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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10 SOUTH DISTRICT

11 CURT DANIEL NEWNES, individually and
12 doing business as CENTENNIAL
13 PROPERTIES,

14 Plaintiff,

15 vs.

16 FARMERS AND MERCHANTS BANK OF
17 LONG BEACH, a California corporation;
18 FARMERS AND MERCHANTS TRUST
19 COMPANY OF LONG BEACH, a California
20 corporation; and DOES 1 through 20,
21 inclusive,

22 Defendants.

Case No.: NC061713

FIRST AMENDED COMPLAINT FOR:

- 1. Intentional Interference with Prospective Economic Advantage
- 2. Negligent Interference with Prospective Economic Advantage
- 3. Intentional Interference with Contractual Relations
- 4. Violation of Business & Professions Code §17200 *et seq*
- 5. Restitution Based on Unjust Enrichment
- 6. Violation of California Financial Information Privacy Act, Fin. Code §4050 *et seq*

23 Plaintiff complains and alleges:

24 **GENERAL ALLEGATIONS**

25 1. Plaintiff Curt Daniel Newnes (“Newnes”) is, and at all times herein mentioned
26 was, an individual residing in the County of Los Angeles, State of California doing business as
27 Centennial Properties. Plaintiff has complied with all fictitious business name filing
28 requirements.

2. Plaintiff is informed and believes and thereon alleges that Defendant Farmers and
Merchants Bank of Long Beach (“Bank”) is a California corporation with its principal place of
business in the City of Long Beach, County of Los Angeles, State of California.

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1 3. Plaintiff is informed and believes and thereon alleges that Defendant Farmers and
2 Merchants Trust Company of Long Beach (“Trust”) is a California corporation with its principal
3 place of business in the City of Long Beach, County of Los Angeles, State of California.

4 4. Plaintiff is ignorant of the true names of Defendants Does 1 through 20, inclusive,
5 and has therefore sued them by the foregoing names which are fictitious, and is informed and
6 believes and thereon alleges that each of said defendants claims an interest in the property
7 hereinafter described and which is the subject of this action, or is somehow obligated to Plaintiff
8 hereunder, and Plaintiff asks that when their true names are discovered this Complaint may be
9 amended by inserting their true names in lieu of said fictitious names, together with apt and
10 proper words to charge them.

11 5. Plaintiff is informed and believes and thereon alleges that each of the named and
12 Doe defendants are, and at all times herein mentioned were, the agents, servants, employees
13 and/or partners of the other and, in committing the acts as alleges herein, were acting within the
14 course and scope of such agency, service, employment and/or partnership.

15 6. Plaintiff is informed and believe and thereon allege that Does 1 through 10, in
16 doing the things alleged herein have such a unity of interest with each other and with Defendant
17 Bank and Defendant Trust that they are liable for the obligations of their co-Defendants Does 1
18 through 10 and Defendant Bank and Defendant Trust, under the doctrine of *alter ego*, and
19 Plaintiff requests that the Court determine that any liability of one Defendant should be
20 considered and treated by the Court as a liability of the other Defendants.

21 7. Plaintiff formed Centennial Properties in or about 1988 and began performing
22 private property management service, and has therefore been in such business for approximately
23 30 years. In about 1990, Plaintiff obtained a broker’s license and shortly thereafter began to
24 manage properties for outside income property owners, principally located in the Long Beach
25 area.

26 8. Since about 1990 or 1991, Centennial Properties has been a full-service property
27 management firm. It does not merely collect and distribute rents, but assists its customers in
28 improving the value of its properties through the application of analytical tools through which it

1 assists customers in determining how much income to allocate to property improvements versus
2 net income distribution to the customers based on their personal needs. Proper application of
3 these analytical tools not only assists in increasing property values to be the best obtainable in
4 any given market, but increases occupancy, and decreases turnover, thereby maximizing profits
5 and funds available for distribution as well as funds available for further improvement. In
6 addition, Plaintiff's management services have allowed his clients to grow the size of their
7 estates and holdings by allocating funds to further acquisitions during appropriate times in the
8 market, leading to further maximization of wealth.

9 **FIRST CAUSE OF ACTION**

10 Intentional Interference with Prospective Economic Relations

11 (Against All Defendants)

12 9. Plaintiff repeats and realleges the allegations of paragraphs 1 through 8 above as
13 through set forth verbatim herein.

14 10. Plaintiff claims that Defendants intentionally interfered with an economic
15 relationship between him and Regina Cole ("Cole") that probably would have resulted in an
16 economic benefit to Plaintiff.

17 11. Plaintiff and Cole entered into a contract whereby Plaintiff would perform
18 property management services for her in or about 1993. A written contract was entered into in
19 about February 1996 and was for an initial term of 6 months. Due to the passage of time, a copy
20 of the written contract no longer exists.

21 12. Regardless of the initial term of the contract, Cole kept employing Plaintiff to
22 perform property management services until about March 10, 2017. Plaintiff is informed and
23 believes and thereon alleges that because the contract remained in force and was never
24 terminated by either party until such date, it remained in place.

25 13. At the time Cole hired Plaintiff, her husband Bob Cole suffered form Alzheimer's
26 disease and was unable to participate in the care and management of his properties. Cole was
27 herself approximately 65 years of age desired and required professional assistance for property
28 management.

1 14. At the time Cole began turning over properties for plaintiff for management, the
2 real estate economy was in a deep recession, her properties suffered from an extensive need to
3 accomplish deferred maintenance, had high turnover and numerous vacancies, and units were not
4 rented for full market value. Through extensive time and effort, Plaintiff was able to turn Cole's
5 properties profitable by allocating funds to renovations and upgrades, filling the properties with
6 qualified tenants, and was gradually able to increase rents to full market value, thereby not only
7 increasing Cole's income, but providing income for further repairs, renovations and
8 improvements, and was able to increase the value of her properties, thereby redirecting much of
9 the income from higher taxable regular income to lower taxable capital gains. In addition,
10 through Plaintiff's extensive efforts, and despite the harsh real estate recession in the 1990s,
11 Plaintiff was not only able to turn Cole's properties into a profitable, income-generating
12 business, but provided additional income which would be used to reduce debt, increase equity,
13 and increase the size of the estate. At the time Plaintiff took over management of the Cole
14 properties, they had, collectively, approximately \$5,000,000 in equity and Mrs. Cole was
15 receiving approximately \$7,500 per month in draws. By the time of Plaintiff's termination,
16 through Plaintiff's efforts, the Cole properties had more than \$70,000,000 in equity and Mrs.
17 Cole was receiving over \$110,000 per month in draws. Further, While Plaintiff was still handling
18 the Cole properties prior to termination, Plaintiff has issued rent increase notices per their usually
19 rent increase cycle, which rent increases were to take effect immediately after the date of
20 termination.

21 15. Plaintiff successfully managed Cole's properties for approximately 25 years and
22 was able to keep the properties profitable, updated, and filled with qualified tenants even through
23 the occurrence of several real estate recessions during that time. Cole remained with Plaintiff
24 and continued to use Plaintiff's property management services both through good and bad
25 economic times resulting in the creation of extreme value and equity for Cole and consistent and
26 significant income for Plaintiff amounting to over \$20,000 per month by the time of termination.
27 Due to this mutually successful relationship during both good and bad times, Plaintiff had a
28

1 reasonable expectation that the economic relationship between him and Cole would continue into
2 the future were it not interfered with.

3 16. Defendants, and each of them, knew of Plaintiff's relationship with Cole. Plaintiff
4 at all times herein relevant was a customer of Bank with extensive deposits at the Bank not only
5 in Plaintiff's personal name but in the name of Centennial Properties, including property
6 management accounts owned by Centennial Properties and placed at the Bank used for the
7 purpose of providing property management services for its customers, and used for the purpose
8 of collecting and disbursing customer income, as well as payment of fees to Plaintiff. Plaintiff is
9 informed and believes and thereon alleges that Defendant Trust was at all times relevant the
10 successor trustee of Cole's personal revocable trust, and would become, on information and
11 belief, the trustee of Cole's trust upon her death or incapacity (Bob Cole passed in or about
12 2004).

13 17. At all times relevant, Defendants and each of them had access to Plaintiff's
14 accounts at the Bank and employees of Defendants and each of them had or gained access to
15 such accounts and the information contained therein. Through mutual employees both the Bank
16 and the Trust had access to, and availed themselves of access to, non-public personal information
17 contained in Plaintiff's accounts at the Bank. Defendants used and disclosed such non-public
18 personal information in order to obtain termination of the Cole contract with Plaintiff and obtain
19 the benefits of such contract for themselves. In doing so, Defendants engaged in unfair
20 competition as well as a violation of California Financial Code §4050 *et seq.* by using non-public
21 personal information to their benefit and advantage to obtain termination of the Cole contract
22 with Plaintiff and to have the contract transferred to themselves. Defendants conduct was
23 additionally wrongful as Cole, at the time of termination, was elderly, approximately 89 years
24 old, and susceptible to their suggestions and were able to convince her to terminate her
25 previously successful relationship with Plaintiff and switch her relationship for property
26 management to Defendants. Plaintiff is informed and believes that Defendants were able to
27 accomplish this based in part upon their ability to learn Plaintiff's fee and cost structure through
28 the above-mentioned non-public personal information, whereupon they were able, on

1 information and belief, to convince Regina Cole that Plaintiff's services were "too expensive"
2 and were able to convince her that Defendants could provide the same services on a more cost
3 effective basis. Defendants' conduct was not only wrongful as to Plaintiff, but wrongful as to
4 third parties, namely Cole, in that Defendants do not, and are not capable of, providing the same
5 or similar services as those provided by Plaintiff in that they had no prior experience in the
6 property management business and did not perform, and do not perform, the same level of
7 services that Plaintiff performed for Cole prior to their taking the Cole account away from
8 Plaintiff, and Defendant Trust was not and is not licensed by the Department of Real Estate
9 ("DRE") to provide property management services, and concealed its unlawful unlicensed status
10 from Cole. Plaintiff is informed and believes and therein alleges that performance of Cole's
11 portfolio and net income (net of fees) would have been superior with Plaintiff's continued
12 management than she is receiving now.

13 18. By engaging in the above-alleged conduct, Defendants intended to disrupt
14 Plaintiff's relationship with Cole, or knew that disruption of the relationship was certain or
15 substantially certain to occur.

16 19. The conduct of Defendants as alleged above did in fact cause plaintiff's
17 relationship with Cole to be disrupted and caused her to terminate her relationship with Plaintiff
18 despite a profitable 25-year history. At the behest of Defendants, the contract with Cole was
19 terminated on or about March 10, 2017. The properties under Plaintiff's management were
20 transferred to Defendants for management on or about April 30, 2017.

21 20. Plaintiff was harmed by the disruption of its economic relationship with Cole and
22 has been deprived of extensive and ongoing income according to proof at time of trial but not
23 less than \$20,000 per month. Plaintiff is informed and believes and thereon alleges that the
24 wrongful disruption of its economic relationship with Cole has caused it past and future
25 economic loss which is value in excess of \$5,000,000. In addition, in doing the acts herein
26 alleged, Defendants acted with malice, oppression or fraud, and Plaintiff therefore is entitled to
27 punitive damages according to proof at time of trial.

28 21. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

1 **SECOND CAUSE OF ACTION**

2 Negligent Interference with Prospective Economic Relations

3 (Against All Defendants)

4 22. Plaintiff repeats and realleges the allegations of paragraphs 1 through 21 above as
5 through set forth verbatim herein.

6 23. Plaintiff and Cole were in an economic relationship that probably would have
7 resulted in a future economic benefit to Plaintiff.

8 24. Defendants knew or should have known of this relationship.

9 25. Defendants knew or should have known that this relationship would be disrupted
10 if they failed to act with reasonable care.

11 26. Defendants failed to act with reasonable care.

12 27. Defendants engaged in wrongful conduct by engaging in the acts alleged in
13 paragraph 17 above and incorporated by reference in this cause of action.

14 28. The relationship between Plaintiff and Cole was disrupted.

15 29. Plaintiff was harmed and has lost past and future income valued in excess of
16 \$5,000,000.

17 30. Defendants' wrongful conduct was a substantial factor in causing Plaintiff's harm.

18 **THIRD CAUSE OF ACTION**

19 Intentional Interference with Contractual Relations

20 (Against All Defendants)

21 31. Plaintiff repeats and realleges the allegations of paragraphs 1 through 30 above as
22 through set forth verbatim herein.

23 32. In or about March 2017 a contract existed between Plaintiff and Cole.

24 33. Defendants knew of the contract.

25 34. Defendants acted intentionally to induce and did induce a disruption of the
26 contractual relationship between Plaintiff and Cole.

27 35. Defendants intended to disrupt the performance of the contract or knew that
28 disruption of performance was certain or substantially certain to occur.

1 **FIFTH CAUSE OF ACTION**

2 Restitution Based on Unjust Enrichment

3 (Against All Defendants)

4 45. Plaintiff repeats and realleges the allegations of paragraphs 1 through 44 above as
5 through set forth verbatim herein.

6 46. As a proximate result of Defendants' unlawful, fraudulent and unfair conduct,
7 Defendants have obtained revenues by which they became unjustly enriched at the expense of
8 Plaintiff.

9 47. Under the circumstances alleged herein, it would be unfair and inequitable for
10 Defendants to retain the profits they have unjustly obtained at the expense of Plaintiff.

11 48. Accordingly, Plaintiff seeks an order establishing Defendants as constructive
12 trustees of the profits that served to unjustly enrich them, together with interest during the period
13 in which Defendants have obtained such profits, and requiring Defendants to disgorge those
14 profits to Plaintiff in a manner to be determined by the Court.

15 **SIXTH CAUSE OF ACTION**

16 Violation of California Financial Information Privacy Act, Fin. Code §4050 *et seq*

17 (Against All Defendants)

18 49. Plaintiff repeats and realleges the allegations of paragraphs 1 through 48 above as
19 through set forth verbatim herein.

20 50. In enacting Cal. Fin. Code §4050 *et seq*, the California Legislature stated that it
21 “intends for financial institutions to provide their customers notice and meaningful choice about
22 how consumers’ non-public personal information is shared or sold by their financial
23 institutions.” Id. §4051(a). The Legislature also stated that its intent was “[t]o further achieve ...
24 control for California consumers by providing customers with the ability to prevent the sharing
25 of financial information among affiliated companies through a simple opt-out mechanism via a
26 clear and understandable notice provided to the consumer.”

27 51. According to the California Financial Information Privacy Act, “[a]n entity that
28 received non-public personal information from a financial institution under this division shall not

1 disclose this information to any other entity, unless the disclosure would be lawful if made
2 directly to the other entity by the financial institution.” Cal. Fin. Code §4053.5. An entity that
3 negligently discloses or shares non-public personal information shall be held liable for harm
4 resulting therefrom. *Id.* at §4057.

5 52. By handing over Plaintiff’s private personal and financial information, including
6 information on its costs and charges, Defendant Bank recklessly failed to “protect the
7 unauthorized access” of Plaintiff’s personal financial records. Federal and State law along with
8 its own policies was not a sufficient deterrent to stop Defendant Bank and its employees from
9 handing over Plaintiff’s private personal and financial information, which both Bank and Trust
10 and their mutual employees were seeking to wrongfully use to the financial detriment of
11 Plaintiff.

12 53. Section 4053(a)(1) of the statute makes it unlawful for a financial institution to
13 disclose to or share a consumer’s non-public personal financial information with any non-
14 affiliated third party without first obtaining consent. The statute requires a financial institution to
15 obtain a consent acknowledgement authorizing the financial institution to disclose or share non-
16 public personal information. Section §4053(a)(2) further clarifies that the consent must be given
17 via a form, statement, or writing that meets all of the following criteria: the form must not be
18 attached to any other document; it must be dated and signed by the consumer; and it must clearly
19 and conspicuously disclose that “by signing, the consumer is consenting to the disclosure to
20 nonaffiliated third parties of nonpublic personal information pertaining to the consumer.”

21 54. Plaintiffs never received any such form, statement, or writing from Defendant
22 Bank regarding the disclosure of Plaintiff’s private financial information to third parties . Despite
23 the failure to follow the express guidelines of this statute, Defendants nevertheless released
24 private financial information to third parties.

25 55. The statute states that “[t]he civil penalties provided for in this section shall be
26 exclusively assessed and recovered in a civil action brought in the name of the people of the
27 State of California.” Cal. Fin. Code §4057(e). It does not preclude an individual from seeking
28 relief against a financial institution that so egregiously violated this statute. Under the terms of

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1 this statute, Plaintiff is a person that should have a right to hold Defendants accountable for their
2 wrongful conduct.

3 56. Plaintiff thus asserts that the Defendants' disclosure of non-public personal
4 information and personally identifiable financial information constituted violations of the
5 California Financial Information Privacy Act.

6 57. Consequently, Plaintiff may recover damages under California Financial Code
7 §4507(a) according to proof and such further relief as is set further below in the section
8 captioned Prayer for Relief which is by this reference incorporated herein.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays judgment against Defendant as follows:

- 11 1. For general and special damages according to proof at trial but not less than
12 \$5,000,000;
- 13 2. For exemplary damages according to proof at time of trial as to the First and
14 Third Causes of Action;
- 15 3. For statutory damages according to proof at time of trial as to the Fourth and
16 Sixth Causes of Action;
- 17 4. For restitution and/or an order requiring disgorgement of monies wrongfully
18 obtained as a result of Defendants' wrongful and unlawful conduct, and particularly as to the
19 Fourth Cause of Action;
- 20 5. For pre-judgment and post-judgment interest at the legal rate;
- 21 6. For costs of suit herein incurred; and
- 22 7. For such other and further relief as the Court deems just and proper.

23 DATED: March 21, 2019

CURD, GALINDO & SMITH, L.L.P.

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25 

26 JOSEPH D. CURD
27 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is: 301 East Ocean Blvd., #1700, Long Beach, CA 90802.

On March 21, 2019, I served the following document(s): **FIRST AMENDED COMPLAINT; SUMMONS ON FIRST AMENDED COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Michael Leight
Michelle Leight
Law Offices of Michael Leight
6700 E. Pacific Coast Highway #237
Long Beach CA 90803

X (BY FIRST CLASS MAIL) I deposited the above envelope(s) in the mail, at Long Beach, California. The envelope(s) was mailed with postage thereon fully prepaid. I am readily familiar with this business's practice for collection and processing of correspondence for mailing, and that correspondence will be deposited with the United States Postal Service on the date set hereinabove in the ordinary course of business at Long Beach, California.

(BY ELECTRONIC MAIL) I transmitted the document by electronic mail to the e-mail address for the addressee.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.


(BY OVERNIGHT COURIER) I caused the above-referenced document(s) to be delivered to USPS for Priority Mail delivery to the above address(es).

(BY FACSIMILE MACHINE) The foregoing document was transmitted to the above named person(s) by facsimile from (562) 435-1891 before 5:00 p.m. on said date and transmission was reported as complete and without error.

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 March 21, 2019 at Long Beach, California.



Melanie Palmer