating Johns because of his age and providing him with a false reason
4 for his termination to cover-up the true discriminatory motives was willful and malicious and in conscious
5 disregard of Johns' rights with the intent to vex, injure and annoy him, such as to constitute oppression,
6 fraud and/or malice under California Civil Code § 3294. Cross-Defendants' conduct, as described above,
7 was carried out by its officers, directors and or/managing agents, or by lower level employees, whose
8 conduct was knowingly authorized and ratified by the officers, directors and/or managing agents of Cross-
9 Defendants. Accordingly, Johns is entitled to punitive damages in an amount appropriate to punish and
10 make an example of Cross-Defendants.

11 **FOURTH CAUSE OF ACTION**
12 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
13 **(Against Cross-Defendants PCM, D. Disbro and ROES 1-50)**

14 65. Johns realleges and incorporates herein by reference each of the allegations set forth above as if
15 fully set forth herein.

16 66. At all times herein mentioned, Labor Code section 1102.5 was in full force and effect. This statute
17 prohibits an employer from retaliating against an employee that makes complaints that the employer is
18 violating state and/or federal law.

19 67. At all times herein mentioned, the FEHA, embodied in Government Code section 12940 was in full
20 force and effect. This Act prohibits employers from refusing to hire, refusing to re-hire, terminating, or
21 otherwise discriminating against employees in the terms, conditions or privileges of employment because of
22 their age if the individual is age 40 or older. This Act further prohibits employers and co-workers from
23 creating a hostile work environment by sexually harassing other employees.

24 68. At all times relevant to this matter, California Constitution Article I, Section 8 was in full force and
25 effect and binding on PCM, and each of them. This Constitutional provision embodies fundamental,
26 substantial, and well-established public policies of the State of California that prohibit employers from
27 wrongfully terminating employees in violation of fundamental policies, beneficial to the public, and
28 embodied in a statute, administrative regulation, or constitutional provision.

1 69. At the time of his termination, Johns was 51 years old.

2 70. Johns believes and thereon alleges that PCM is a qualified employer subject to the requirements of
3 FEHA.

4 71. At or near the end of April 2009, Johns was sexually harassed by D. Disbro. D. Disbro made
5 unwelcome sexual comments concerning D. Disbro's sexual relations with a transvestite hooker to Johns.
6 The details of D. Disbro's sexual liaison with the transvestite hooker were both graphic and severe, and it
7 altered Johns' working conditions. Indeed, D. Disbro had a habit of constantly regaling Johns with stories
8 of his sexual conquests while on PCM business. He would tell Johns that he would submit expense reports
9 so that he could obtain "walking around and getting laid money." Johns complained about this harassment,
10 but to no avail.

11 72. Beginning in May 2009, Johns made numerous complaints to PCM that both it and D. Disbro were
12 violating both California and federal law, including, but not limited to California's FEHA.

13 73. After making these complaints, Johns was retaliated against by PCM, its agents and employees,
14 including but not limited to, R. Disbro and D. Disbro. Indeed, after his first complaint concerning D.
15 Disbro's actions in New Orleans with a transvestite hooker, R. Disbro retaliated against Johns by failing to
16 promote him to CEO. After making his complaints regarding D. Disbro's misuse of PCM's funds, D.
17 Disbro made comments about his age and his ability to members of Johns' executive team. Finally, after
18 complaining about the Incentive Plan, D. Disbro terminated Johns' employment.

19 74. Johns was at all times herein mentioned, performing satisfactorily all duties pursuant to his
20 employment agreement with PCM, and each of them, properly and in the manner in which he had been
21 instructed by PCM, and each of them. At all times mentioned, PCM, and each of them, knew or should
22 have known that the basis upon which Johns' termination was based was false and that their actions were
23 arbitrary and capricious, and in violation of public policy.

24 75. As a direct and proximate result of the wrongful conduct of PCM, and each of them, and in spite of
25 Johns' efforts to remain in the employ of PCM, Johns was terminated on or about February 28, 2010.

26 76. The actual reason for Johns' termination was based upon, among other things, the fact that Johns
27 was over 40 years old, and/or in retaliation for making protected complaints related to sexual harassment.
28 All of this being a violation of public policy as manifested by Article I, Sections 1 and 8 of the California

1 Constitution, Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e *et seq.*),
2 California's FEHA (California Government Code Sections 12900 *et seq.*), and California Labor Code
3 section 1102.5.

4 77. As a result of the retaliatory acts, Johns suffered from stress and anxiety which has negatively
5 impacted his physical and emotional condition.

6 78. Johns believes and thereon alleges that any claims of misconduct or performance issues as PCM's
7 basis for any disciplinary actions against Johns are pretextual and meant to disguise the retaliatory reasons
8 for his treatment. Indeed, on or around February 25, 2010, D. Disbro made statements that Johns was "not
9 fired," and that his replacement as General Manager of PCM was not due to competency.

10 79. As a direct and proximate cause of the retaliation, Johns has suffered and continues to suffer
11 general, compensatory, and special damages, including lost wages and benefits, future loss of wages and
12 benefits, and emotional distress and physical illness in an amount unknown, but according to proof at trial.

13 80. Moreover, Johns is entitled to attorneys' fees and costs for bringing suit alleging these violations.
14 Johns has incurred and continues to incur legal expenses and attorneys' fees as a result of his Labor Code
15 section 1102.5 claims against PCM, and the other Cross-Defendants. Johns is presently unaware of the
16 precise amount of these expenses and fees, but seeks an award of attorneys' fees and costs according to
17 proof at trial.

18 81. The conduct by PCM of terminating Johns because of the complaints he made and providing him
19 with a false reason for his termination to cover-up the true retaliatory motives was willful and malicious and
20 in conscious disregard of Johns' rights with the intent to vex, injure and annoy him, such as to constitute
21 oppression, fraud and/or malice under California Civil Code § 3294. Cross-Defendants' conduct, as
22 described above, was carried out by its officers, directors and or/managing agents, or by lower level
23 employees, whose conduct was knowingly authorized and ratified by the officers, directors and/or
24 managing agents of Cross-Defendants. Accordingly, Johns is entitled to punitive damages in an amount
25 appropriate to punish and make an example of Cross-Defendants.

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1 **FIFTH CAUSE OF ACTION**

2 **INTERFERENCE WITH CONTRACTUAL RELATIONS**

3 (Against Van Hoomissen, JDTP, MSFDAR, Third, GRF, Hatch, Matson and ROES 51-100)

4 82. Johns realleges and incorporates herein by reference each of the allegations set forth above as if
5 fully set forth herein.

6 83. Van Hoomissen, JDTP, MSFDAR, Third GRF, Hatch, Matson, and each of them, knew that there
7 was an employment contract between Johns and PCM.

8 84. In October and November 2009, Third GRF, Hatch, Matson, and each of them, interfered with the
9 employment contract between Johns and PCM with the intention to disrupt the performance of this contract
10 by PCM by, among other things, requesting that PCM terminate Johns' employment. Johns in informed
11 and believes and thereon alleges that the reason that GRF, Hatch, Matson, and each of them, made such a
12 request is because Johns, as General Manager of PCM informed GRF, and its board members, including
13 Hatch and Matson, that instituting a proposed transfer fee on incoming home buyers would violate the
14 California Civil Code. Instead of relying on Johns' expertise in this matter, GRF, Hatch, Matson, conspired
15 to get rid of Johns so that they could impose this illegal fee.

16 85. Johns in informed and believes and thereon alleges that the reason that Third, and each of them,
17 made such a request is because Johns informed it, and its board members that Third, through its board
18 members, was engaging in sexual harassment and was also violating California law and its own bylaws.

19 86. Van Hoomissen, JDTP, MSFDAR, interfered with Johns' employment contract by negotiating with
20 Third for Johns' termination.

21 87. Indeed, Van Hoomissen, JDTP, MSFDAR, Third, GRF, Hatch, Matson, and each of them, engaged
22 in conduct that prevented performance by PCM in that PCM terminated Johns' employment contract.

23 88. As a direct and proximate cause of the interference by Van Hoomissen, JDTP, MSFDAR, Third,
24 GRF, Hatch, Matson, and each of them, Johns has suffered and continues to suffer general, compensatory,
25 and special damages, including lost wages and benefits, future loss of wages and benefits, and emotional
26 distress and physical illness in an amount unknown, but according to proof at trial.

27 89. The conduct by Van Hoomissen, JDTP, MSFDAR, Third, GRF, Hatch, Matson, and each of them,
28 in requesting and negotiating with regard to Johns' termination because he told the entities and individuals

1 that they were violating California law was willful and malicious and in conscious disregard of Johns'
2 rights with the intent to vex, injure and annoy him, such as to constitute oppression, fraud and/or malice
3 under California Civil Code § 3294. Cross-Defendants' conduct, as described above, was carried out by its
4 officers, directors and or/managing agents, or by lower level employees, whose conduct was knowingly
5 authorized and ratified by the officers, directors and/or managing agents of Cross-Defendants.
6 Accordingly, Johns is entitled to punitive damages in an amount appropriate to punish and make an
7 example of Cross-Defendants.

8 **SIXTH CAUSE OF ACTION**
9 **BREACH OF FIDUCIARY DUTY**

(Against Van Hoomissen, JDTP, MSFDAR, and ROES 101-150)

10 90. Johns realleges and incorporates herein by reference each of the allegations set forth above as if
11 fully set forth herein.

12 91. Van Hoomissen, an attorney, was engaged on Johns' behalf to represent him with respect to certain
13 claims being made against Johns by Third.

14 92. Johns is informed and believes, and thereon alleges that Van Hoomissen initially worked for JDTP
15 while representing Johns' interests, and then while still engaged on behalf of Johns began working for
16 MSFDAR.

17 93. One of Van Hoomissen's duties to Johns was to keep him informed of the circumstances and events
18 pertaining to litigation against Johns. Another of Van Hoomissen's duties was to represent Johns with
19 zealous advocacy and when a conflict of interest arose with respect to Van Hoomissen's representation of
20 Johns to obtain informed consent relating to that conflict of interest.

21 94. Johns is informed and believes and thereon alleges that Van Hoomissen breached these duties by
22 failing to inform Johns of a tolling agreement extension proposed by Third. Johns is informed and believes
23 and thereon alleges that Van Hoomissen further breached his fiduciary duty to Johns by engaging in
24 discussions with Third, GRF, Hatch and Matson on behalf of PCM regarding the termination of Johns'
25 employment with PCM without Johns' knowledge or informed consent.

26 95. Johns has been harmed in that he was never informed of the proposed tolling agreement, which he
27 would have entered into and thus avoided being sued by Third. Johns has been further harmed due to his
28

1 termination by PCM.

2 96. As a direct and proximate cause of the breach of fiduciary duty by Van Hoomissen, JDTP,
3 MSFDAR, and each of them, Johns has suffered and continues to suffer general, compensatory, and special
4 damages, including lost wages and benefits, future loss of wages and benefits, and emotional distress and
5 physical illness in an amount unknown, but according to proof at trial.

6 97. The conduct by Van Hoomissen, JDTP, MSFDAR, and each of them, in failing to properly
7 represent Johns and failing to inform him of the developments pertaining to his livelihood was willful and
8 malicious and in conscious disregard of Johns' rights with the intent to vex, injure and annoy him, such as
9 to constitute oppression, fraud and/or malice under California Civil Code § 3294. Cross-Defendants'
10 conduct, as described above, was carried out by its officers, directors and or/managing agents, or by lower
11 level employees, whose conduct was knowingly authorized and ratified by the officers, directors and/or
12 managing agents of Cross-Defendants. Accordingly, Johns is entitled to punitive damages in an amount
13 appropriate to punish and make an example of Cross-Defendants.

14
15 **SEVENTH CAUSE OF ACTION**
16 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
(Against PCM, R. Disbro, D. Disbro, and ROES 1-50)

17 98. Johns realleges and incorporates herein by reference each of the allegations set forth above as if
18 fully set forth herein.

19 99. In perpetuating the discrimination and retaliation against Johns and other offensive conduct
20 described herein, PCM, and each of them, abused the special positions they held in relation to Johns. PCM,
21 and each of them, acted with the knowledge that they could manipulate and damage Johns' interest and
22 well-being.

23 100. Johns was able to and did perform the essential functions of his position. Johns believes and
24 thereon alleges that PCM, and each of them, intended to and did cause Johns to suffer from emotional
25 distress because he was discriminated against.

26 101. As a result of these acts, Johns suffered from stress and anxiety which negatively impacted his
27 physical and emotional condition.

28 102. Through PCM, and each of their outrageous and unprivileged conduct as described herein and

1 above, PCM, and each of them, acted with the intent to cause, or with a reckless disregard for the
2 probability of causing, Johns to suffer humiliation, isolation, mental anguish, loss of job opportunities and
3 reputation, and severe physical and emotional distress.

4 103. To the extent that said certain agent(s) of PCM perpetrated retaliatory conduct, the Cross-
5 Defendants authorized and ratified the conduct with the knowledge that Johns' emotional and physical
6 distress would thereby increase, and with a wanton and reckless disregard of the deleterious consequences
7 to Johns.

8 104. As a direct and proximate result of PCM, and each of their acts, Johns suffered and continues to
9 suffer general, compensatory, and special damages, including lost wages and benefits, future loss of wages
10 and benefits, loss of career opportunities, prejudgment interest, consequential and incidental damages, plus
11 tort damages including humiliation, isolation, emotional distress and physical injuries in an amount
12 unknown, but according to proof at trial.

13 105. Based on PCM, D. Disbro, R. Disbro, and each of their, course of conduct, which was willful,
14 malicious, knowing, intentional, and in conscious disregard for Johns' rights and safety, Johns seeks an
15 award of punitive and exemplary damages in an amount according to proof at trial to punish PCM, and each
16 of them, and deter similar conduct in the future.

17 **WHEREFORE, Johns prays for judgment as follows:**

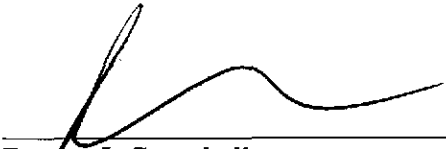
- 18 1. General and compensatory damages including all lost wages, in a sum according to proof at
19 time of trial;
- 20 2. Consequential and incidental damages in a sum according to proof at time of trial;
- 21 3. Damages for mental and emotional distress in a sum according to proof at time of trial;
- 22 4. General and special damages in a sum according to proof at time of trial;
- 23 5. Penalties in a sum according to proof at time of trial;
- 24 6. Payment of Johns' reasonable and actual attorney fees in a sum according to proof at time of
25 trial;
- 26 7. For costs of suit herein incurred;
- 27 8. Pre-judgment interest at the legal prevailing rate;
- 28

1 9. Punitive and exemplary damages in a sum according to proof at time of trial; and
2 For such other and further relief as the Court deems just and proper.

3
4 Dated: December 30, 2010

LAW OFFICES OF DARREN J. CAMPBELL, APC

5
6
7 By



Darren J. Campbell
Attorney for Cross-Complainant
MILTON JOHNS

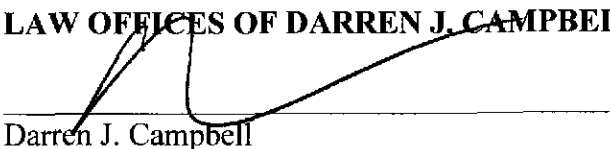
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9
10 **DEMAND FOR JURY TRIAL**

11
12 Johns hereby demands trial of his claims by jury to the extent authorized by law.

13 Dated: December 30, 2010

LAW OFFICES OF DARREN J. CAMPBELL, APC

14
15 By



Darren J. Campbell
Attorney for Cross-Complainant
MILTON JOHNS