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8 PRICE

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

SEP 16 2010

ALAN CARLSON, Clerk of the Court


BY E. VELOZ

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

BY FAX

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

13 Plaintiff,

14 vs.

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

18 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 DEMURRER TO
PLAINTIFF THIRD LAGUNA HILLS
MUTUAL'S COMPLAINT**

[Cal. Code Civ. Proc., § 430:10]

Date: September 23, 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 THLM is apparently trying to make new law in the area of Elder Abuse. In its
3 Opposition, it literally ignores the fatal impact of its own unequivocal allegations: the money
4 supposedly taken by PCM “belonged to Third Mutual,” was “from Third Mutual’s account,”
5 and was “Plaintiff’s money.” (Complaint at 3:21-23, 11:1-2; Opposition at 2:5-7.) Elder
6 Abuse, however, is clearly limited to situations where the purported abuser took money or
7 property *from an individual elder*. (Cal. Welf. & Inst. Code, § 15610.30; *Estate of Lowrie*
8 (2004) 118 Cal.App.4th 220, 223-25 [detailing the abusive acts against an individual].)¹
9 THLM, though, has alleged it is a corporation (Compliant at 1:25), so the misappropriation of
10 its money cannot satisfy the most important element of Section 15610.30: taking property of
11 “an elder,” which is defined as an individual over 65 years of age or dependent adult. (Cal.
12 Welf. & Inst. Code, § 15610.27.)

13 In a feeble effort to avoid the plain meaning of the statute, THLM first claims that it its
14 members are “elders” and sums taken from *THLM’s accounts* holding *THLM’s money* is equal
15 to taking money from the elders: “the residents of Third Mutual...were the ultimate victims”
16 (Complaint at 11:4-6; Opposition 8:18-22 [funds allegedly taken were “derived from the
17 association fees”].) This argument, however, is supported by neither law nor logic. In fact, it
18 directly contravenes established law in *PacLink Communications Int’l, Inc. v. Superior Court*
19 (2001) 90 Cal.App.4th 958 and *Jones v. H.F. Ahmanson & Co.* (1969) 1 Cal.3d 93, which
20 clearly provide that misappropriation of a corporation’s property does not give rise to an
21 individual cause of action by the corporation’s shareholders or members.²

22 THLM’s argument is also illogical. To adopt THLM’s argument would be to provide
23 an elder abuse claim to any association that has suffered a financial wrong by anyone, where
24 the association has some members over 65. Indeed, under THLM’s asserted operation, any
25 financial wrong committed against any dues based organization such as the American

26 ¹ Indeed, all of the elder abuse cases cited in the Opposition involve abuse against a single
27 individual, not allegations brought by a corporation on behalf of thousands of individuals.

28 ² It is noteworthy that THLM has completely ignored this point in its Opposition. It must
 remain silent, because it has no counterpoint.

1 Association of Retired Persons (AARP) would give rise to an “elder abuse” claim, since the
2 injury to the association “ultimately” harms the members.³ Even financial wrongs against any
3 homeowners’ association where only a few of the members are over 65 would provide an
4 “elder abuse” claim under THLM’s fiction. This, obviously, is not what is intended by the
5 actual statutory scheme.

6 After ignoring the simple facts that allegations of misappropriation of a corporation’s
7 funds cannot satisfy the first element of elder abuse, THLM’s Opposition goes on at length
8 that the policies behind the elder abuse statute encourages broad views of “standing.” The
9 argument, though, ignores the fatal allegations that the money taken did not belong to the
10 elders – only to THLM. (There are no allegations that PCM wrongfully induced THLM
11 members to pay money to THLM with the intention that the money would then be taken.)
12 Indeed, all of the cases cited, as well as the statutes, that delineate the limited circumstances
13 where an association has standing to bring a claim on behalf of its members, carry the same
14 initial requirement: that the individuals on whose behalf the suit is brought can maintain the
15 cause of action themselves. As established, however, the individual members cannot maintain
16 elder abuse under these facts. It appears that this meritless cause of action was only alleged to
17 inflame the members of the Laguna Woods community and provide for an incendiary press
18 release at the outset of the litigation. There are no additional facts that TLHM can allege
19 under the framework already pleaded that can cure this fatal pleading flaw.

20 Likewise, TLHM’s cause of action for fraudulent concealment is also improperly
21 pleaded. While TLHM argues in its Opposition that it does not have to plead facts that are
22 “exclusively” known to the defendants (*see* Opposition at 12:15-13:5), this argument does not
23 change TLHM’s obligation to plead with “particularity” all facts concerning the alleged fraud
24 that TLHM does know (*see, e.g., Wilhelm v. Pray, Price, Williams & Russell* (1986) 186
25 Cal.App.3d 1324, 1331). Here, TLHM simply concludes that the incentive plan was not

26 ³ THLM cannot claim its intended “rewriting” of the elder abuse statute will be limited to
27 associations where all of the members of an association are over 65, because THLM has many
28 members under 65 -- Laguna Woods Village is a community for active adults over 55. THLM
tacitly admits this when it alleges its members “who were over the age of 65” were the
ultimate victims. (Complaint at 11:4.)

1 disclosed by PCM, but utterly fails to plead any facts as to how the concealment was
2 performed, when the information could have been disclosed, when the information should
3 have been disclosed, who could and/or should have disclosed it, and exactly how the
4 individuals (such as Price) are involved. (See Complaint at ¶¶ 7-24, 37-45.) TLHM attends
5 numerous meetings with PCM annually, yet none of these meetings are even mentioned in the
6 Complaint, and there is a ten year “gap” where no facts whatsoever are alleged. (*Id.*) Thus,
7 TLHM’s fraud allegations are clearly not “particular” and this cause of action is therefore
8 untenable as a matter of law.

9 Finally, TLHM has failed to allege any specific facts against Price warranting a
10 departure from the agent immunity doctrine. (See, e.g., *Sanchez v. Lindsey Morden Claims*
11 *Services, Inc.* (1999) 72 Cal.App.4th 249, 255.) Aside from mere legal conclusions, the only
12 facts TLHM has alleged with respect to Price are that it requested information from Price and
13 that she subsequently responded. (Complaint at ¶¶ 17, 19.) TLHM’s attempt to “lump-in”
14 Price with the allegations it has only made against PCM is improper, and since it has not
15 alleged any specific facts demonstrating that Price has personally committed tortious acts
16 resulting in physical damage to person or property, all of TLHM’s claims against Price are
17 barred as a matter of law.

18 **II. LEGAL DISCUSSION.**

19 **A. TLHM’s Opposition Fails To Address The Fatal Flaw In Its Elder** 20 **Abuse Cause Of Action.**

21 1. TLHM Admits That Only Corporate Funds Are At Issue.

22 TLHM’s Opposition does nothing more than recite the defective allegations pleaded
23 in support of its purported elder abuse cause of action. (See Opposition at 6:1-7:23.)
24 Notably, TLHM is forced to admit in its Opposition that “plaintiff has clearly pleaded that
25 defendants have taken plaintiff’s property.” (Opposition at 6:12-13; *see also*, Complaint at
26 11:1-3 [“Defendants...have taken...*Plaintiff’s money* for a wrongful use”] [emphasis
27 added].) This is exactly where TLHM’s cause of action is fatally flawed, as the plaintiff
28 here (TLHM) is a corporation, not an individual that has the right to pursue an elder abuse

1 cause of action.

2 The two central elements of a cause of action for financial abuse of an elder are (1)
3 the plaintiff is an individual who is 65 years of age or older, and (2) the defendant took or
4 appropriated this individual's property. (*See, e.g.*, Cal. Welf. & Inst. Code, §§ 15610.27
5 ["elder" defined] and 15610.30 [financial abuse of an elder]; Cal. Judicial Council Civil
6 Jury Instructions 3100, Financial Abuse -- Essential Factual Elements (2008 Ed.); *see also*,
7 Opposition at 6:5-11 [elements admitted by TLHM].) Here, TLHM admits that it is the
8 plaintiff in this case and only alleges that its money -- *i.e.*, the corporation's money -- was
9 appropriated. (*See* Opposition at 6:12-7:5; Complaint at 11:1-3.) Such allegations clearly
10 do not suffice, as TLHM is not an individual over 65.

11 In addition, as a matter of law, the fact that some of TLHM's members are over the
12 age of 65 does not give rise to any elder abuse claim under TLHM's allegations. TLHM
13 simply concludes in its Opposition that it "stands in the shoes of its elderly members" and
14 that the elderly members of TLHM "were the ultimate victims of Defendants'
15 malfeasance," but TLHM provides absolutely no support for these conclusions and tellingly
16 fails to even address the controlling authority set forth in PCM's and Price's Demurrer.
17 (*See* Opposition at 6:14, 7:1-4; *compare*, Demurrer at 4:26-5:28 [citing *Jones v. H.F.*
18 *Ahmanson & Co.* (1969) 1 Cal.3d 93; *PacLink Communications Int'l, Inc. v. Superior Court*
19 (2001) 90 Cal.App.4th 958].) TLHM's failure to address this authority is a tacit admission
20 that it cannot refute PCM's and Price's Demurrer in this regard. (*See, e.g.*, *Larson v.*
21 *Abdun-Nur* (1931) 118 Cal.App. 269, 271 [where a party made no reply to issues raised in
22 the other party's brief, it must be assumed that the party was not able to contradict them].)

23 Contrary to TLHM's unsupported legal conclusions, and as set forth in PCM's and
24 Price's Demurrer, it is well-settled in California that shareholders or members of a company
25 do not have individual causes of action for damage to the company as a whole. (*See*
26 Demurrer at 4:26-5:28; *Jones v. H.F. Ahmanson & Co.*, *supra*, 1 Cal.3d at 107 ["a
27 **stockholder of a corporation has no personal or individual right of action against third**
28 **persons...for a wrong or injury to the corporation**"] [emphasis added]; *Grosset v.*

1 *Wenaas* (2008) 42 Cal.4th 1100, 1108 [“Because a corporation exists as a separate legal
2 entity, the shareholders have no direct cause of action or right of recovery against
3 those who have harmed it”] [emphasis added]; *PacLink, supra*, 90 Cal.App.4th at 964
4 [“Because members of the LLC hold no direct ownership interest in the company’s
5 assets (Corp. Code, § 17300), the members cannot be directly injured when the
6 company is improperly deprived of those assets”] [emphasis added].)

7 The very same is true here. *None* of the individual members of TLHM have a
8 personal right of action based on any claim that a third party (such as PCM or Price)
9 appropriated money from the corporation. TLHM specifically pleaded that the only funds
10 at issue are its money from its own bank account. (See Complaint at 3:21-23 [“PCM was
11 transferring money to itself from *Third Mutual’s account*...and the money belonged to
12 *Third Mutual*”] and 11:1-3 [“Defendants...have taken...*Plaintiff’s money*”].) Accordingly,
13 TLHM’s arguments that it “stands in the shoes of its elderly members” and that the elderly
14 members of TLHM “were the ultimate victims of Defendants’ malfeasance” are precluded
15 as a matter of law and cannot support its cause of action for elder abuse.

16 Indeed, not only is TLHM’s argument contrary to California law, it also defies
17 logic. If it were true, then every shareholder of every corporation who is over the age of 65
18 would be able to maintain an individual cause of action for elder abuse every time a
19 business tort was allegedly committed against the corporation. This is not the law in
20 California, and clearly not what the elder abuse statutes were designed to protect.

21 2. TLHM Has No Standing To Maintain Its Elder Abuse Claim.

22 TLHM goes to great length in its Opposition to discuss standing of homeowners’
23 associations to assert causes of action on behalf of their members, as well as to discuss the
24 legislative purpose behind the Elder Abuse Act. (Opposition at 7:24-11:13.) However,
25 these arguments are entirely misplaced, as TLHM cannot have standing where none of
26 TLHM’s members have standing to sue in their own right in the first place.

27 As TLHM admits, a representative action can only be maintained by an association
28 where “its members (or some of them) would have standing to sue in their own right.”

1 (Opposition at 8:5; *see also*, *Property Owners of Whispering Palms, Inc. v. Newport Pac.,*
2 *Inc.* (2005) 132 Cal.App.4th 666, 673 [“an association has standing to bring suit on behalf
3 of its members when...its members would otherwise have standing to sue in their own
4 right”].) Here, the critical defect under TLHM’s allegations is that none of TLHM’s
5 members have standing to sue individually for elder abuse under the facts alleged in
6 TLHM’s Complaint. (*See* Section II.A.1. of this Reply, *supra* [shareholders of a
7 corporation have no direct cause of action or right of recovery against any third party who
8 has harmed the corporation].) Thus, since TLHM only alleged that its funds were
9 appropriated, and since TLHM’s members do not -- as a matter of law -- have any
10 individual cause of action or right against PCM or Price under the alleged facts, TLHM
11 does not have standing to sue in a representative capacity for elder abuse because there are
12 no valid underlying elder abuse claims for it to pursue as a “representative.”

13 In addition, TLHM argues that “Standing, for purposes of the Elder Abuse Act,
14 must be analyzed in a manner that induces interested persons to report elder abuse and to
15 file lawsuits against elder abuse and neglect.” (Opposition at 10:23-25.) It is axiomatic that
16 in order for there to be an elder abuse claim for an “interested person” to pursue, there must
17 be underlying elder abuse and/or neglect that is actionable. That aside, “interested persons”
18 under the elder abuse act are to be viewed with the same eye as those who can maintain a
19 probate action. (Cal. Prac. Guide Elder Abuse Ch. 2 at ¶ 2:26 [“as may an ‘interested
20 person’ under Prob. C. § 48”]; *see also*, Cal. Prob. Code, § 48 [“‘interested person’
21 includes...[a]n heir, devisee, child, spouse, creditor, beneficiary, and any other person
22 having a property right in or claim against a trust estate or the estate of a decedent”].)
23 While standing should not be viewed overly restrictively for an elder abuse claim, none of
24 the authorities suggest that the elder abuse claim itself should be broader than established
25 by statute. It is therefore not an invitation for anyone to sue. After all, we all are interested
26 in thwarting elder abuse.

27 ////

28 ////

1 **B. TLHM’s Fraud Claim Is Also Untenable, As It Was Not Pleaded With**
2 **The Requisite Level Of “Particularity.”**

3 In its Opposition, TLHM argues that “[i]t is not appropriate to require a Plaintiff
4 who has been scammed by a Defendant through active concealment to set forth facts
5 detailed facts [sic] that cannot be known until discovery is conducted.” (Opposition at
6 11:20-21 [emphasis omitted].) This argument fails, though, as it is predicated on TLHM
7 having already pleaded all “known” facts with particularity, which it clearly has not done.

8 As discussed in PCM’s and Price’s Demurrer, TLHM simply concludes in its
9 Complaint that the subject incentive plan was “actively concealed and suppressed.” (See
10 Demurrer at 7:18-8:6; see also, Complaint at ¶¶ 39-41.) However, such conclusions do not
11 satisfy the “particularity” pleading requirement for fraud. (See, e.g., *Wilhelm v. Pray,*
12 *Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1331.) To the contrary, TLHM
13 must allege with specificity all of the facts it knows regarding the purported fraud.

14 On this front, TLHM alleges that “PCM devised a scheme in the mid 1990’s
15 whereby PCM paid itself an incentive bonus of 30% of the ‘hard dollar savings’ which
16 allegedly PCM achieved for each of the corporations.” (Complaint at ¶ 10.) TLHM also
17 claims that “the existence of PCM’s incentive plan was not disclosed to the various
18 corporate community associations” and only “[r]ecently, Third Mutual began to uncover the
19 mere existence of the incentive plan.” (*Id.* at ¶¶ 11, 12.) TLHM then jumps to the
20 conclusion that PCM and Price “actively concealed” the incentive plan from TLHM. (*Id.*
21 at ¶ 11.) Under well-settled California law, these allegations are not enough.

22 TLHM has alleged the very serious claim of fraudulent concealment spanning the
23 course of over ten years, and has specifically identified individual defendants (including
24 Price) who allegedly participated in over a decade of concealment, but has failed to allege
25 any facts whatsoever as to how the concealment was performed, when the information
26 could have been disclosed, when the information should have been disclosed, who could
27 and/or should have disclosed it, and exactly how the individuals (such as Price) are
28 involved. (See generally, Complaint at ¶¶ 39-43.) TLHM must be aware of the meetings

1 that were held with PCM and who was present at each, yet not a single meeting from the
2 “mid 1990’s” until “recently” -- over ten years -- is even mentioned. (*See generally*,
3 Complaint.) Does TLHM contend that the incentive plan was never disclosed to it in any
4 meeting whatsoever until “recently,” or is it just the current Board of Directors of TLHM
5 that was unaware of the incentive plan? What about the disclosures during the annual
6 compensation meetings PCM held with TLHM throughout this ten year period? What
7 about the meetings PCM held with TLHM’s Presidents? TLHM’s broad-brush allegations
8 are certainly not “particular.”

9 While TLHM is correct that less specificity is required for matters that are
10 presumably exclusively in the defendants’ knowledge, this exception does not relieve
11 TLHM of its obligations to plead the matters within its own knowledge with particularity,
12 as “fraud involves a serious attack on character and fairness to the defendant demands that
13 he should receive *the fullest possible details* of the charge in order to prepare his defense.”
14 (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197,
15 216 [emphasis added].) Notably, it appears that TLHM intentionally failed to plead specific
16 facts in this regard, as to do so will require TLHM to divulge that it was actually aware of
17 the subject incentive plan for years before the time it alleges in its Complaint. Therefore, as
18 TLHM’s Third Cause of Action for Fraud by Concealment has not been pleaded with the
19 requisite level of “particularity,” the cause of action is defective and untenable as a matter
20 of law. (Cal. Code Civ. Proc., § 430.10(e).)

21 **C. TLHM Has Failed To Allege Any Facts Enabling It To Pursue Janet**
22 **Price Personally.**

23 TLHM cites a plethora of cases in its Opposition in which agents have been held to
24 be personally liable for torts, but all of these cases deal with traditional agency relationships
25 in which specific facts were alleged demonstrating that the agent individually committed
26 tortious acts -- not what TLHM has alleged in this case. (*See, e.g.*, Opposition at 13:8-
27 14:20, citing *Michaelis v. Benavides* (1998) 61 Cal.App.4th 681 [specific facts
28 demonstrating that agent personally made the decisions that resulted in construction

1 defects]; *Crawford v. Nastos* (1960) 182 Cal.App.2d 659 [specific facts demonstrating that
2 real estate agent made fraudulent representation to buyer in connection with real estate
3 transaction]; *Lingsch v. Savage* (1963) 213 Cal.App.2d 729 [specific facts demonstrating
4 that real estate agent failed to disclose known defects in the property to the buyer]; *McNeill*
5 *v. State Farm Life Ins. Co.* (2004) 116 Cal.App.4th 597 [specific facts demonstrating that
6 insurance agent made fraudulent representation to insured concerning policy premiums];
7 *Montoya v. McLeod* (1985) 176 Cal.App.3d 57 [specific facts demonstrating that real estate
8 agent breached fiduciary duties after soliciting money from client for lending purposes].)
9 Indeed, it makes sense for such agents in the traditional sense (such as real estate agents) to
10 be personally liable for their conduct, as these agents are typically the only ones who have
11 direct contact with the injured party and the ones who committed the tortious acts at issue.
12 Such circumstances, however, have not been alleged by TLHM in this case.

13 TLHM alleges no specific facts whatsoever establishing any wrongdoing by Price,
14 but rather, simply “lumps-in” Price with the factual allegations it asserts against PCM.
15 TLHM only alleges that “PCM devised a scheme in the mid 1990’s whereby PCM paid
16 itself an incentive bonus” (Complaint at ¶ 10 [emphasis added]), “the existence of PCM’s
17 incentive plan was not disclosed to the various corporate community associations” (*id.* at ¶
18 11), “When Third Mutual pressed PCM for more details about the existence of the plan and
19 its details, PCM stunningly refused to answer” (*id.* at ¶ 12 [emphasis added]), “PCM was
20 transferring money to itself from Third Mutual’s account” (*id.* at ¶ 13 [emphasis added]),
21 and “Third Mutual repeatedly demanded disclosure from PCM and, in response, PCM
22 repeatedly denied and rejected Third Mutual’s demands” (*id.* at ¶ 14 [emphasis added]).
23 Importantly, the only two factual allegations that specifically mention Price are (1) “The
24 members of Third Mutual continued to press Milt Johns, Janet Price and PCM for more
25 information about the incentive plan” (*id.* at ¶ 17), and (2) “Janet Price informed Third
26 Mutual board member John Paulus in writing that Third Mutual’s share of the savings
27 amounted to \$1,414,071 and that PCM paid itself \$424,233” (*id.* at ¶ 19). Neither of these
28 establish what Price did that was wrong.

1 As set forth in PCM's and Price's Demurrer, a corporation is an entity and cannot
2 act except through its employees and agents. (*See* Demurrer at 8:9-9:2; *see also*, *Kachudis*
3 *v. GTE Sprint Communications Corp.* (N.D. Cal. 1992) 806 F. Supp. 866, 873.) This is
4 why the "agent immunity" rule exists: to shield agents from being pulled into litigation
5 simply because they were carrying out their job duties. (*Id.*; *see also*, *Sanchez v. Lindsey*
6 *Morden Claims Services, Inc.* (1999) 72 Cal.App.4th 249, 255.) Thus, absent specific facts
7 demonstrating that the agent has personally committed tortious acts resulting in injury,
8 "[a]n agent's mere failure to perform a duty owed to his principal may render him liable to
9 third persons who rely on his undertaking where there is physical damage to person or
10 property.... But *where the effect is merely to cause economic loss, the law does not yet*
11 *recognize liability to a third person.*" (*Id.* [emphasis in original].)

12 In this case, TLHM has not alleged any facts demonstrating tortious conduct by
13 Price individually. Instead, the only facts alleged are that TLHM requested information
14 from Price and that she subsequently responded. (Complaint at ¶¶ 17, 19.) These
15 allegations merely demonstrate that Price was working for PCM and doing her job, not that
16 she personally committed any wrongdoing. Therefore, since TLHM has done nothing more
17 than associate Price with PCM, and since it has failed to plead any specific facts
18 demonstrating that Price has personally committed tortious acts, all of TLHM's claims
19 against Price are barred. (Cal. Code Civ. Proc., § 430.10(e).)

20 **III. CONCLUSION.**

21 Based on the foregoing, PCM and Price respectfully request that this Court sustain
22 their Demurrer in its entirety.

23 DATED: September 15, 2010

MUCH SHELIST DENENBERG
AMENT & RUBENSTEIN, P.C.

24
25 By: _____

Paul E. Van Hooymissen
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26 Attorneys for Defendants PROFESSIONAL
27 COMMUNITY MANAGEMENT, INC. and
28 JANET PRICE

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 September 16, 2010, I served the foregoing document described as **DEFENDANT**
6 **PROFESSIONAL COMMUNITY MANAGEMENT, INC.'S AND JANET PRICE'S**
7 **REPLY BRIEF IN SUPPORT OF THEIR DEMURRER TO PLAINTIFF THIRD**
8 **LAGUNA HILLS MUTUAL'S COMPLAINT**, on all interested parties in this action by
9 placing a true copy thereof enclosed in a sealed envelope addressed as stated on the attached
10 service list.

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

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

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

23 **BY OVERNIGHT DELIVERY** - I deposited such envelope for collection and
24 delivery by a well-known overnight delivery service, i.e., Federal Express or Overnite Express
25 with delivery fees paid or provided for in accordance with ordinary business practices. I am
26 "readily familiar" with the firm's practice of collection and processing packages for overnight
27 delivery by Federal Express and Overnite Express for receipt on the same day in the ordinary
28 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 16, 2010**, at Irvine, California.

25
26 
27 _____
28 Lisa Romines

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