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 12 COMMUNITY MANAGEMENT, INC. and JANET
 13 PRICE

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 CENTRAL JUSTICE CENTER

SEP 10 2010

ALAN CARLSON, Clerk of the Court

R. Lucey
 BY R. LUCEY

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

BY FAX

11 **THIRD LAGUNA HILLS MUTUAL, a**
 12 **California non profit corporation,**

13 **Plaintiff,**

14 vs.

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

20 **Defendants.**

21 CASE NO. 30-2010-00380231

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

24 **DEFENDANTS PROFESSIONAL**
 25 **COMMUNITY MANAGEMENT, INC.'S**
 26 **AND JANET PRICE'S NOTICE OF**
 27 **MOTION AND MOTION FOR**
 28 **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; OPENING
MEMORANDUM OF POINTS AND
AUTHORITIES

[Cal. Code Civ. Proc., § 128.7]

Date: October 14, 2010
 Time: 2:00 p.m.
 Dept.: C-8

[Request for Judicial Notice and Declarations
 in Support of Motion filed concurrently
 herewith]

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

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

HEARING ON MOTION FOR SANCTIONS. PLEASE TAKE NOTICE that on October 14, 2010, at 2:00 p.m., or as soon thereafter as the matter may be considered, in Department C-8 of the above-entitled Court, located at 700 Civic Center Drive West, Santa Ana, California 92701, the Honorable Kirk H. Nakamura presiding, Defendants **PROFESSIONAL COMMUNITY MANAGEMENT, INC. ("PCM")** and **JANET PRICE ("Price")** will and hereby do move the Court, pursuant to California Code of Civil Procedure section 128.7, for an Order imposing monetary sanctions against Plaintiff **THIRD LAGUNA HILLS MUTUAL ("TLHM")** and its counsel of record in this matter, Jeffrey M. Cohon and Kristina S. Keller of Cohon & Pollak, LLP, jointly and severally, as well as non-monetary sanctions against TLHM, as follows:

1. For monetary sanctions against TLHM and its counsel, jointly and severally, in the amount of the reasonable costs and attorneys' fees incurred by PCM and Price in bringing this Motion, which totals \$18,630;
2. For non-monetary sanctions in the form of striking all of the Causes of Action in TLHM's Complaint, as they are all knowingly time-barred;
3. For non-monetary sanctions in the form of striking the Fifth Cause of Action for Elder Abuse in TLHM's Complaint, as it is frivolous on grounds of standing and its failure to state a cause of action;
4. For non-monetary sanctions in the form of striking the false contention on page five, lines 27 to 28, of TLHM's Complaint, which specifically states: "Therefore, the statute of limitations has been tolled since that time through the date of the filing of this Complaint;" and,
5. For such other and further relief as the Court may deem proper.

This Motion is brought on the grounds that all of the Causes of Action in TLHM's Complaint are frivolous, as TLHM is fully aware that they are time-barred as a matter of law. In addition, TLHM's Fifth Cause of Action for Elder Abuse is also frivolous under its allegations, as (1) TLHM has not alleged the required elements of its elder abuse claim, and (2)

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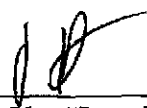
1 even if it did, TLHM has no standing to assert the claims of the individual elders. Finally,
2 TLHM's contention that the parties entered into an agreement that tolled any statutes of
3 limitations "through the date of the filing of this Complaint" is knowingly false not only with
4 respect to Price, but with respect to PCM as well; TLHM is fully aware that the parties'
5 respective tolling agreements did not extend as far as TLHM alleges.

6 As required under Code of Civil Procedure section 128.7, counsel for PCM and Price
7 served counsel for TLHM with these moving papers in order to give TLHM and its counsel the
8 opportunity to cure the Complaint of the improprieties identified herein and/or withdraw the
9 Complaint altogether. TLHM and its counsel, though, did not cure the Complaint within the
10 statutory 21-day "safe harbor" period.

11 This Motion is based upon this Notice, the accompanying Opening Memorandum of
12 Points and Authorities, the concurrently filed Declarations of Jeff J. Astarabadi, Janet Price,
13 Harry H. Curtis, Roger Noble, Milton W. Robbins, Mark M. Schneider and Richard Moos, the
14 concurrently filed Request for Judicial Notice, such evidence as Much Shelist Denenberg
15 Ament & Rubenstein may submit to the Court with respect to the amount of fees and expenses
16 which PCM and Price incurred and will incur in connection with bringing this Motion, all
17 matters of which the Court may take judicial notice, all pleadings and papers on file with the
18 Court, and such other and further evidence and argument as the Court may entertain.

19
20 DATED: September 10, 2010

Respectfully submitted,
MUCH SHELIST DENENBERG
AMENT & RUBENSTEIN, P.C.

21
22
23 By: 
24 Paul E. Van Hoomissen
25 Jeff J. Astarabadi
26 Attorneys for Defendants PROFESSIONAL
27 COMMUNITY MANAGEMENT, INC. and JANET
28 PRICE

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1 Notwithstanding these claims, however, TLHM was actually aware of the plan from
2 its inception in that the plan was created in approximately 1995 at the request of TLHM and
3 the other housing mutual corporations in Laguna Woods Village. Indeed, since its inception,
4 PCM advised TLHM of the plan's existence in connection with TLHM's annual budget, and
5 even gave TLHM's President a detailed presentation on the plan in February 2003. Thus,
6 simply put, the entire basis of TLHM's case is knowingly frivolous, as TLHM has been well
7 aware of the subject incentive plan for approximately fifteen years.

8 Even assuming *arguendo* that TLHM was first made aware of the incentive plan at the
9 February 2003 presentation (which it was not, as TLHM was involved since the plan's
10 inception), any claim TLHM may have had regarding disclosure of the plan was indisputably
11 time-barred as a matter of law as of March 2007 -- four years after the February 2003
12 presentation on the plan was given to TLHM's President. (*See, e.g.*, Cal. Code Civ. Proc., §§
13 337, 338 and 339; Cal. Bus. & Prof. Code, § 17208; Cal. Welf. & Inst. Code, § 15657.7.)
14 Whether this information was actually passed along from prior TLHM board members to later
15 board members has no bearing on PCM and Price; rather, the proper inquiry is whether any
16 board member(s) learned of the existence of the plan between its inception and August 2005,¹
17 as the information provided to TLHM's directors and/or officers is imputed to TLHM as a
18 matter of law. (*See, e.g., Bank of New York v. Fremont General Corp.* (9th Cir. 2008) 523
19 F.3d 902, 911 [quoting *Meyer v. Glenmoor Homes, Inc.* (1966) 246 Cal.App.2d 242]; *United*
20 *California Bank v. Maltzman* (1974) 44 Cal.App.3d 41, 51-52.) Accordingly, all of TLHM's
21 Causes of Action in its Complaint are legally barred and this entire action appears to be
22 nothing more than an improper attempt to stir-up the emotions of the elders in the Laguna
23 Woods Village community and rally opposition against PCM.

24 In addition, as to TLHM's Fifth Cause of Action for Elder Abuse specifically, this
25 cause of action is also frivolous under TLHM's own allegations for additional reasons than
26 those discussed above, and was certainly included for no purpose other than stigmatize PCM

27 ¹ Taking the longest statute of limitations period for all causes of action, August 2005 would be
28 the earliest TLHM could have learned of the incentive plan and timely filed this action -- which,
as clearly set forth herein, is certainly not the case.

1 as an “abuser” until such time that this baseless claim is dismissed. On this front, TLHM
2 admits in its Complaint that the alleged funds at issue belonged to TLHM, the corporation,
3 not to the individuals members of the corporation. (See Complaint at ¶ 13 [“PCM was
4 transferring money to itself from Third Mutual’s account...and...the money belonged to
5 Third Mutual”].) As such, TLHM cannot pursue any claim of any specific elder(s), but
6 instead, only a claim of the corporation; similarly, no elder has a claim under these facts,
7 because an injury to a corporation does not provide the individual stockholders or members of
8 the corporation with individual claims. (Cal. Welf. & Inst. Code, §§ 15610.27, 15610.30;
9 *Jones v. H.F. Ahmanson & Co.* (1969) 1 Cal.3d 93, 107.) Also, TLHM admits that it is only
10 an “interested person” for its Elder Abuse claim. Therefore, even if TLHM had properly
11 alleged facts sufficient for an individual elder abuse claim (which it has not), it nevertheless
12 has no standing to sue for such claims. (*Gantman v. United Pac. Ins. Co.* (1991) 232
13 Cal.App.3d 1560, 1566; *Carsten v. Psychology Examining Comm. of Bd. of Med. Qual.*
14 *Assur.* (1980) 27 Cal.3d 793, 796.)

15 Finally, TLHM even goes so far as to misrepresent in its Complaint that “the statute of
16 limitations has been tolled...through the date of the filing of this Complaint.” Contrary to
17 this allegation, however, TLHM knows full well the true facts are that none of the respective
18 tolling agreements were effective through the date TLHM filed its Complaint. Even in the
19 light most favorable to TLHM, the tolling agreement with Price expired on October 30, 2009,
20 the tolling agreement with Johns expired on January 31, 2010, and the tolling agreement with
21 PCM expired on April 30, 2010 -- all of which are significantly before TLHM commenced
22 this action. While this is a legally moot issue given that the tolling agreements were executed
23 years after the applicable limitations periods had already expired, TLHM’s knowingly false
24 allegation underscores its bad faith and the improper means it is willing to employ in pursuing
25 its meritless Complaint.

26 Based on the foregoing, and as required under Code of Civil Procedure section 128.7,
27 counsel for PCM and Price served counsel for TLHM with these moving papers in order to
28 give TLHM and its counsel the opportunity to cure the Complaint and/or withdraw it

1 altogether. TLHM and its counsel, though, did not do so, timely or otherwise. Thus,
2 pursuant to the provisions of Section 128.7, PCM and Price respectfully request that the Court
3 issue an order:

- 4 1. For monetary sanctions against TLHM and its counsel, jointly and severally, in
5 the amount of the reasonable costs and attorneys' fees incurred by PCM and
6 Price in bringing this Motion, which totals \$18,630;
- 7 2. For non-monetary sanctions in the form of striking all of the Causes of Action
8 in TLHM's Complaint, as they are all knowingly time-barred;
- 9 3. For non-monetary sanctions in the form of striking the Fifth Cause of Action
10 for Elder Abuse in TLHM's Complaint, as it is frivolous on its face;
- 11 4. For non-monetary sanctions in the form of striking the false contention on
12 page five, lines 27 to 28, of TLHM's Complaint, which specifically states:
13 "Therefore, the statute of limitations has been tolled since that time through
14 the date of the filing of this Complaint;" and,
- 15 5. For such other and further relief as the Court may deem proper.

16 **II. BACKGROUND.**

17 **A. The Parties.**

18 PCM has almost 40 years of experience in managing hundreds of housing communities
19 throughout Southern California. (Declaration of Janet Price filed concurrently herewith
20 ["*Price Decl.*"] at ¶ 3.) It is one of the largest community management companies in the
21 United States, specializing in metropolitan condominiums, family-oriented master-planned
22 communities and active adult communities. (*Id.*) PCM has managed the Laguna Woods
23 Village active adult community (formerly known as "Leisure World") since PCM's inception
24 in 1972. (*Id.*)

25 Laguna Woods Village is governed by four mutual benefit corporations. (Price Decl. at
26 ¶ 4.) Three of them are housing corporations -- TLHM, United Laguna Hills Mutual
27 ("*ULHM*") and Laguna Woods Mutual No. Fifty ("*M50*") -- while the fourth, the Golden Rain
28 Foundation ("*GRF*"), is not a housing corporation, but a corporation that manages the shared

1 community facilities. (TLHM, ULHM, M50 and GRF may sometimes be collectively referred
2 to herein as the "**Corporations**"). (*Id.*) PCM contracts with each of the Corporations
3 individually, and pursuant thereto, provides on-site management of Laguna Woods Village that
4 includes most every aspect of the community from hiring and managing the staff to providing
5 many community services. (*Id.*)

6 PCM regularly attends meetings with the boards of the respective Corporations
7 concerning the management of Laguna Woods Village, and each board reviews and approves
8 its respective operating budget, as prepared by PCM staff, on an annual basis. (Price Decl. at ¶
9 5.) The total operating budget for all of the Corporations is currently approximately \$100
10 million annually, and approximately half of the annual budget is allocated to employee
11 compensation and related costs. (*Id.*) The compensation to those PCM employees working in
12 the community is paid by the Corporations pursuant to the management contracts. (*Id.*)

13 **B. The Employee Incentive Plan.**

14 From 1996 to 2008, PCM utilized an incentive plan whereby employee(s) that
15 demonstrated a specific means of reducing costs to the Corporations would receive an
16 "incentive bonus" in the amount of 15% of the savings that the Corporation(s) realized in the
17 first year those savings idea(s) were implemented; another 15% of the savings for the first year
18 would be applied to a bonus savings "pool" to be used to reward other employees who
19 demonstrated an improvement in service that did not result in a savings of hard costs, but the
20 remaining 70% of the savings for the first year a savings idea was implemented would be kept
21 by the Corporations. (Price Decl. at ¶ 6.) After the first year, *i.e.*, from the second year
22 forward, 100% of the savings would be realized by the Corporations and the PCM employee
23 would receive no portion of the savings. (*Id.*)

24 Notably, PCM advised the Corporations of the plan's existence, **including TLHM**,
25 every year prior to their annual budget review.² (Price Decl. at ¶ 7.) Incredibly, in February
26 2003, PCM provided a Power Point presentation to the Presidents of the Corporations,
27

28 ² PCM receives authorization from the boards to expend annual compensation and related costs.
(Price Decl., ¶ 7.)

1 **including TLHM's President**, explaining the details of the incentive plan (the "**2003**
2 **Presentation**"). (Price Decl., ¶ 8 and Exh. "A" [2003 Presentation].) The 2003 Presentation
3 included the following detailed topics of discussion:

- 4 • "Pay for Results Plan – based on financial savings" (See Price Decl. at Exh.
5 "A" [2003 Presentation].)
- 6 • "Goals of PCM-LW are to Minimize Costs & Maximize Service" (*Id.*)
- 7 • "Requires that there be an actual, measurable improvement in service" (*Id.*)
- 8 • "30% of total savings [in first year] become Incentive Plan Pool" (*Id.*)
- 9 • "1/2 (15%) of savings to Participant(s) who achieved the savings" (*Id.*)
- 10 • "1/2 (15%) of savings to Participant(s) who achieved Service Improvement
11 Goals" (*Id.*)

12 On this front, PCM possesses **declarations under penalty of perjury from five**
13 **former TLHM board members** (some of which were Presidents of the board) indicating that
14 TLHM had been aware of the incentive plan since the 1990's and was advised of the plan each
15 year. (See concurrently filed Declarations of Harry H. Curtis, Roger Noble, Milton W.
16 Robbins, Mark M. Schneider and Richard Moos.) Thus, it is without question that TLHM has
17 known about the incentive plan for years, not just recently as it improperly alleges throughout
18 its Complaint.

19 **C. TLHM's Complaint.**

20 On June 10, 2010, TLHM filed its Complaint in which it alleges causes of action for
21 breach of contract, breach of fiduciary duty, fraudulent concealment, violation of Business &
22 Professions Code section 17200, elder abuse and negligence. (See Request for Judicial Notice
23 filed concurrently herewith; concurrently filed Declaration of Jeff J. Astarabadi [***Astarabadi***
24 ***Decl.***] at Exh. "A" [Complaint].) Every cause of action asserts, and indeed depends upon, the
25 allegation that the incentive plan was unknown to TLHM and its existence was intentionally
26 concealed. (*Id.*)

27 Although TLHM provides no specific date in its Complaint, it clearly claims that only
28 "[r]ecently, Third Mutual began to uncover the mere existence of the incentive plan."

1 (Astarabadi Decl., Exh. "A" [Complaint] at 3:14 [emphasis added].) It then alleges that
2 "during a meeting at which selected Third Mutual board members were reviewing the
3 following year's budget and analyzing the renewal of PCM's five year agreement, they
4 discovered *for the first time* that PCM had some type of undefined incentive plan." (*Id.* at 3:15-
5 17 [emphasis added].) These are blatantly false allegations, as the evidence demonstrates that
6 the TLHM board members and TLHM's counsel are aware of the true facts. As a result, it is
7 clear that the Complaint is frivolous and this Motion should be granted.

8 **III. THIS COURT HAS AUTHORITY TO AWARD THE MONETARY AND NON-**
9 **MONETARY SANCTIONS THAT ARE THE SUBJECT OF THIS MOTION.**

10 California Code of Civil Procedure section 128.7 provides, in pertinent parts, as
11 follows:

12 "(b) By presenting to the court, whether by signing, filing, submitting, or
13 later advocating, a pleading, petition, written notice of motion, or other
14 similar paper, an attorney or unrepresented party is certifying that to the
15 best of the person's knowledge, information, and belief, formed after an
16 inquiry reasonable under the circumstances, all of the following
17 conditions are met:

18 (1) It is not being presented primarily for an improper purpose, such as to
19 harass or to cause unnecessary delay or needless increase in the cost of
20 litigation.

21 (2) *The claims, defenses, and other legal contentions therein are
22 warranted by existing law or by a nonfrivolous argument for the
23 extension, modification, or reversal of existing law or the establishment of
24 new law.*

25 (3) *The allegations and other factual contentions have evidentiary
26 support or, if specifically so identified, are likely to have evidentiary
27 support after a reasonable opportunity for further investigation or
28 discovery.*

(c) If, after notice and a reasonable opportunity to respond, the court
determines that subdivision (b) has been violated, the court may, subject
to the conditions stated below, impose an appropriate sanction upon the
attorneys, law firms, or parties that have violated subdivision (b) or are
responsible for the violation. In determining what sanctions, if any, should
be ordered, the court shall consider whether a party seeking sanctions has
exercised due diligence.

(d) *...the sanction may consist of, or include, directives of a nonmonetary
nature, an order to pay a penalty into court, or, if imposed on motion and
warranted for effective deterrence, an order directing payment to the*

1 *movant of some or all of the reasonable attorney's fees and other expenses*
2 *incurred as a direct result of the violation.” (Emphasis added.)*

3 Thus, an attorney who presents a pleading to the court makes an implied certification
4 as to its legal and factual merit, and is subject to sanctions for violation of this certification.
5 (Cal. Code Civ. Proc., § 128.7; *see also, Eichenbaum v. Alon* (2003) 106 Cal.App.4th 967,
6 976 [“A violation of any of them may give rise to sanctions”].) Whether the certificate is
7 violated is tested objectively, not by the attorney’s or client’s subjective beliefs: “[w]e
8 measure the truth-finding inquiry’s reasonableness under an objective standard and apply this
9 standard both to attorneys and to their clients.” (*Bockrath v. Aldrich Chem. Co., Inc.* (1999)
10 21 Cal.4th 71, 82.) Both monetary and nonmonetary sanctions, including striking the
11 offending pleading, are authorized. (Cal. Code Civ. Proc., § 128.7; *see also, Cal. Prac. Guide*
12 *Civ. Pro. Before Trial, Ch. 9(III)-C at 9:1216* [“‘Directives of a nonmonetary nature’ may
13 include...striking the offending pleading”].)

14 **IV. SANCTIONS ARE WARRANTED AND APPROPRIATE UNDER THE**
15 **PRESENT CIRCUMSTANCES.**

16 **A. All Of TLHM’s Causes Of Action Are Knowingly Time-Barred And**
17 **Therefore Frivolous.**

18 It is well settled under California law that knowledge of a corporate officer or director
19 within the scope of his employment is knowledge of corporation. (*See, e.g., Bank of New*
20 *York v. Fremont General Corp.* (9th Cir. 2008) 523 F.3d 902, 911 [“Generally, the knowledge
21 of a corporate officer within the scope of his employment is the knowledge of the
22 corporation”][quoting *Meyer v. Glenmoor Homes, Inc.* (1966) 246 Cal.App.2d 242].) That is,
23 the rule that notice to an agent is imputed to his or her principal applies to officers and other
24 agents of a corporation when acting within the scope of their duties. (*See, e.g., United*
25 *California Bank v. Maltzman* (1974) 44 Cal.App.3d 41, 51-52 [“Knowledge of an officer of a
26 corporation within the scope of his duties is imputed to the corporation”]; *see also, Steele v.*
27 *Litton Industries, Inc.* (1968) 260 Cal.App.2d 157; *Sanders v. Magill* (1937) 9 Cal.2d 145;
28 *Jefferson v. Hewitt* (1894) 103 Cal. 624.) Following this operation of law, any information

1 learned by TLHM's previous board members in the scope of their duties is, by definition,
2 within the "knowledge" of TLHM (the corporate plaintiff here).

3 In this case, all of TLHM's alleged causes of action are knowingly time-barred. Even
4 if TLHM could somehow get around the facts that it was amongst those that requested the
5 plan be implemented in 1995 and was advised of the plan by PCM annually thereafter before
6 reviewing its annual operating budget, it will be entirely unable to get around the fact that
7 PCM gave a detailed presentation updating TLHM's President on the plan in February 2003.
8 As such, even if the respective limitations periods did not begin to run until February 2003,
9 TLHM's right to pursue any possible claim under its allegations, whether based in tort or
10 contract, terminated at the very latest as of March 2007 -- years before the August 2009
11 tolling agreement was executed by any of the parties. (*See, e.g.*, Cal. Code Civ. Proc., §§ 337
12 [four year statute of limitations for breach of written contract], § 338 [three year statute of
13 limitations for breach of fiduciary duty and fraud], and § 339 [two year statute of limitations
14 for negligence]; Cal. Bus. & Prof. Code, § 17208 [four year statute of limitations for unfair
15 competition]; Cal. Welf. & Inst. Code, § 15657.7 [four year statute of limitations for elder
16 abuse].) TLHM's current board members and its counsel have been provided with the
17 evidence that they cannot contradict, which established the knowledge of TLHM and when it
18 was acquired. Nonetheless, TLHM and its counsel continue to prosecute this action in the
19 face of it. This places the action squarely within the ambit of Section 128.7.

20 **B. TLHM's Fifth Cause Of Action For Elder Abuse Is Also Frivolous For**
21 **Several Additional Reasons.**

22 In its Complaint, TLHM bases its Fifth Cause of Action for Edler Abuse on the
23 following allegations:

- 24 • "PCM was transferring money to itself from Third Mutual's
25 account...and...*the money belonged to Third Mutual*." (Complaint at 3:21-24
26 [emphasis added].)
- 27 • "Defendants, and each of them, have taken, misappropriated, obtained and
28 retained *Plaintiff's money* for a wrongful use and with the intent to defraud in

1 violation of *California Welfare & Institutions Code* § 15610.30(a).” (*Id.* at
2 11:1-3 [emphasis added].)

- 3 • “The residents of Third Mutual, who were over the age of 65 at the time of the
4 misconduct, were the ultimate victims of Defendants’ malfeasance. Third
5 Mutual is an interested person and by this action protects the victims of
6 Defendants’ abuse.” (*Id.* at 11:4-6 [emphasis added].)

7 This cause of action, though, is facially defective for two glaring reasons: (1) TLHM has not
8 alleged the required elements of its elder abuse claim; and, (2) even if it did, TLHM has no
9 standing to assert the claims of the individual elders.

10 1. TLHM has not alleged the required elements of its claim.

11 A cause of action for financial abuse of an “elder” under the Elder Abuse and
12 Dependent Adult Civil Protection Act requires proof of the following elements: (1) the
13 defendant took or appropriated an individual’s property; (2) the individual was 65 years of
14 age or older, or a dependent adult, at the time of the defendant’s conduct; (3) the defendant
15 took or appropriated the property for a wrongful use, with the intent to defraud or by undue
16 influence; (4) the individual was harmed; and (5) the defendant’s conduct was a substantial
17 factor in causing the individual’s harm. (*See, e.g.*, Cal. Welf. & Inst. Code, §§ 15610.27
18 [“elder” defined] and 15610.30 [financial abuse of an elder]; *see also*, Cal. Judicial Council
19 Civil Jury Instructions 3100, Financial Abuse -- Essential Factual Elements (2008 Ed.).)

20 Here, however, TLHM judicially admits the money purportedly taken “belonged to
21 Third Mutual” and came from “Third Mutual’s account.” There is no good faith argument
22 that the incendiary claim of elder abuse can be stretched under the statutory language to
23 include a corporation.

24 Similarly, TLHM cannot argue the claim is not frivolous because its members are
25 “elders.” With respect to a corporation like TLHM, the law is clear that claims for injury or
26 damage to a corporation or its property belong to the corporation, not its stockholders; the
27 individual stockholders have no standing to sue for such wrongs even if the value of their
28 stock is diminished. (*Jones v. H.F. Ahmanson & Co.* (1969) 1 Cal.3d 93, 107 [“a stockholder

1 of a corporation has no personal or individual right of action against third persons, including
2 the corporation's officers and directors, for a wrong or injury to the corporation which results
3 in the destruction or depreciation of the value of his stock, since the wrong thus suffered by
4 the stockholder is merely incidental to the wrong suffered by the corporation and affects all
5 stockholders alike"] [quoting *Shaw v. Empire Sav. & Loan Assn.* (1960) 186 Cal.App.2d 401,
6 407]; see also, *PacLink Communications Int'l, Inc. v. Superior Court* (2001) 90 Cal.App.4th
7 958, 964-65 [same for limited liability company members].)

8 In this case, TLHM admits that it is a "California non-profit corporation." (Complaint
9 at 1:25.) In addition, it admits that the funds at issue belonged to TLHM, the corporation, not
10 to the individuals elders. (*Id.* at 11:1-3 ["Defendants, and each of them, have taken,
11 misappropriated, obtained and retained *Plaintiff's money* for a wrongful use..."] [emphasis
12 added].) Notably, TLHM is a corporation and obviously cannot be a "person" that is 65 years
13 of age or older. Since TLHM is an entity, it can never meet the required element of being an
14 "elder" and cannot independently satisfy the elements for financial abuse under the Elder
15 Abuse and Dependent Adult Civil Protection Act.

16 Likewise, no individual elder has a claim under these facts, because an injury to
17 TLHM does not provide its members with individual causes of action, whether or not they are
18 "elders." Regardless of their age, it is well settled that members of a corporation or limited
19 liability company do not have individual causes of action for a wrong or injury to their
20 company, and that any argument that they do as an "ultimate victim" fails as a matter of law.
21 (*Jones v. H.F. Ahmanson & Co.*, *supra*, 1 Cal.3d at 107; see also, *PacLink Communications*
22 *Int'l, Inc. v. Superior Court*, *supra*, 90 Cal.App.4th at 964-65.) Just as with closely held
23 corporations and limited liability companies, any damage such suffered by the stockholder or
24 member is "incidental" to the wrong suffered by the company. (*Id.*)

25 Therefore, because TLHM has only alleged that its funds (*i.e.*, the funds of the
26 corporation) were misappropriated, TLHM cannot properly allege the requisite elements and
27 its Fifth Cause of Action for Elder Abuse is clearly frivolous.

28 ///

1 2. TLHM does not have standing to pursue any claims of the individuals.

2 It is well-settled in California that a complaint filed by someone other than the real party
3 in interest is subject to general demurrer. (*See, e.g., Carsten v. Psychology Examining Comm.*
4 *of Bd. of Med. Qual. Assur.* (1980) 27 Cal.3d 793, 796 [“If the petition reveals that Carsten
5 lacks either the right or standing to sue, it is vulnerable to a general demurrer on the ground that
6 it fails to state a cause of action”]; *see also, Powers v. Ashton* (1975) 45 Cal.App.3d 783, 789-
7 90.) Generally, the real party in interest is the person who has the right to sue under the
8 substantive law; it is the person who owns or holds title to the claim, as opposed to others who
9 may be interested or benefited by the litigation. (*Gantman v. United Pac. Ins. Co.* (1991) 232
10 Cal.App.3d 1560, 1566 [“the person possessing the right sued upon by reason of the substantive
11 law is the real party in interest”][quoting *Del Mar Beach Club Owners Assn. v. Imperial*
12 *Contracting Co.* (1981) 123 Cal.App.3d 898, 906].) Furthermore, as discussed above, claims
13 for damage to a corporation or its property belong to the corporation, not its members. (*Jones*
14 *v. H.F. Ahmanson & Co., supra*, 1 Cal.3d at 107; *see also, PacLink Communications Int’l, Inc.*
15 *v. Superior Court, supra*, 90 Cal.App.4th at 964-65.)

16 Here, TLHM’s allegations at best amount to a wrong committed against the
17 corporation. As such, there is no elder abuse claim under TLHM’s allegations, nor can there
18 be under the factual framework already pleaded. (*See* Section IV.B.1. of this Motion, *supra*.)
19 Even if there was such a claim, though, TLHM admits that it is only an “interested person”
20 for such claim, not the real party in interest -- which it must be in order to pursue its Elder
21 Abuse cause of action. (*See* Complaint at 11:5-6.) Accordingly, as TLHM is not the real
22 party in interest for any of the individual elders’ claims (assuming *arguendo* that there were
23 any), TLHM does not have standing to pursue any such claims and its Fifth Cause of Action
24 for Edler Abuse is frivolous for this reason as well.

25 C. TLHM’s Tolling Agreement Allegations Are Knowingly False.

26 In addition to its frivolous causes of action, TLHM brazenly alleges in its Complaint
27 that:

28 “[I]n an effort to reach a peaceful resolution to this dispute, PCM, Milt
 Johns and Janet Price executed a tolling agreement commencing on

1 August 4, 2009. Therefore, *the statute of limitations has been tolled since*
2 *that time through the date of the filing of this Complaint.*" (Complaint at
3 5:26-28 [emphasis added].)

4 While it is true that the parties executed tolling agreements, TLHM is well aware that
5 neither the initial agreement nor any extensions thereof tolled any statute of limitations
6 "through the date of the filing of this Complaint." To the contrary, the true facts -- of which
7 TLHM is certainly aware -- are as follows:

- 8 • In August 2009, TLHM, PCM, Price and Johns executed a tolling agreement
9 in which all existing timing defenses were "tolled" until October 30, 2009.
10 (Astarabadi Decl., Exh. "B" [tolling agreement] at ¶ 1(c).) Importantly, the
11 tolling agreement specifically provides that "TLHM agrees to *forebear* filing a
12 petition or complaint or initiating any lawsuit or other legal proceeding against
13 PCM, MJ and JP *until on or after the last day of the Tolling Period....*" (*Id.* at
14 ¶ 5 [emphasis added].)
- 15 • In November 2009, PCM and Johns -- but not TLHM or Price -- executed an
16 extension to the tolling agreement. (Astarabadi Decl., Exh. "C" [first
17 extension to tolling agreement].) All of the relevant terms remained the same,
18 except the tolling period was extended to January 31, 2010. (*Id.*)
- 19 • In April 2010, PCM -- but not TLHM, Johns or Price -- executed an extension
20 to the tolling agreement. (Astarabadi Decl., Exh. "D" [second extension to
21 tolling agreement].) All of the relevant terms remained the same, except the
22 tolling period was extended to April 30, 2010. (*Id.*)
- 23 • In June 2010, PCM -- but not TLHM, Johns or Price -- executed an extension
24 to the tolling agreement. (Astarabadi Decl., Exh. "E" [third extension to
25 tolling agreement].) All of the relevant terms remained the same, except the
26 tolling period was extended to July 15, 2010. (*Id.*)
- 27 • TLHM commenced this action on June 10, 2010.

28 Thus, the true facts are that (1) the only agreement signed by Price was the initial
tolling agreement, which expired on October 30, 2009 (and therefore clearly did not toll the

1 applicable statutes of limitations through the date of filing of TLHM's Complaint as TLHM
2 alleged); (2) Johns did not sign the second or third extensions, so even assuming the first
3 extension was signed by TLHM, the tolling period was only extended as between TLHM and
4 Johns through January 31, 2010 (and not through the date of filing of TLHM's Complaint as
5 TLHM alleged); and, (3) even assuming the first through third extensions were signed by
6 TLHM, TLHM did not live up to its end of the agreement and "forebear filing a petition or
7 complaint or initiating any lawsuit" against PCM, so even in the light most favorable to
8 TLHM, the tolling period was only extended as between TLHM and PCM through the
9 expiration date in the second extension, which was April 30, 2010 (and not through the date
10 of filing of TLHM's Complaint as TLHM alleged).³ As such, TLHM knowingly and
11 willingly misrepresented in its Complaint the facts concerning the parties' respective tolling
12 agreements.

13 Legally, this allegation presents a moot issue as the respective tolling agreements
14 commenced years after all of the applicable statutes of limitations had expired (*see* Section
15 IV.A. of this Motion, *supra*), and the tolling agreement expressly states that "nothing herein
16 shall be deemed to revive any Claims barred as of the Effective Date" (Astarabadi Decl., Exh.
17 "B" [tolling agreement] at ¶ 3). Notwithstanding the legal impact (or lack thereof), TLHM's
18 blatant misrepresentation in its Complaint underscores its bad faith and provides yet another
19 basis upon which this Court should impose the monetary and non-monetary sanctions
20 requested herein.

21 **D. TLHM And Its Counsel Should Be Sanctioned For Their Failure To Cure**
22 **The Complaint And/Or Withdraw The Complaint Altogether.**

23 As required under Code of Civil Procedure section 128.7, counsel for PCM and Price
24 served counsel for TLHM with these moving papers in order to give TLHM and its counsel

25 ³ In addition to TLHM's failure to execute the third extension to the tolling agreement, it would
26 defy logic and longstanding California contract jurisprudence for TLHM to claim that it can
27 enforce the third extension through July 15, 2010 against PCM, but does not have to live up to
28 its end of the agreement and forebear from filing its action until on or after that date (which
TLHM certainly did not do, as it filed its Complaint on June 10, 2010). Hence, even in the light
most favorable to TLHM, the tolling period as between TLHM and PCM could only have been
extended through the time TLHM complied with its terms, which was April 30, 2010.

1 the opportunity to cure the Complaint of the improprieties identified herein. (Astarabadi
2 Decl., ¶ 7, Exh. "F.") TLHM and its counsel, though, did not cure the Complaint within the
3 statutory 21-day "safe harbor" period. (*Id.* at ¶ 8.) Therefore, pursuant to the provisions of
4 Section 128.7, PCM and Price respectfully request that the Court issue the following
5 sanctions:


- 6 1. Monetary sanctions against TLHM and its counsel, jointly and severally, in the
7 amount of the reasonable costs and attorneys' fees incurred by PCM and Price
8 in bringing this Motion, which totals \$18,630 (Astarabadi Decl., ¶¶ 7-11);
- 9 2. For non-monetary sanctions in the form of striking all of the Causes of Action
10 in TLHM's Complaint, as they are all knowingly time-barred;
- 11 3. For non-monetary sanctions in the form of striking the Fifth Cause of Action
12 for Elder Abuse in TLHM's Complaint, as it is frivolous on its face;
- 13 4. For non-monetary sanctions in the form of striking the false contention on
14 page five, lines 27 to 28, of TLHM's Complaint, which specifically states:
15 "Therefore, the statute of limitations has been tolled since that time through
16 the date of the filing of this Complaint;" and,
- 17 5. For such other and further relief as the Court may deem proper.

18 **V. CONCLUSION.**

19 Based on the foregoing, PCM and Price respectfully request that this Court grant this
20 Motion in its entirety.

21 DATED: September 10, 2010

22 Respectfully submitted,
23 MUCH SHELIST DENENBERG
24 AMENT & RUBENSTEIN, P.C.

25 By: 
26 Paul E. Van Hoomissen
27 Jeff J. Astarabadi
28 Attorneys for Defendants PROFESSIONAL
COMMUNITY MANAGEMENT, INC. and JANET
PRICE

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PROOF OF SERVICE

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

On September 10, 2010, I served the foregoing document described as **DEFENDANTS PROFESSIONAL COMMUNITY MANAGEMENT, INC.'S AND JANET PRICE'S NOTICE OF MOTION AND 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; OPENING MEMORANDUM OF POINTS AND AUTHORITIES**, on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as stated on the attached service list.

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

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

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

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

(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 September 10, 2010, at Irvine, California.



Lisa Romines

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