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6 THIRD LAGUNA HILLS MUTUAL

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Superior Court of California,  
County of Orange  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

11 THIRD LAGUNA HILLS MUTUAL, a )  
12 California non profit corporation, )  
13 Plaintiff, )  
14 vs. )  
15 PROFESSIONAL COMMUNITY )  
MANAGEMENT, INC., a California )  
16 Corporation, also known as PCM; MILT )  
JOHNS, an individual; JANET PRICE, an )  
17 individual; and DOES 1 to 20, inclusive, )  
18 Defendants. )  
19 )  
20 )

CASE NO. 30-2010-00380231

*Assigned to the Honorable  
Kirk H. Nakamura, Department C-8*

**FIRST AMENDED COMPLAINT FOR:**

1. **BREACH OF CONTRACT**
2. **BREACH OF FIDUCIARY DUTY**
3. **INTENTIONAL CONCEALMENT**
4. **VIOLATION OF BUSINESS & PROFESSIONS CODE §17200**
5. **ELDER ABUSE**
6. **NEGLIGENCE**

**REQUEST FOR JURY TRIAL**

Complaint Filed: June 10, 2010  
Trial Date: None Set

21  
22 COMES NOW, Plaintiff THIRD LAGUNA HILLS MUTUAL and complains and alleges:

23 GENERAL ALLEGATIONS

24 1. Plaintiff THIRD LAGUNA HILLS MUTUAL is and at all relevant times was a  
25 California non-profit corporation subject to the Davis Stirling Act, with its principal place of business  
26 in Laguna Woods, California.

27 2. Plaintiff is informed and believes and thereupon alleges that Defendant  
28

1 PROFESSIONAL COMMUNITY MANAGEMENT, INC., also known as PCM, is, and at all relevant  
2 times was, a California corporation duly organized under the laws of the State of California, with its  
3 principal place of business in Lake Forest, County of Orange, State of California.

4 3. Plaintiff is informed and believes and thereupon alleges that Defendant MILT JOHNS  
5 is an individual whose residence is in Orange County, California.

6 4. Plaintiff is informed and believes and thereupon alleges that Defendant JANET PRICE  
7 is an individual whose residence is in Orange County, California.

8 5. Plaintiff is ignorant of the true names and capacities of the parties herein sued as DOES  
9 1 through 50 inclusive, whether individual, corporate or otherwise, and as such sues said fictitiously  
10 named defendants as DOES. Plaintiff will timely amend its Complaint to reflect the true names and  
11 capacities of said fictitiously named Defendants when such names and capacities are ascertained.

12 6. Plaintiff is further informed and believes and thereupon alleges that Defendants, and each  
13 of them, were at all times relevant herein, the agents, employees, partners, servants, representatives,  
14 successors in interest, alter egos, of each and all of the remaining Defendants and in doing the things  
15 herein alleged, were acting within the course and scope of such relationship, agency, servitude,  
16 employment, representation or affiliation. Specifically, when Plaintiff alleges that any acts were  
17 performed by an agent of PCM, it is specifically intended to include any employee, manager, officer,  
18 director, shareholder, contractor, or any person acting on behalf of, or in concert with, Defendant PCM

19 **THE FACTS**

20 7. This is a dispute between plaintiff Third Laguna Hills Mutual (“Third Mutual”) one of  
21 the corporate homeowners associations at Laguna Woods Village, and the defendants, PCM, Inc. (its  
22 on-site management company) and two of PCM’S agents, Milt Johns and Janet Price.

23 8. This is a case of serious and profound fraud and abuse by defendants PCM and its agents,  
24 Milt Johns and Janet Price. For the better part of four decades, PCM has managed the four non-profit  
25 corporations which make up Laguna Woods Village. PCM has dominated each board, its constituent  
26 members and the members of each association. In particular, PCM’s former general manager, Milt  
27 Johns has proven to be a bully and has successfully exercised extraordinary control over the Third  
28 Mutual Board and its residents.

1           9.       The corporate board members are typically made up of persons who are in their 70s, 80s  
2 and 90s. Some of the board members who might serve as witnesses in this case are actively associated  
3 with the current board, but many are retired, deceased or suffer from fading memories, a fact well  
4 known to the Defendants.

5           10.      Keenly aware of the future “unavailability” of witnesses to testify against them, PCM  
6 devised a scheme in the mid 1990s whereby PCM paid itself an incentive bonus of 30% of the “hard  
7 dollar savings” which allegedly PCM achieved for each of the corporations through its own agents’  
8 “ingenuity” and “extraordinary efforts.”

9           11.      However, the existence of PCM’s incentive plan was not disclosed to the various  
10 corporate community associations, much less the terms of the so-called incentive plan, the criteria used  
11 by PCM to determine what “savings” measures qualified for payment under the plan, and how much  
12 PCM ultimately paid itself on an annual basis. PCM, Milt Johns and Janet Price actively concealed this  
13 information from Third Mutual.

14           12.      Recently, Third Mutual began to uncover the mere existence of the incentive plan.  
15 Indeed, during a meeting at which selected Third Mutual board members were reviewing the following  
16 year’s budget and analyzing the renewal of PCM’s five year agreement, they discovered for the first  
17 time that PCM had some type of undefined incentive plan. When Third Mutual pressed PCM for more  
18 details about the existence of the plan and its details, PCM stunningly refused to answer the board’s  
19 questions, claiming that it was intruding upon PCM’s internal affairs and, in particular, invading the  
20 confidential domain of the employer-employee relationship.

21           13.      Despite the fact that PCM was transferring money to itself from Third Mutual’s account  
22 (as PCM was a signatory on Third Mutual’s bank accounts and therefore a fiduciary of Third Mutual),  
23 and despite the fact that the money belonged to Third Mutual, PCM claimed that the questions about  
24 the incentive plan were of no concern to Third Mutual.

25           14.      Third Mutual repeatedly demanded disclosure from PCM and, in response, PCM  
26 repeatedly denied and rejected Third Mutual’s demands.

27           15.      Still, PCM would not disclose the details of its employee incentive plan, but would only  
28 reveal that one had existed since the mid-1990s.

1           16.       Finally, and only in response to a rising tide of questions and criticism, Milt Johns on  
2 behalf of PCM circulated a short memorandum together with a series of highlighted board meeting  
3 minutes. However, instead of supporting PCM's claim that it had disclosed the existence of the  
4 incentive plan, the minutes only serve to confirm that no such disclosures were ever made to Third  
5 Mutual.

6           17.       The members of Third Mutual continued to press Milt Johns, Janet Price and PCM for  
7 more information about the incentive plan. To that end, members of Third Mutual's board of directors  
8 individually and in combination with each other asked for more information about the alleged incentive  
9 plan.

10          18.       On March 7, 2007, PCM finally relented and disclosed for the first time the amount of  
11 money that it purportedly "saved" Third Mutual over the preceding six years. Starting in 2000 and  
12 ending in 2006, PCM claims to have saved the various corporations at Laguna Woods Village a total  
13 of \$9,911,981. PCM then acknowledged that, of that sum, it had paid itself the sum of \$2,973,594.  
14 This discovery was shocking to Third Mutual's board of directors. Accordingly, Third Mutual's board  
15 of directors continued to demand that PCM make additional disclosures. Specifically, Third Mutual  
16 demanded to know how the sums were calculated, when the payments were made, the criteria used to  
17 determine whether or not a particular savings was eligible for the incentive program and how much  
18 money was paid to PCM on behalf of Third Mutual, and not just the other corporations.

19          19.       Finally, on April 20, 2007, Janet Price informed Third Mutual board member John  
20 Paulus in writing that Third Mutual's share of the savings amounted to \$1,414,071 and that PCM paid  
21 itself **\$424,233** for the period 2000 through 2006. It is this amount, at a minimum, that must be  
22 disgorged from PCM and returned to Third Mutual. But this disclosure still did not answer the  
23 remaining mystery: what were the criteria used to determine whether – in the minds of the decision  
24 makers at PCM – a savings was eligible for the incentive plan or whether it was simply part and parcel  
25 of the management company's contractual obligation to Third Mutual.

26          20.       In or about June, 2007, PCM finally disclosed the "2006 Incentive Plan Results" for  
27 Third Mutual. The one-page Incentive Plan Results sheet identifies those areas where PCM believed  
28 it had used its ingenuity and extraordinary efforts to save money for Third Mutual. In 2006 alone, PCM

1 claims to have saved a total of \$397,793. According to the report, the eligible savings activities  
2 included “centralized irrigation system cost avoidances,” “changes in systems and procedures resulting  
3 in labor savings in paint program, gutter cleaning and street sweeping,” as well as “changes in the meter  
4 designations for laundry rooms.” For these “efforts,” and without informing Third Mutual, PCM  
5 secretly paid itself an extra \$119,338.

6 21. From Third Mutual’s perspective, these activities were naturally part of PCM’s  
7 management responsibility to supervise and manage the association in the most cost-efficient way  
8 possible. PCM, which had control over much of the finances, had a fiduciary obligation to avoid waste  
9 and to spend Third Mutual’s money in a reasonable and cost effective manner. Granting to itself, in  
10 accordance with an unwritten and undisclosed incentive plan, monies over and above its fees for work  
11 which should have been embraced as part of its management responsibilities in the first place, is  
12 unconscionable.

13 22. PCM took advantage of Third Mutual’s older board members by formulating an  
14 incentive plan to pay itself undisclosed sums pursuant to an undisclosed set of criteria in undisclosed  
15 amounts on an annual basis. PCM’s incentive plan lived in darkness and could only survive in the  
16 darkest shadows, where no one would detect PCM’s activities. By July, 2008, and within a few months  
17 of the foregoing revelations, on information and belief, no further incentive payments were made to  
18 PCM, which allegedly abandoned its so-called incentive plan altogether. When subject to scrutiny in  
19 the light of day, the incentive plan could not be defended and PCM’s conduct of concealing the plan  
20 brought down any hope of working out some compromise arrangement even with those most  
21 sympathetic to PCM.

22 23. Through this lawsuit, Third Mutual seeks to recover *at least* the \$424,233 which PCM  
23 claims to have paid its employees from 2000 through 2006. PCM acknowledges that it received  
24 additional sums for the period 1996 through 2000, the amounts for which remain presently unknown.  
25 The total monetary claim, excluding interest and attorneys fees, is in excess of \$500,000.

26 24. Moreover, in an effort to reach a peaceful resolution to this dispute, PCM, Milt Johns  
27 and Janet Price executed a tolling agreement commencing on August 4, 2009. Therefore, the statute  
28 of limitations has been tolled since that time through the date of the filing of this Complaint.

1 **FIRST CAUSE OF ACTION**

2 **BREACH OF CONTRACT**

3 (Against Defendant PCM and Does 1 through 50)

4 25. Plaintiff incorporates by reference, each and every allegation set forth in paragraphs 1  
5 through 24 and realleges those paragraphs as though fully set forth herein.

6 26. Plaintiff entered into a series of written management contracts with PCM. Attached  
7 hereto as Exhibits “A” and “B” are copies of the Management Agreements in effect between 1997 and  
8 2006. Under these Agreements, Third Mutual and Defendants agreed that PCM would limit the  
9 payments to PCM and to its agents to amounts disclosed in the operating budgets and the Management  
10 Agreements. PCM did not disclose in any of these Agreements that it would pay itself or its agents any  
11 incentive payments. Notably, in the 2008 Management Agreement, PCM specifically disclosed the  
12 existence of an incentive plan, but only after PCM had just been caught making such unauthorized  
13 payments to itself. The incentive plan, identified in the 2008 Management Agreement with Third  
14 Mutual, was cancelled in or about July, 2008.

15 27. Plaintiff performed all conditions, covenants, promises and obligations required to be  
16 performed on their part in accordance with the terms and conditions of the Management Agreement  
17 except those conditions, covenants, promises and obligations which Plaintiff was prevented or excused  
18 from performing.

19 28. From approximately 1996 through 2007, Defendants continuously breached the  
20 Management Agreement by granting to itself, in accordance with an unwritten and undisclosed  
21 incentive plan, for work which should have been embraced as part of its management responsibilities.

22 29. As a legal and proximate cause of Defendant’s breach of the Management Agreements,  
23 Third Mutual lost at least \$424,233 which PCM claims to have paid itself from 2000 through 2006.  
24 PCM acknowledges that it received additional sums for the period 1996 through 2000, the amounts for  
25 which remain presently unknown. Plaintiff Third Mutual is entitled to an award of prejudgment interest  
26 in all sums due and owing to Plaintiff. The total monetary claim, excluding interest and attorneys fees,  
27 is in excess of \$500,000.

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1 Defendants, while Defendants siphoned money from Plaintiff's accounts.

2 43. Until Plaintiff became aware of the incentive plan as explained in this Complaint,  
3 Plaintiff was unaware of the concealed true facts, including the existence of the incentive plan, the  
4 criteria used by Defendants to determine whether they should be paid under the incentive plan, and the  
5 amount of money Defendants paid themselves under the incentive plan.

6 44. As a legal and proximate cause of Defendants' intentional and fraudulent misconduct,  
7 Plaintiff suffered damages in excess of \$500,000.00.

8 45. In doing the things herein alleged, said Defendants PCM, Milt Johns and Janet Price  
9 acted willfully and with the intent to cause injury to Plaintiff. Defendants PCM, Milt Johns and Janet  
10 Price were therefore guilty of malice, oppression and fraud in conscious disregard of Plaintiff's rights,  
11 thereby warranting an assessment of punitive damages in an amount appropriate to punish said  
12 Defendants and deter others from engaging in similar misconduct..

13 **FOURTH CAUSE OF ACTION**

14 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200**

15 (Against Defendants PCM, Milt Johns, Janet Price and Does 1 through 50)

16 46. Plaintiff incorporates by reference, each and every allegation set forth in paragraphs 1  
17 through 45 and realleges those paragraphs as though fully set forth herein.

18 47. Starting in or about 1996, Defendants have committed and continue to engage in acts  
19 of fraudulent, unlawful and unfair competition in violation of California Business and Professions Code  
20 §17200, by engaging in the following practices, among others:

21 A. Defendants have led Plaintiff to believe that they were managing Plaintiff's  
22 financial affairs in Plaintiff's best interest when, in fact, Defendants were misappropriating funds to  
23 themselves through a fraudulently concealed incentive program.

24 B. Defendants conspired to exploit Plaintiff through the aforementioned incentive  
25 program.

26 48. The acts and practices set forth above and those acts and practices described in more  
27 detail throughout this Complaint, violate Business and Professions Code §17200 in the following  
28 respects, among others:



1           53. Defendants, and each of them, have taken, misappropriated, obtained and retained  
2 Plaintiff's money for a wrongful use and with the intent to defraud in violation of California *Welfare*  
3 *& Institutions Code* § 15610.30(a).

4           54. The residents of Third Mutual, who were over the age of 65 at the time of the  
5 misconduct, were the ultimate victims of Defendants' malfeasance. Third Mutual is an interested  
6 person and by this action protects the victims of Defendants' abuse.

7           55. Third Mutual's Covenants, Conditions and Restrictions ("CC&Rs"), including Article  
8 IV(2)(c) and Article IV(5), specifically allow plaintiff Third Mutual to retain the services of a Managing  
9 Agent for the efficient operation and maintenance of Third Mutual's common area, its related projects  
10 or to provide services to the Third Mutual's residents. Attached hereto as Exhibit "C" is a true and  
11 correct copy of the Third Mutual CC&Rs in effect at the times relevant to the Complaint.

12           56. The Third Mutual Bylaws, including Article 2, subparagraphs 2.1.2 and 2.1.3, specify  
13 that the Third Mutual is intended to operate as part of a Senior Citizen Housing Development, and in  
14 accordance with the Davis-Stirling Common Interest Development Act, in providing services for  
15 authorized users. Attached hereto as Exhibit "D" is a true and correct copy of the Third Mutual Bylaws  
16 in effect at the times relevant to the Complaint.

17           57. The Management Agreements, including Article I subsections (p) and (r), attached hereto  
18 as Exhibits A and B, require PCM to comply with, and to operate Third Mutual consistent with, the  
19 plaintiff's rules and regulations, including the CC&Rs and Bylaws.

20           58. The Management Agreements further require PCM to perform all of the obligations as  
21 are reasonable, necessary and proper in the discharge of its duties under the agreement.

22           59. The Management Agreements, including Article 3, subparagraph (h), require PCM to  
23 take such action as necessary to comply with all requirements affecting the property that are imposed  
24 by any federal, state, county or municipal authority or regulatory body.

25           60. The Management Agreements also contain implied covenants to comply with Third  
26 Mutual's governing documents, including the CCR&R's and Bylaws, as well as local, state and federal  
27 laws, including the Elder Abuse and Dependent Adult Civil Protection Act.

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1           69. Defendants breached their duty of care owed to Plaintiff by implementing an incentive  
2 program that was detrimental to Plaintiff's financial well-being. Defendants breached their duty by  
3 negligently transferring funds from Third Mutual to PCM and its agents for the payment of bonuses  
4 under an undisclosed incentive plan. Moreover, PCM was negligent in failing to supervise the persons  
5 responsible for creating and implementing the incentive plan.

6           70. Defendants' negligence was a substantial factor in causing Plaintiff damages in excess  
7 of \$500,000.00.

8           WHEREFORE, Cross-Complainant prays for judgment as follows:

9 On the First, Second, Third, Fourth, Fifth, and Sixth Causes of Action:

- 10           1. For damages in the sum of at least \$500,000.00;  
11           2. For prejudgment interest.

12 On the First and Fifth Cause of Action:

- 13           1. For an award of attorneys fees.

14 On the Second, Third and Fifth Causes of Action:

- 15           1. For exemplary damages.

16 On the Fourth Cause of Action:

- 17           1. For restitution in the sum of at least \$500,000.00.  
18           2. For temporary, preliminary and permanent injunction prohibiting Defendants from  
19           misappropriating Plaintiff's funds.

20 On all Causes of Action:

- 21           1. For costs of suit herein incurred; and,  
22           2. For such other and further relief as the court may deem proper.

23 Dated: October 8, 2010

COHON & POLLAK, LLP

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  /s/ Jeffrey M. Cohon  
BY: \_\_\_\_\_  
  JEFFREY M. COHON  
  Attorneys for Plaintiff  
  THIRD LAGUNA HILLS MUTUAL

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**REQUEST FOR JURY TRIAL**

Plaintiff THIRD MUTUAL hereby requests a jury trial on all issues triable by a jury.

Dated: October 8, 2010

COHON & POLLAK, LLP

/s/ Jeffrey M. Cohon

BY: \_\_\_\_\_  
JEFFREY M. COHON  
Attorneys for Plaintiff  
THIRD LAGUNA HILLS MUTUAL