

San Francisco Superior Courts
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Feb-06-2007 3:00 pm

Case Number: CGC-07-460255

Filing Date: Feb-06-2007 2:54

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COMPLAINT

ROSS J BOYERT VS. SAKTI INTERNATIONAL CORPORATION, INC., A et al

001C01673134

Instructions:

Please place this sheet on top of the document to be scanned.

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

SAKTI INTERNATIONAL CORPORATION, INC., a California corporation;
WALLYSON'S, INC.; a Washington Corporation; and DOES 1-20, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTA DEMANDANDO EL DEMANDANTE):**

Ross J. Boyert, an individual

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco
Civil Division

400 McAllister Street, Room 103 San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Patricia G. Rosenberg San Francisco, California, 94108
Haas & Najarian, LLP 415-788-6330

58 Maiden Lane, Floor 2

DATE: FEB 06 2007
(Fecha)

Gordon Park-Li (Secretario)

Clerk, by

CASE NUMBER
(Número del Caso): 07-460255

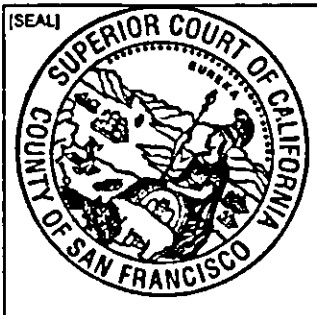
 , Deputy
Deborah Stepe (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación uso el formulario Proof of Service of Summons, (POS 010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an Individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Patricia G. Rosenberg 154820
Haas & Najarian, LLP
58 Maiden Lane, Second Floor
San Francisco, CA 94108
TELEPHONE NO.: (415) 788-6330 FAX NO.: (415) 391-0555
ATTORNEY FOR (Name): Plaintiff, Ross J. Boyert

FOR COURT USE ONLY
FILED
San Francisco County Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister Street, Room 103
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME: Civil Division

FEB 06 2007
GORDON PARK-LI, Clerk
By: *Deborah Steppe*
DEBORAH STEPPE, Deputy Clerk

CASE NAME: Boyert v. Sakti, et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **CC-07-460255**
JUDGE:
DEPT.:

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <input type="checkbox"/> Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <input type="checkbox"/> Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <input type="checkbox"/> Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<input checked="" type="checkbox"/> Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <input type="checkbox"/> Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <input type="checkbox"/> Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) <input type="checkbox"/> Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <input type="checkbox"/> Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Type of remedies sought (check all that apply):
a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **Eleven**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 6, 2007

Patricia G. Rosenberg
(TYPE OR PRINT NAME)

Patricia G. Rosenberg
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this a complex case, this cover sheet will be used for statistical purposes only.

FEB 06 2007

GORDON PARK LI, Clerk
BY: *Deborah Stegge*
DEBORAH STEPPE, Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

JUL 06 2007 -9⁰⁰AM

SUMMONS ISSUED

1 LOUIS N. HAAS (039133)
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4 58 Maiden Lane, 2nd Floor
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5 Attorneys for Plaintiff,
6 Ross J. Boyert

DEPARTMENT 212

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA – UNLIMITED JURISDICTION
8 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

10 ROSS J. BOYERT, an individual

Case No. CGC-07-460255

11)
12) Plaintiff,

VERIFIED COMPLAINT FOR DAMAGES
FOR:

13 v.

1. Breach of Oral Contract
(Employment termination without cause)
(v. Sakti International)
2. Breach of Oral Contract
(Employment termination without cause)
(v. Wallyson's)
3. Violation of Labor Code Section 201
(Failure to pay earned compensation)
(v. Sakti International)
4. Anticipatory Breach of Oral Contract
(Failure to pay compensation)
(v. Sakti International)
5. Anticipatory Breach of Oral Contract
(Failure to pay compensation)
(v. Wallyson's)
6. Breach of the Covenant of Good Faith
and Fair Dealing (v. Sakti Int'l)
7. Breach of the Covenant of Good Faith
and Fair Dealing v. Wallyson's);
8. Fraud (Promise without intent to perform)
(v. Sakti)
9. Fraud (Promise without intent to perform)
(v. Wallyson's)
10. Violation of B&P Code Section 17200
(v Sakti)
11. Violation of B&P Code Section 17200
(v. Wallyson's)

15 SAKTI INTERNATIONAL CORPORATION,
16 INC., a California corporation; WALLYSON'S
INC., a Washington corporation; and DOES 1-20,
17 inclusive,

18)
19) Defendants.

JURY TRIAL DEMANDED

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1 By this verified Complaint, Plaintiff ROSS BOYERT (hereinafter referred to as "Boyert" or
2 "Plaintiff"), alleges:

3 I

4 GENERAL ALLEGATIONS

5 1. Plaintiff is an individual and resident of the County of San Mateo, State of California.

6 2. Defendant SAKTI INTERNATIONAL CORPORATION, INC. (hereinafter referred to
7 as "Sakti") is a California corporation with its principal place of business in San Francisco, California,
8 and was formed in 1987 for the sole purpose of holding and managing real estate. At the time of its
9 formation, Sakti held one asset, namely, commercial real property located at, and commonly known as,
10 260 California Street, San Francisco, California.

11 3. At the time of its incorporation on March 9, 1987, Sakti's designated Chief Executive
12 Officer, Secretary and Chief Financial Officer, was Mahmoud Taib. Plaintiff is informed and believes,
13 and thereon alleges, that sometime before 1994, Ybhg Dato Sri Sulaiman Abdul Rahman Taib became
14 the sole officer and director of Sakti. Ybhg Dato Sri Sulaiman Abdul Rahman Taib is hereinafter referred
15 to as "Rahman".

16 4. Plaintiff is informed and believes, and thereon alleges, that the original members of
17 Sakti's Board of Directors were Onn Mahmud, Arip Mahmud, and Mahmoud Taib, and that Sakti's
18 shareholders were Mahmoud Taib, Onn Mahmud, Jamilah Taib, Arip Mahmud and Rahman.

19 5. W.A. BOYLSTON, INC. (hereinafter referred to as "Boylston"), is a California
20 corporation, formed in 1991 as an entity to hold and manage a single asset, namely, residential real
21 property located at, and commonly known as, 1111 Boylston Street, Seattle, Washington.

22 6. W.A. EVERETT INC. (hereinafter referred to as "Everett"), is a California corporation,
23 formed in 1991 as an entity to hold and manage a single asset, namely, residential real property located
24 at, and commonly known as, 2222 Everett St., Seattle Washington.

25 7. SAKTI INTERNATIONAL HOLDINGS, INC. (hereinafter referred to as "Sakti
26 Holdings"), is a California corporation, located in San Francisco, California, formed in 1993 but now
27 suspended. Plaintiff is informed and believes, and thereon alleges, that Sakti Holdings was formed for
28 the purpose of holding all of the shares of Sakti, Boylston and Everett, and that all such shares were in

1 fact transferred to Sakti Holdings, whose shareholders were, and still believed to be, Mahmoud Taib,
2 Onn Mahmud, Jamilah Taib-Murray, Arip Mahmud, and Rahman.

3 8. SOGO HOLDINGS, INC. (hereinafter referred to as "Sogo"), is an offshore company
4 located in the Channel Islands. Plaintiff is informed and believes, and thereon alleges, that all of the
5 shares of Sakti Holdings are presently held by Sogo.

6 9. Defendant WALLYSON'S, INC. (hereinafter referred to as "Wallyson's") is a
7 Washington corporation, with its principal place of business located in the City and County of San
8 Francisco. Plaintiff is informed and believes and thereon alleges that Wallyson's is an entity holding and
9 managing a single asset, namely, 1110 Third Avenue, Seattle, Washington (hereinafter referred to as "the
10 Third Avenue building").

11 10. Plaintiff is informed and believes, and thereon alleges, that Rahman was at all times
12 alleged relevant herein, the sole officer, sole director, and indirect shareholder of Wallyson's.

13 11. Plaintiff is informed and believes and thereon alleges that RODINMASS, INC.
14 (hereinafter referred to as "Rodinmass"), is an offshore corporation located in the British Virgin Islands.
15 Plaintiff is informed and believes, and thereon alleges, that Rodinmass is a direct shareholder of
16 Wallyson's.

17 12. In December 1994, Sakti hired Boyert as its Vice President ("VP"), whose duties were
18 to manage and renovate 260 California Street, oversee the on site property manager for the Third Avenue
19 building, and any additional properties that Sakti might acquire.

20 13. Boyert's compensation as Sakti's VP consisted of (a) a base annual salary of \$75,000,
21 (b) a commission of 1% on each purchase and sale of new property (which was later increased to 2%),
22 and (c) a leasing commission of 10% of the total leasing commissions payable for a new tenant and 5%
23 of total leasing commissions payable on a renewal tenant, thereafter in 1997, these amounts were
24 changed to provide a leasing commission equal to 50% of the listing broker commission rate and when
25 Boyert negotiated leases without a listing broker, a commission equal to 50% of the procuring broker's
26 commission rate, and (d) a financing fee equal to 1% for each financing package obtained for new and
27 existing properties. This compensation package was structured to take into consideration Sakti's
28 investment and property acquisition plans, which would generate substantial acquisition, disposition and

1 leasing commissions. Boyert relied on Sakti's representations of substantial future investments of capital
2 and planned acquisitions, when deciding to accept Sakti's offer of employment, and in particular,
3 accepting a salary at a rate well below that enjoyed by VPs of similar skill and situation.

4 14. No written employment contract was entered into as between Sakti and Boyert. However,
5 by virtue of the manner in which the bulk of his compensation would be earned, as well as upon
6 representations verbally expressed to him by Rahman, it was agreed that Boyert's employment at Sakti
7 could not be terminated except for good cause.

8 15. In 1998, Boyert became employed by Defendant Wallyson's as the on-site property
9 manager of the Third Avenue building. Boyert's annual compensation for this responsibility was
10 \$30,000, which was one half of the salary of the previous on-site property manager.

11 16. In 1999, Wallyson's and Sakti jointly approached Boyert to expand his employment
12 responsibilities in exchange for additional incentive compensation, as further described in Paragraphs
13 17 through 19 hereinbelow.

14 17. As to Sakti, Boyert's initial duties involved the oversight of those day to day operations
15 of the company typically handled by a VP. This initially involved terminating existing property
16 management contracts, creating an operating company to assume the property management function, and
17 commencing a planned \$7,750,000 renovation of its single property (260 California Street), which at the
18 time of Boyert's hiring, was 40-50% vacant. Boyert was able to commence renovations and obtain
19 tenants for 260 California by (a) using the \$62,000 in existing capital for leasing and renovation
20 expenses, and (b) though mired in a depressed lending market, obtaining financing. Between September,
21 1995 and December 1997, Boyert was able to obtain five separate loans for 260 California to keep the
22 construction and leasing activity going despite Sakti informing Boyert that no additional equity capital
23 or investment funds would be provided, either for the renovation or to acquire new properties. It was
24 during this time that the original design and construction teams, headed by Mr. Sean Murray ("Murray"),
25 the brother-in-law of Rahman by virtue of Murray's marriage to Jamilah Taib-Murray, were terminated.
26 The renovation of 260 California was completed in early 1997 and the remaining floors were renovated
27 as they became vacant during 1997, 1998 and 1999. However, 260 California was in desperate need of
28 cash because payments for the final construction costs were overdue and the contractor was threatening

1 to lien the property. Sakti also was delinquent in paying its property taxes which, if left unpaid, would
2 cause a default in the loan agreement for 260 California. In early 1998, in recognition of Boyert's
3 achievements and exemplary performance of his duties, Rahman promoted Boyert from VP to Executive
4 Vice President ("Exec. VP") and Chief Operating Officer ("COO").

5 18. As to Wallyson's, Boyert began his management duties of the Third Avenue building with
6 Northern Life as a long-term tenant, and from whom Wallyson's had purchased the building in the late
7 1980s, and who had ten months left on its lease. At that time, the Third Avenue building was seriously
8 aged and had no useable interior improvements. Northern Life decided not to renew its lease, forcing
9 Boyert to secure a major tenant in a short period of time. Boyert found a tenant in the General Services
10 Administration (hereinafter referred to as "GSA"), and specifically for a lease of the property to the
11 Federal Bureau of Investigation ("the FBI") for its Northwest Regional Headquarters. The leasing of the
12 Third Avenue building to the GSA was done without an outside broker, saving Wallyson's
13 approximately \$2 million in leasing commissions. The GSA also required its tenant improvements to
14 be constructed and completed by November 1, 1999 or else it would terminate its lease. The construction
15 schedule between January and October of 1999 included gutting the building, replacing all major
16 systems, seismic upgrades, and all interior improvements. At this time Boyert, because Wallyson's
17 would not invest money of its own, secured 100% construction financing without equity capital. The
18 construction loan required the approval of construction budget estimates by the lender and acceptance
19 by the GSA of its tenant improvement costs. Furthermore, in early 1999, the GSA expanded its original
20 lease from 80% to 99% of the Third Avenue building. The GSA refused to sign the Lease Expansion
21 Agreement and the lender required that lease expansion documentation be signed prior to funding
22 construction costs. At about the same time, Conning Asset Management Company, the initial lender for
23 both the construction and permanent loan for the Third Avenue building, substantially changed the terms
24 of its permanent loan, which led to its rejection. The construction loan was linked to the permanent loan
25 and at this time \$1,000,000.00 of overdue construction bills needed to be paid. Due to the rejection of
26 the permanent financing by Conning, Boyert proceeded with the Union Labor Life Insurance Company
27 to arrange for a permanent loan on the Third Avenue building. At the same time, Boyert identified a
28 different lender to provide bridge financing for the difference between the construction loan and the

1 permanent loan. Boyert was also negotiating with the GSA to sign the Lease Expansion Agreement and
2 complete its review of the construction budget and cost allocations, which had to be resolved prior to
3 obtaining any funds from the construction loan. Boyert was ultimately able to successfully obtain
4 permanent and bridge financing commitments, but Wallyson's did not have the funds required to pay
5 the lender's commitment fees. To resolve this dilemma, Boyert was able to borrow \$100,000.00 from
6 Sequoia Bank to pay the construction lender loan commitment fee of \$123,000.00. More money was
7 borrowed to pay the permanent lender its commitment fees of \$183,750.00. Because the project was so
8 overextended, the full deposit could not be paid. Nevertheless, Boyert convinced the lender to take a
9 promissory note for the unfunded portion of \$58,750.00. By this time, the architect liened the Third
10 Avenue building for nonpayment of \$1,000,000.00 in fees and the construction costs were nearly
11 \$5,000,000.00. At the same time, Wallyson's was 30 days behind on its Prudential loan payment for the
12 Third Avenue building and a tax payment was overdue of \$74,000.00 which, if unpaid, would create a
13 default with the lender.

14 19. With 260 California and the Third Avenue building both in financial straits, for the
15 reasons above-described, Boyert and Rahman met in April 1999 to discuss the manner in which to
16 address them. Rahman repeatedly told Boyert there was no cash to be infused into either Sakti or
17 Wallyson's, bankruptcy was not an option, and suggested borrowing from Boylston. Boyert expressed
18 his view that the problems faced by Wallyson's and Sakti could not be resolved with those limitations.
19 Rahman implored Boyert to try to resolve the problems within those parameters. As incentive for Boyert
20 to remain an employee of both Sakti and Wallyson's, Rahman offered Boyert the responsibility to
21 manage all aspects of both operations, and that commensurate with such greater responsibilities, with
22 additional compensation in the form of (a) commissions and fees from Wallyson's of the same type and
23 amount as Boyert had in connection with Sakti operations and (b) one-half the value of the net proceeds
24 of any future sale of 260 California and one-half the value of the net proceeds of any future sale of the
25 Third Avenue building, with the determination of whether and when to sell either property remaining
26 in the discretion of the Board of Directors of Wallyson's and Sakti. Boyert accepted Rahman's offer and
27 immediately took over the operations of both companies.

28 20. Having acquired authority from Rahman to use equity in 260 California to assist in

1 resolving Wallyson's problems, Boyert obtained a loan commitment from American California Bank
2 for a \$150,000 unsecured line of credit to Sakti, which was used to pay Wallyson's loan commitment
3 fees, and obtained a second mortgage on 260 California principally for the benefit of Wallyson's.
4 Rahman's signature was required and obtained for this unsecured line of credit. When Rahman signed
5 the Conning loan documents, to facilitate resolution of the then pressing problems, Rahman and Boyert
6 agreed there would be no cash distributions or capital withdrawals from either Sakti or Wallyson's
7 directly for the benefit of the nominal owners of the two corporations.

8 21. Boyert ultimately was able to resolve the problems with Wallyson's without bankruptcy
9 by convincing the contractors to continue on the Third Avenue building until funding of the construction
10 loan. Boyert was also able to successfully negotiate all lease expansion and cost allocation issues with
11 the GSA, as well as the construction budget issues. Boyert was able to overcome a crucial impasse
12 regarding the final budget approvals, resulting in the issuance of a Notice to Proceed (a condition
13 precedent for the construction lender), and Boyert prevailed in negotiations with the GSA regarding the
14 tenant improvement cost allocations. Boyert completed the Third Avenue Building construction project
15 on time and on budget.

16 22. Boyert also successfully resolved the 260 California funding issues without any recording
17 of mechanics' liens on the property.

18 23. Since meeting with Rahman in December 1999, for the purpose of signing the permanent
19 loan documentation and paying Boyert his incentive compensation, Rahman has not met with Boyert and
20 they have spoken to each other only two to three times by telephone (occurring sometime between April
21 1999 and 2003), which only consisted of Rahman's acknowledging the call. Since April 1999, Boyert
22 managed all assets of Sakti and Wallyson's himself in all aspects of operations, preservation of assets,
23 improvements, and financial decisions and kept Rahman informed of all significant activities. Boyert
24 submitted detailed budget worksheets annually which were sent to him at odd destinations in Asia at
25 Rahman's instructions and approved by Rahman. Boyert additionally took on the responsibility of
26 signing the tax returns for Sakti and Wallyson's.

27 24. In February 2005, Murray, with whom Boyert had not heard since Murray was fired from
28 the 260 California renovation project, called Boyert stating that he was assuming control of Sakti. This

1 was followed by correspondence from Murray on September 14, 2005 reiterating this fact. Boyert
2 received no supporting documents to verify this claim. Having a financial interest in the properties
3 pursuant to his compensation package, Boyert continued to manage the now profitable operations, but
4 was concerned about the purported transfer of ownership, because the GSA lease of the Third Avenue
5 building contained a provision that if the GSA objected to any transfer of ownership or control of
6 Wallyson's, it could terminate its lease and make the landlord, Wallyson's, responsible for (a) any rent
7 differential until 2019, (b) moving costs, and (c) legal and administrative costs. Boyert therefore
8 continued to run the operations of Sakti and Wallyson's, and between October 2005 and February 2006,
9 initiated and completed the long-anticipated refinancing of 260 California Street with Prudential.

10 25. Plaintiff was informed that on May 26, 2006, Rahman resigned as the sole officer and
11 director of Sakti and that Murray would be replacing Rahman.

12 26. On July 6, 2006 Murray informed Boyert in correspondence that he was appointed
13 Rahman's replacement effective immediately. Thereafter, in November 2006, a Sakti Board Resolution
14 confirmed this change.

15 27. On January 9, 2007 Murray met with Boyert at the Sakti offices. At this meeting, Murray
16 terminated Boyert's employment with Sakti and Wallyson's, effective immediately, without cause to do
17 so. Thereafter, Murray has communicated to Boyert that neither Sakti nor Wallyson's recognize any
18 financial obligation to Boyert except for his base salary, and specifically that Sakti and Wallyson's
19 disavow the existence of any right or entitlement of Boyert to commissions of any sort and/or any
20 financial interest to be paid out of any future sale of either 260 California and/or the Third Avenue
21 building.

22 28. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as Does
23 1-20, inclusive and therefore sues these defendants by such fictitious names. Plaintiff will amend this
24 Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes
25 and hereon alleges that each of the fictitiously named Defendants is responsible in some manner for the
26 occurrences herein alleged and Plaintiff's damages as herein alleged were proximately caused by their
27 conduct.

28 29. Plaintiff is informed and believes and hereon alleges that at all times mentioned herein

1 Defendants, and each of them, whether individual, corporate or otherwise, were the partners, joint-
2 venturers, agents, and/or employees of their co-defendants and in doing the acts hereinafter alleged were
3 acting in the scope and authority of such partnership, joint-venture, agency, and/or employment and
4 under the direction of, with consent or permission, advance knowledge and/or subsequent ratification
5 of their co-defendants, and each of them.

6 30. Jurisdiction and venue is proper in the Superior Court of the State of California of
7 unlimited jurisdiction, in and for the City and County of San Francisco, because the principal place of
8 business of each of the Defendants is located in the City and County of San Francisco, State of
9 California, and at all relevant times, Defendants, and each of them, conducted much of the subject
10 business in the City and County of San Francisco.

11 31. Plaintiff hereby demands a jury trial of each and every allegation and cause of action
12 contained herein.

13 II
14 FIRST CAUSE OF ACTION

15 (Breach of oral employment contract - against Sakti, only)

16 32. Plaintiff hereby incorporates those facts and allegations set forth above in Paragraphs 1
17 through 31, as if fully set forth in this Paragraph 32.

18 33. By virtue of the facts alleged hereinabove, Sakti breached the employment contract
19 between it and Boyert, by terminating Boyert's employment without cause and/or without any valid
20 justification.

21 34. Sakti's breach of Boyert's employment contract has consequentially, legally and
22 proximately caused economic damages to Plaintiff, including lost salary, lost leasing commissions, lost
23 incentive income, and lost prospective financial opportunities from Sakti's real estate leasing, acquisition
24 and disposition activities, each in amounts to be shown according to proof at trial.

25 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

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III
SECOND CAUSE OF ACTION

(Breach of oral employment contract - against Wallyson's, only)

35. Plaintiff hereby incorporates those facts and allegations set forth above in Paragraphs 1 through 34, as if fully set forth in this Paragraph 35.

36. By virtue of the facts alleged hereinabove, Wallyson's breached the employment contract between it and Boyert, by terminating Boyert's employment without cause and/or without any valid justification.

37. Wallyson's breach of Boyert's employment contract has consequentially, legally and proximately caused economic damages to Plaintiff, including, but not limited to, lost salary, lost leasing commissions, lost incentive income, and lost prospective financial opportunities from Wallyson's real estate leasing, acquisition and disposition activities, each in amounts to be shown according to proof at trial.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

IV
THIRD CAUSE OF ACTION

(Breach of Labor Code Section 201 – against Sakti, only)

38. Plaintiff hereby incorporates those facts and allegations set forth above in Paragraphs 1 through 37, as if fully set forth in this Paragraph 38.

39. On January 7, 2007, when Boyert was terminated, Sakti did not pay Boyert that part of his salary earned but still unpaid, earned commissions and the value of unused vacation, which sums became immediately due on January 7, 2007 pursuant to California Labor Code Section 201. Such failure was willful within the meaning of Labor Code Section 203.

40. The willful failure to pay all compensation due Boyert at the time of his termination, entitles Plaintiff not only to receive the compensation due him, but also to recovery of statutory waiting time penalties.

41. Each and all of the amounts due Plaintiff by virtue of Sakti's violations of Labor Code Sections 201 and 203 will be shown according to proof at trial.

1 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

2 V

3 **FOURTH CAUSE OF ACTION**

4 **(Anticipatory breach of oral employment contract - against Sakti, only)**

5 42. Plaintiff hereby incorporates those facts and allegations set forth above in Paragraphs 1
6 through 41, as if fully set forth in this Paragraph 42.

7 43. By its aforementioned words and conduct, Sakti has clearly and positively indicated that
8 it will not honor or perform that part of Plaintiff's employment contract that entitles Boyert to receive
9 (a) payment equal to one-half of the net proceeds received from the future sale of 260 California Street,
10 (b) earned and/or future leasing commissions, and (c) future disposition fees and commissions, and that
11 such clear and positive indications constitute an anticipatory breach of contract by Sakti.

12 44. Plaintiff has performed all that is or was required of him to be entitled to receive said
13 future compensation and is, and has been, ready, willing and able, to continue to perform his
14 employment duties to preserve said entitlements, though by his unjust termination, has been prevented
15 by Defendant from doing so.

16 45. Defendant's anticipatory breaches are consequential, proximate and legal causes of
17 present and future economic loss to Plaintiff, including, but not limited to, lost leasing commissions, lost
18 incentive income (including payment of one half of the proceeds from any future sale of 260 California),
19 lost disposition fees and commissions, lost prospective financial opportunities from future acquisition
20 and disposition activities, each in amounts to be shown according to proof at trial.

21 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

22 VI

23 **FIFTH CAUSE OF ACTION**

24 **(Anticipatory breach of oral employment contract - against Wallyson's, only)**

25 46. Plaintiff hereby incorporates those facts and allegations set forth above in Paragraphs 1
26 through 45, as if fully set forth in this Paragraph 46.

27 47. By its aforementioned words and conduct, Wallyson's has clearly and positively indicated
28 that it will not honor or perform that part of Plaintiff's employment contract that entitles Boyert to

1 receive (a) payment equal to one-half of the net proceeds received from the future sale of the Third
2 Avenue building, (b) earned and/or future leasing commissions, and (c) future disposition fees and
3 commissions, and that such clear and positive indications constitute an anticipatory breach of contract
4 by Wallyson's.

5 48. Plaintiff has performed all that is or was required of him to be entitled to receive said
6 future compensation and is, and has been, ready, willing and able, to continue to perform his
7 employment duties to preserve said entitlements, though by his unjust termination, has been prevented
8 by Defendant from doing so.

9 49. Defendant's anticipatory breaches are consequential, proximate and legal causes of
10 present and future economic loss to Plaintiff, including, but not limited to, lost leasing commissions, lost
11 incentive income (including payment of one half of the proceeds from any future sale of the Third
12 Avenue building), lost disposition fees and commissions, lost prospective financial opportunities from
13 future acquisition and disposition activities, each in amounts to be shown according to proof at trial.

14 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

15 **VII**

16 **SIXTH CAUSE OF ACTION**

17 **(Breach of the covenant of good faith and fair dealing - against Sakti, only)**

18 50. Plaintiff hereby incorporates those facts and allegations set forth above in Paragraphs 1
19 through 49, as if fully set forth in this Paragraph 50.

20 51. Boyert's employment contract includes an implied promise of good faith and fair dealing.
21 That covenant required Defendant not do anything to unfairly interfere with the right of Boyert to receive
22 the benefits of the contract.

23 52. By doing the acts above-described, which turned Sakti from financial insecurity into
24 holding a long-lasting and profitable asset, Plaintiff did substantially all that his employment contract
25 required of him to have fully earned the afore-mentioned incentive compensation and entitlement to
26 future leasing commissions, acquisition and disposition fees that would come as the property continued
27 to grow and new properties were acquired, such that all conditions required for Defendant to perform
28 its obligations to pay incentive compensation to Plaintiff have occurred.

1 benefits under his employment contract in bad faith.

2 59. Plaintiff has in fact been harmed by Defendant's breach of the covenant of good faith and
3 fair dealing by having been denied earned and/or prospective incentive income, including but not limited
4 to, leasing commissions, acquisition fees, disposition fees and other financial opportunities, each in
5 amounts to be shown according to proof at trial.

6 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

7 IX

8 EIGHTH CAUSE OF ACTION

9 (Fraud – promise without intention to perform) (against Sakti, only)

10 60. Plaintiff hereby incorporates those facts and allegations set forth above in Paragraphs 1
11 through 59, as if fully set forth in this Paragraph 60.

12 61. As set forth in Paragraph 19 hereinabove, Boyert was induced to accept new and
13 expanded employment with Sakti as a result of Sakti's affirmative representation that Boyert would
14 receive, as additional compensation, one-half the value of the net proceeds of any future sale of 260
15 California Street.

16 62. Boyert accepted the responsibility to oversee all operations of Sakti based upon the
17 additional compensation offered him and when and by doing so, forewent other economic and financial
18 opportunities.

19 63. Boyert believes that Rahman's representation was true, and as of the date of this pleading,
20 believes that Rahman would affirm such representation and of Plaintiff's financial entitlements, as
21 alleged herein. However, in the event that Rahman denies making said representation of additional
22 employment compensation, then such denial could only be the result of having made the alleged
23 representation without the intent to perform it, so that when Boyert later claimed entitlement to such
24 compensation, Sakti would deny the obligation at that time.

25 64. Boyert's reliance on Rahman's representation was justified under the circumstances,
26 given his dealings with Rahman up to the date of said representation in 1999, and Boyert did not know,
27 and had no reason to know, that Sakti would not honor all of the terms of the employment contract at
28 that time, including Boyert's right to receive, as incentive compensation for solving Sakti's financial

1 troubles, one-half of the net proceeds from the future sale of 260 California Street.

2 65. Sakti's, conduct as above described, acquiesced and ratified the fraud by continuing to
3 refuse to acknowledge and to disavow the compensation due Boyert as alleged herein.

4 66. As a consequence of Plaintiff's reliance on a promise that Sakti did not intend to perform
5 when the promise was made, Plaintiff has been damaged economically and personally. As to the former,
6 Plaintiff continued to work for Sakti at a salary hundreds of thousands less than he would have earned
7 elsewhere for the same work. As to the latter, Plaintiff has worked with extreme dedication and loyalty
8 for many years, only to be summarily fired for no cause and with a total disavowal of Plaintiff's financial
9 interests in and with the company, causing him substantial emotional distress. These economic and
10 personal damages will be shown in amounts according to proof at trial.

11 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

12 X

13 **NINTH CAUSE OF ACTION**

14 **(Fraud – Promise without intention to perform) (against Wallyson's, only)**

15 67. Plaintiff hereby incorporates those facts and allegations set forth above in Paragraphs 1
16 through 66 of this Complaint, as if fully set forth in this Paragraph 67.

17 68. As set forth in Paragraph 19 hereinabove, Boyert was induced to accept new and
18 expanded employment with Wallyson's as a result of Wallyson's affirmative representation that Boyert
19 would receive, as additional compensation, one-half the value of the net proceeds of any future sale of
20 the Third Avenue building.

21 69. Boyert accepted the responsibility to oversee all operations of Wallyson's based upon the
22 additional compensation offered him and when and by doing so, forewent other economic and financial
23 opportunities.

24 70. Boyert believes that Rahman's representation was true, and as of the date of this pleading,
25 believes that Rahman would affirm such representation and of Plaintiff's financial entitlements, as
26 alleged herein. However, in the event that Rahman denies making said representation of additional
27 employment compensation, then such denial could only be the result of having made the alleged
28 representation without the intent to perform it, so that when Boyert later claimed entitlement to such

1 compensation, Wallyson's would deny the obligation at that time.

2 71. Boyert's reliance on Rahman's representation was justified under the circumstances,
3 given his dealings with Rahman up to the date of said representation in 1999, and Boyert did not know,
4 and had no reason to know, that Wallyson's would not honor all of the terms of the employment contract
5 at that time, including Boyert's right to receive, as incentive compensation for solving Wallyson's
6 financial troubles, one-half of the net proceeds from the future sale of the Third Avenue building.

7 72. Wallyson's conduct, as above described, acquiesced and ratified the fraud by continuing
8 to refuse to acknowledge and to disavow the compensation due Boyert as alleged herein.

9 73. As a consequence of Plaintiff's reliance on a promise that Wallyson's did not intend to
10 perform when the promise was made, Plaintiff has been damaged economically and personally. As to
11 the former, Plaintiff continued to work for Wallyson's at a salary hundreds of thousands less than he
12 would have earned elsewhere for the same work. As to the latter, Plaintiff has worked with extreme
13 dedication and loyalty for many years, only to be summarily fired for no cause and with a total disavowal
14 of Plaintiff's financial interests in and with the company, causing him substantial emotional distress.
15 These economic and personal damages will be shown in amounts according to proof at trial.

16 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

17 **XI**

18 **TENTH CAUSE OF ACTION**

19 **(Violation of Business & Professions Code Section 17200 – against Sakti, only)**

20 74. Plaintiff hereby incorporates those facts and allegations set forth above in Paragraphs 1
21 through 73 of this Complaint, as if fully set forth in this Paragraph 74.

22 75. By virtue of the above mentioned fraud, anticipatory breaches, and/or wrongful
23 termination Sakti is retaining monies for itself that are due to be paid to Boyert, and such retention by
24 an employer of an employee's compensation is an unfair practice within the meaning of Business and
25 Professions Code Section 17200. Plaintiff is informed and believes, and thereon alleges, that Defendant's
26 unfair practice was but a means to obtain financial gain for itself at the expense of Plaintiff.

27 76. Sakti's violation of Business and Professions Code Section 17200 is the proximate and
28 legal cause of damages to Plaintiff, including, but not limited to, lost wages, lost leasing commissions,

1 lost incentive income (including payment of one half of the proceeds from any future sale of 260
2 California), lost disposition fees, and lost prospective financial opportunities from future acquisitions
3 and sales, each in amounts to be shown according to proof at trial.

4 77. Pursuant to Business and Professions Code Section 17200, et. seq., Plaintiff is entitled
5 to recover his attorneys fees incurred in connection with the prosecution of this cause of action

6 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

7 XII

8 ELEVENTH CAUSE OF ACTION

9 (Violation of Business & Professions Code Section 17200 – against Wallyson’s, only)

10 78. Plaintiff hereby incorporates those facts and allegations set forth above in Paragraphs 1
11 through 77 of this Complaint, as if fully set forth in this Paragraph 78.

12 79. By virtue of the above mentioned fraud, anticipatory breaches, and/or wrongful
13 termination, Wallyson’s is retaining monies for itself that are due to be paid to Boyert, and such
14 retention by an employer of an employee’s compensation is an unfair practice within the meaning of
15 Business and Professions Code Section 17200. Plaintiff is informed and believes, and thereon alleges,
16 that Defendant’s unfair practice was but a means to obtain financial gain for itself at the expense of
17 Plaintiff.

18 80. Wallyson’s violation of Business and Professions Code Section 17200 is the proximate
19 and legal cause of damages to Plaintiff, including, but not limited to, lost wages, lost leasing
20 commissions, lost incentive income (including GSA leasing incentives and/or payment of one half of
21 the proceeds from any future sale of the Third Avenue Building), lost disposition fees, and lost
22 prospective financial opportunities from future acquisitions and sales, each in amounts to be shown
23 according to proof at trial.

24 81. Pursuant to Business and Professions Code Section 17200, et. seq., Plaintiff is entitled
25 to recover his attorneys fees incurred in connection with the prosecution of this cause of action

26 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

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