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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

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PRICE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

BY FAX

THIRD LAGUNA HILLS MUTUAL, a
California non profit corporation,

Plaintiff,

vs.

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

Defendants.

CASE NO. 30-2010-00380231

[Assigned for all purposes to the Honorable
Kirk H. Nakamura, Department C-8]

**DEFENDANTS PROFESSIONAL
COMMUNITY MANAGEMENT, INC.'S
AND JANET PRICE'S REPLY BRIEF IN
SUPPORT OF THEIR MOTION FOR
MONETARY SANCTIONS IN THE
AMOUNT OF \$18,630 AGAINST
PLAINTIFF THIRD LAGUNA HILLS
MUTUAL AND ITS COUNSEL OF
RECORD, JOINTLY AND SEVERALLY,
AND FOR NON-MONETARY
SANCTIONS AS WELL**

[Cal. Code Civ. Proc., § 128.7]

Date: October 28, 2010
Time: 2:00 p.m.
Dept.: C-8

Complaint Filed: June 10, 2010
Trial Date: Not set.

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1 **I. INTRODUCTION.**

2 TLHM's Opposition sheds no new light on its and its counsel's sanctionable conduct
3 for going far beyond the pale by including knowingly false allegations and legally untenable
4 claims in TLHM's pleadings. TLHM attempts to couch this Motion as merely a premature
5 motion for summary judgment, but this argument is based upon the premise that an attorney
6 can simply make up incendiary allegations and invoke dangerous but unsupportable claims of
7 elder abuse just to say, "Well, these allegations will percolate in the public consciousness and
8 cause damage within the Laguna Woods community until the Defendant can knock it out on
9 summary judgment. Only then, after the damage has been done (and the case hopefully settled
10 before then), will my client and I have to answer for our claims." That is not what Section
11 128.7 provides, nor does Plaintiff's interpretation of the procedure further the policy set forth
12 in the statute: to ensure an attorney and party are bringing an action that is based upon known
13 or likely facts and a reasonable interpretation of law, not a wholesale rewriting of a statute, as
14 Plaintiff attempts here. Nothing in section 128.7 demands that the offending allegations be
15 dismissed through some other mechanism before the truth of the matter can be brought to the
16 attention of the Court (and after the unsupported claims have been left to fester for months).¹

17 Furthermore, adding insult to injury, TLHM once again pleaded the very same
18 knowingly false allegations and legally untenable claims when it recently filed its First
19 Amended Complaint ("FAC"). Thus, PCM's and Price's Motion is not "putting the cart
20 before the horse" as TLHM contends, but rather, PCM's and Price's use of the appropriate
21 procedural mechanism² to -- at the very least -- have the improprieties stricken from TLHM's

22 ¹ TLHM's interrogatory responses indicate this is precisely the design of the exaggerated
23 claims. For example, the Complaint alleges that PCM knowingly took advantage of
24 community members that "suffer from fading memories," but when asked to identify even one
25 such member, TLHM could not do so. (Complaint at 3:1-8; Declaration of Jeff J. Astarabadi
In Support of Reply, Exh. B.) The whole pleading is designed to destroy reputations, not
pursue targeted claims.

26 ² PCM and Price could not have attacked TLHM's false allegations via a typical motion to
27 strike under Code of Civil Procedure section 436, as the Court's review pursuant to such
28 motion at the pleading stage is limited to the face of the complaint and facts that are judicially
noticeable. (See, e.g., *Garcia v. Sterling* (1985) 176 Cal.App.3d 17, 21 ["a court may strike
false, i.e. untrue, matters contained in a pleading whenever their falsity or untruthfulness is
revealed by facts which are judicially noticed"].)

1 FAC so it can no longer use them as a press release to impugn the defendants and improperly
2 incite members of the Laguna Woods Village community.³ While Plaintiff might find this
3 motion unusual at the outset of the litigation, it cannot be disputed that the outrageous
4 allegations directly attacking the professionalism and ethics of individuals and a company
5 managing a wonderful active adult community presents an unusual situation that should be
6 promptly addressed.

7 **II. LEGAL DISCUSSION.**

8 **A. This Court Already Sustained A Demurrer To TLHM's Frivolous Elder**
9 **Abuse Cause Of Action, And TLHM Did Not Amend Its Complaint**
10 **Within The Parameters Of The Court's Limited Leave To Amend.**

11 As discussed in the moving papers, TLHM's incendiary claim of Elder Abuse is
12 supported neither by its allegations (the money purportedly taken was Third's money, not an
13 elder), nor the law (statute defines an elder to be a person and not a corporation) and
14 therefore violative of Section 128.7, subdivisions (b)(1) and (2) and (3). TLHM's
15 opposition does nothing more than gloss over this toxic cause of action in its Opposition by
16 noting the cause of action was the subject of a successful demurrer: "[t]he arguments
17 submitted by Plaintiff in support of the cause of action for Elder Abuse in their [sic]
18 opposition to Defendants' demurrer were substantive and were warranted by the language
19 of the statute, as well as case law interpreting the statute" (Opposition at 8:15-17) and
20 "[o]bviously, a claim which the Court has allowed to be realleged in an amended complaint,
21 must be, at a minimum, a claim '...warranted by existing law....'" (*id.* at 8:18-19.)

22 This argument defies logic, as the Court already specifically ruled that TLHM's
23 Elder Abuse cause of action was not warranted by either the express language of the statute
24 or the case law:

25 "[D]emurrer to the 5th c/a for Elder Abuse is *sustained* with leave to
26 amend (*for individuals to make a claim*) for lack of standing. Nothing
about the financial elder abuse claim seeks enforcement of governing

27
28 ³ This Motion is not mooted by TLHM having filed its FAC, as TLHM alleges the very same
false allegations and legally untenable claims in this pleading as well.

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documents, or damage to the property which are the types of actions where HOAs typically have standing. Nothing about the W&I Code sections definition of "elder" would include the plaintiff. See Cal. Welf. & Inst. Code § 15610.27. Finally, The Estate of Lowrie case discusses who has standing under Ca Welf & Inst. Code §15657.3, which is entirely inapplicable here because that statute and case involves standing once the decedent holding the Elder Abuse claim dies. That is not the case here. Here, we have a plaintiff HOA apparently representing the interests of living elders who could bring their own Elder Abuse claims. RJN granted." (Astarabadi Reply Decl., Exh. "A.")

Therefore, contrary to TLHM's superficial argument, the Court expressly ruled that its Elder Abuse cause of action was not warranted by the statute ("Nothing about the W&I Code sections definition of 'elder' would include the plaintiff") and not warranted by the case law ("The Estate of Lowrie case discusses who has standing under Ca Welf & Inst. Code §15657.3, which is entirely inapplicable here because that statute and case involves standing once the decedent holding the Elder Abuse claim dies"). (*Id.*)

Furthermore, the Court only gave TLHM limited leave to amend its Complaint "for individuals to make a claim," which TLHM clearly did not do. (*Id.*; *see also generally*, FAC.) Moreover, the fact that leave was granted cannot possibly be interpreted, as Plaintiff posits, as an endorsement by this Court that the cause of action has merit, because it is an abuse of discretion for a Court to not grant at least one opportunity to amend if there is any way to state a cause of action. (*King v. Mortimer* (1948) 83 Cal.App.2d 153, 158.) In this case, the Court explained leave was being granted so that an individual elder could be added as a plaintiff to assert his or her claim. TLHM cannot therefore hide behind this Court's demurrer ruling.

It remains that TLHM's Elder Abuse claim is patently improper, as it is axiomatic that an "elder" must have been "abused" in order for there to be any good faith basis for this claim.⁴ (*See, e.g.*, Cal. Welf. & Inst. Code, §§ 15610.27, 15610.30.) Accordingly, this

⁴ TLHM now contends in its FAC that PCM and Price "violated the Elder Abuse and [sic] Dependent Adult Civil Protection Act through Third Mutual's CC&Rs, Bylaws and Management Agreements." (FAC at 12:8-10.) In other words, TLHM is claiming that it has the right to enforce elder abuse on its members through CC&Rs and Bylaws to which neither PCM nor Price are parties, but it still cites the Elder Abuse statute as the basis for its cause of action. Simply put, there is no law in California that so empowers any association or corporation and the new argument is a frivolous argument for the establishment of new law.

1 claim was included for no purpose other than to stigmatize PCM as an “abuser” in a
2 Complaint (and FAC) -- that read more like press releases than targeted pleadings -- until
3 such time that this baseless claim is been dismissed by way of a second demurrer.

4 **B. TLHM’s Causes Of Action Are Predicated On The Claim The Existence**
5 **Of The Plan Was Wrongful.**

6 In its Opposition, TLHM argues its causes of action are based upon the
7 administration of the incentive plan, rather than the fact an incentive plan was in place but
8 supposedly hidden from the community. (*See generally* Opposition at 3:23-8:8; *see also,*
9 *id.* at 7:7-11.) It must be remembered, though, that TLHM’s Complaint (and now FAC)
10 allege that the mere existence of the incentive plan constituted wrongful conduct by PCM
11 and the individual defendants.

12 Indeed, TLHM’s original Complaint and its FAC allege “the existence of PCM’s
13 incentive plan was not disclosed to the various corporate community associations”
14 (Complaint at ¶ 11; FAC at ¶ 11), “Recently, Third Mutual began to uncover the mere
15 existence of the incentive plan” (Complaint at ¶ 12; FAC at ¶ 12), and “PCM’s incentive
16 plan lived in darkness and could only survive in the darkest shadows, where no one would
17 detect PCM’s activities” (Complaint at ¶ 12; FAC at ¶ 12). Thus, TLHM’s action is not
18 based only on the claim that the incentive plan was merely mishandled, but rather, that
19 TLHM was not aware of the existence of the incentive plan until “recently” and that the
20 Defendants concealed the plan such that it “lived in darkness and could only survive in the
21 darkest shadows.” These allegations are key to painting the Defendants as depraved people
22 that intimidated, bullied, and defrauded a community of frail elders by withholding even
23 “basic” information. This is precisely where TLHM and its counsel have crossed the line,
24 as they have intentionally alleged a “story” that they know is false.

25 Per PCM’s and Price’s moving papers, it is well settled in California that a
26 corporation (TLHM) is deemed to be on notice of a fact when such fact is learned by a
27 director or officer of the corporation when acting within the scope of his duties. (*See*
28 Motion at 8:18-9:2 [citing *Bank of New York v. Fremont General Corp.* (9th Cir. 2008) 523

1 F.3d 902, 911; *Meyer v. Glenmoor Homes, Inc.* (1966) 246 Cal.App.2d 242.) On this front,
2 the Declarations of TLHM's former directors and officers submitted in support of this
3 Motion collectively establish that TLHM was aware of the existence of the subject
4 incentive plan for over ten years.

5 TLHM asserts in its Opposition that the declarations submitted in support of the
6 motion do not contain dates that establish the latest time by which TLHM was advised of
7 the plan's existence. That is simply untrue, as a review of the declarations establish:

8 Harry Curtis – Mr. Curtis was a member of TLHM's board of directors from 1994
9 to 1997, and served as both Vice President and President of TLHM for a portion of that
10 time. (See Curtis Decl. at ¶ 1.) In addition, he served as a member of Golden Rain
11 Foundation's ("GRF") board of directors from 2000 to 2001 and from 2001 to 2003, and
12 served as both Vice President and President of GRF for a portion of that time. (*Id.* at ¶ 2.)
13 As Mr. Curtis declared, "During presentations to both Boards, as well as at Presidents'
14 meetings, staff of the managing agent, Professional Community Management Inc. (PCM),
15 advised us that...they had an incentive plan." (*Id.* at ¶ 3.) Given that Mr. Curtis served as a
16 member of TLHM's board from 1994 to 1997, the latest he could have been advised of the
17 existence of the incentive plan in such capacity would have been in 1997 -- over twelve
18 years ago.

19 Roger Noble – Mr. Noble served as the President of TLHM from 1997 to 1998.
20 (See Noble Decl. at ¶ 1.) As Mr. Noble declared, "During a presentation in roughly the first
21 quarter of each year, staff of Third Laguna Hills Mutual's managing agent, Professional
22 Community Management, Inc. advised me that...they had an incentive plan." (*Id.*) Given
23 that Mr. Noble only served as the President of TLHM from 1997 to 1998, the latest he
24 could have been advised of the existence of the incentive plan in such capacity would have
25 been in 1998 -- over eleven years ago.

26 Mark Schneider – Mr. Schneider was a member of TLHM's board of directors from
27 2003 to 2006. (See Schneider Decl. at ¶ 1.) As Mr. Schneider declared, "During a
28 presentation in roughly the first quarter of each year, staff of Third Laguna Hills Mutual's

1 managing agent, Professional Community Management, Inc. advised me that...they had an
2 incentive plan.” (*Id.*) Although Mr. Schneider was a member of TLHM’s board more
3 recently than Messrs. Curtis and Noble, his testimony confirms that TLHM was advised of
4 the existence of the incentive plan each year during this timeframe as well.

5 Milton Robbins – Mr. Robbins was a member of TLHM’s board of directors from
6 1999 to 2000, and served as the Treasurer of TLHM for a portion of that time. (*See*
7 Robbins Decl. at ¶ 1.) In addition, he served as a member of GRF’s board of directors
8 from 2000 to 2003, and served as both Treasurer and President of GRF for a portion of that
9 time. (*Id.*) As Mr. Robbins declared, “During presentations to both Boards, as well as at
10 President meetings, staff of the managing agent, Professional Community Management,
11 Inc. (PCM), advised me that...they had an incentive plan.” (*Id.* at ¶ 2.)

12 Richard Moos – Mr. Moos was a member of TLHM’s board of directors from 2004
13 to 2007, as well as a member of GRF’s board of directors from 2001 to 2004. (*See* Moos
14 Decl. at ¶ 1.) As Mr. Moos declared, “During a presentation in roughly the first quarter of
15 each year, staff of Third Laguna Hills Mutual’s managing agent, Professional Community
16 Management, Inc. advised me that...they had an incentive plan.” (*Id.*)

17 Here, TLHM points to absolutely no evidence demonstrating that its factual
18 allegations were either made or maintained in good faith. Although TLHM points to a few
19 board members that apparently did not know of the plan (*see generally*, Declarations
20 submitted in support of Opposition), the test in California is not whether all board members
21 possessed the knowledge -- it is whether *any* of them did in their capacity as directors.
22 Since TLHM has not provided any evidence refuting that the directors and officers
23 identified above learned of the incentive plan when acting within the scope of their duties
24 for TLHM, it is undisputed that TLHM has -- as a matter of law -- been aware of the
25 existence of the subject incentive plan for over ten years. Furthermore, neither TLHM nor
26 its counsel deny that they were aware of this evidence before the “safe harbor” period under
27 Section 128.7 expired. (*See generally*, Opposition and supporting Declarations.)

28 Thus, fully aware of the evidence demonstrating the existence of the incentive plan

1 had been disclosed to TLHM years ago, that TLHM did not just "recently" learn of the
2 existence of the plan, nor was the plan "living in darkness." Notwithstanding this, TLHM
3 knowingly pleads this false allegation, because it makes a more compelling story up until
4 the time the story can no longer be maintained in the litigation, but by then the damage
5 caused by an inflammatory Complaint has been done. If TLHM is now changing its claims
6 to assert the details of the plan were not known and the offending conduct occurred in the
7 administration of the plan, rather than the institution of the plan by PCM, then that is what
8 they should allege (and be subject to the unrefuted evidence discussed below). At the very
9 least, the Court should strike these knowingly false allegations from TLHM's FAC and
10 require TLHM and its counsel to pay PCM and Price sanctions as a result of their bad faith
11 conduct in this regard. (Cal. Code Civ. Proc., § 128.7.)

12 2. Contrary to its false allegations, TLHM has been aware of the criteria
13 for the administration of the incentive plan since no later than 2003.

14 Likewise, absent from TLHM's Opposition is any evidence whatsoever disputing
15 that Ms. Price gave a Power Point presentation to the board Presidents in February 2003 --
16 including the President of TLHM -- explaining the criteria and details of the administration
17 of the incentive plan. (See generally, Opposition.) The written slides from Ms. Price's
18 presentation alone state that it was a "Pay for Results Plan -- based on financial savings,"
19 "Goals of PCM-LW are to Minimize Costs & Maximize Service," "Requires that there be
20 an actual, measurable improvement in service," "30% of total savings [in first year] become
21 Incentive Plan Pool," "1/2 (15%) of savings to Participant(s) who achieved the savings,"
22 and "1/2 (15%) of savings to Participant(s) who achieved Service Improvement Goals."
23 (See Price Decl., Exh. "A.") Here, TLHM claims in its Opposition that "Directly
24 contradicting the assertions of Defendant Price are the Declarations of former board
25 members submitted in support of this Opposition" (Opposition at 6:12-13), but just as with
26 the false allegations discussed above, TLHM has produced no such evidence.

27 Not a single Declaration submitted by TLHM in support of its Opposition provides
28 testimony from any witness disputing that Ms. Price gave the presentation to the Presidents

1 in February 2003, let alone the substance of her presentation at that time; nor could they, as
2 none of the individuals who provided Declarations was a President of any of the respective
3 boards in February 2003. (See Declarations submitted in support of TLHM's Opposition.)
4 As discussed above, TLHM obtained a few Declarations from individuals who served as
5 board members who apparently did not know of the plan, its criteria and/or its
6 administration, but these Declarations establish nothing -- the test in California is not
7 whether all board members possessed the knowledge, it is whether *any* of them did. (See
8 Section II.B.1. of this Reply Brief, *supra*.) Therefore, since Ms. Price's testimony
9 demonstrates that TLHM was apprised of the details of the incentive plan in February 2003,
10 and since TLHM refused to withdraw its false allegations in this regard during the "safe
11 harbor" period and pleaded them again in its FAC, the Court should strike these knowingly
12 false allegations from TLHM's FAC and require TLHM and its counsel to pay monetary
13 sanctions. (Cal. Code Civ. Proc., § 128.7.)

14 Knowing full well that they face the bar of the applicable statutes of limitations,
15 TLHM and its counsel pleaded the false allegations concerning TLHM's lack of knowledge
16 about the existence of the incentive plan and the administration thereof in a transparent
17 attempt to try and escape a dispositive demurrer. However, as TLHM concedes in its
18 Opposition, it is on notice for purposes of the respective statutes when "the facts had been
19 disclosed regarding the terms of the incentive plan, the criteria used by PCM to determine
20 what measures qualified for payment under the plan, or how much PCM ultimately paid
21 itself on an annual basis." (Opposition at 7:7-11.) This is exactly the case here.

22 Once TLHM's false allegations are disregarded, all of TLHM's alleged causes of
23 action are knowingly time-barred. (See Motion at 8:16-9:19; Cal. Code Civ. Proc., §§ 337,
24 338, 339; Cal. Bus. & Prof. Code, § 17208; Cal. Welf. & Inst. Code, § 15657.7.) TLHM's
25 current board members and its counsel were provided with the evidence that they did not --
26 and cannot -- contradict, which establishes that TLHM has been aware of the existence of
27 the incentive plan for over ten years and that it knew the details of the plan and how it was
28 being administered no later than February 2003, thus barring all of TLHM's claims as of

1 March 2007 at the latest. (*Id.*; see also, Sections II.C.I. and II.C.II. of this Reply Brief,
2 *supra*; *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807 [“suspicion of one or
3 more of the elements of a cause of action, coupled with knowledge of any remaining
4 elements, will generally trigger the statute of limitations period”]; *E-Fab, Inc. v.*
5 *Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1318 [“an employer is charged
6 with the knowledge that an honest agent would have gained in the course of a reasonably
7 diligent examination”].)

8 Nonetheless, TLHM and its counsel have continued to prosecute these improper
9 claims under the guise that they simply pleaded the incentive plan was improperly
10 administered by the Defendants. This, though, is not what they pleaded. To the contrary,
11 all of TLHM’s causes of action are based on its false allegations that it never knew that the
12 incentive plan existed, let alone the criteria for the plan or how it was being administered.
13 (*See generally*, Complaint and FAC.) Since TLHM was on notice of the incentive plan, the
14 criteria used and how it was being administered no later than February 2003, these
15 allegations are knowingly time-barred and all of the causes of action in the FAC should be
16 stricken. (Cal. Code Civ. Proc., § 128.7.)

17 **C. TLHM’s Allegations Regarding The Tolling Agreements Are False.**

18 TLHM and its counsel are fully aware of the statutes of limitations issues they have
19 with this case, which is why it pleads that only “*Recently* Third Mutual began to uncover
20 the mere existence of the incentive plan.” (*See* Complaint at ¶ 12 [emphasis added]; FAC
21 at ¶ 12 [same].) Then, as set forth in PCM’s and Price’s Motion, TLHM alleges the statutes
22 of limitation have been tolled as to all defendants through the date of the Complaint. :

23 [I]n an effort to reach a peaceful resolution to this dispute, PCM, Milt Johns
24 and Janet Price executed a tolling agreement commencing on August 4, 2009.
25 Therefore, the statute of limitations has been tolled since that time through
the date of the filing of this Complaint. (Complaint at ¶ 24 [emphasis
added]; FAC at ¶ 24 [same].)

26 In its Opposition, TLHM and its counsel perpetuate the falsity when they argue
27 “there is no dispute between the parties that a tolling agreement was in place from at least
28 August 2009 through April 2010.” This simply is untrue, because Janet Price’s tolling

1 arrangement was for a maximum of 73 days (she signed it on August 18, 2009 and the
2 tolling period expired on October 30, 2009). The Complaint alleges TLHM was suspicious
3 of the existence of a plan and that, on March 7, 2007, the plan's existence was confirmed
4 and the amount of money PCM purportedly paid itself disclosed. (Complaint, 10-13.)
5 Taking that date as the date of discovery (which TLHM must, because it claims the mere
6 existence of the plan breached the management agreement and constituted a breach of
7 fiduciary duty by Price, Johns, and PCM), then under TLHM's own theory of how a statute
8 is tolled, the latest date by which Price could be sued for Breach of Fiduciary Duty and
9 Fraud was May 19, 2009. Knowing these problems existed, TLHM and its counsel made a
10 groundless allegation that the statute was tolled through the filing of the Complaint so as to
11 protect it from an SOL attack at the pleading stage.

12 As for PCM, TLHM never signed and returned any Tolling Agreement after the first
13 one, so the same operation at play with Price should apply to PCM (and Johns for that
14 matter). As established above, though, the actual date of discovery of the plan and its
15 detailed terms was in 2003 at the latest, so TLHM's claims the statute of limitations was
16 tolled is knowingly false. Thus, TLHM's blatant misrepresentation in its Complaint (which
17 it refused to withdraw and pleaded yet again in its FAC) concerning the tolling of any of the
18 applicable statutes of limitations demonstrates TLHM's bad faith and must at the very least
19 be stricken from its operative pleading. Moreover, TLHM's continued gamesmanship and
20 refusal to withdraw these false allegations -- after being served with notice under Section
21 128.7 as well as brazenly including these allegations in its subsequently-filed FAC -- is
22 exactly the conduct the Court should punish by awarding sanctions from TLHM to PCM
23 and Price. (Cal. Code Civ. Proc., § 128.7.)

24 **III. CONCLUSION.**

25 PCM and Price respectfully request that this Court grant this Motion in its entirety. In
26 the alternative, TLHM should be ordered to delete all allegations regarding the lack of
27 disclosure of the existence of the plan, as well as the entirety of the Elder Abuse cause of
28 action, and allegations the statute of limitations was tolled through June 10, 2010.

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DATED: October 21, 2010

Respectfully submitted,
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1 **PROOF OF SERVICE**

2 I am employed in the County of Orange, State of California. I declare that I am over the
3 age of eighteen (18) and not a party to the within action. My business address is 8001 Irvine
4 Center Drive, Suite 400, Irvine, California 92618.

5 On **October 21, 2010**, I served the foregoing document described as **DEFENDANTS**
6 **PROFESSIONAL COMMUNITY MANAGEMENT, INC.'S AND JANET PRICE'S**
7 **REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR MONETARY SANCTIONS IN**
8 **THE AMOUNT OF \$18,630 AGAINST PLAINTIFF THIRD LAGUNA HILLS MUTUAL**
9 **AND ITS COUNSEL OF RECORD, JOINTLY AND SEVERALLY, AND FOR NON-**
10 **MONETARY SANCTIONS AS WELL**, on all interested parties in this action by placing a
11 true copy thereof enclosed in a sealed envelope addressed as stated on the attached service list.

12 () **BY MAIL** - I deposited such envelope in the mail at Irvine, California. The envelope
13 was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice
14 of collection and processing of correspondence for mailing. Under that practice it would be
15 deposited with the United Postal Service on that same day with postage thereon fully prepaid at
16 Irvine, California in the ordinary course of business. I am aware that on motion of the party
17 served service is presumed invalid if postal cancellation date or postage meter date is more than
18 one (1) day after date of deposit for mailing in affidavit.

19 () **BY ELECTRONIC TRANSMISSION** - I transmitted a .pdf version of this document
20 by electronic mail to the interested parties at the email addresses identified on the attached
21 service list .

22 () **BY PERSONAL SERVICE** - I caused such envelope to be delivered by hand to the
23 addressee(s) identified on the attached service list.

24 (X) **BY OVERNIGHT DELIVERY** - I deposited such envelope for collection and
25 delivery by a well-known overnight delivery service, i.e., Federal Express or Overnite Express
26 with delivery fees paid or provided for in accordance with ordinary business practices. I am
27 "readily familiar" with the firm's practice of collection and processing packages for overnight
28 delivery by Federal Express and Overnite Express for receipt on the same day in the ordinary
course of business.

(X) (State) I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

() (Federal) I declare that I am employed in the office of a member of the bar of this
Court at whose direction the service was made.

Executed on **October 21, 2010**, at Irvine, California.


Lisa Romines

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- 28

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