



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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May-24-2018 3:23 pm

Case Number: CGC-18-566778

Filing Date: May-24-2018 3:18

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COMPLAINT

MICHAEL DISANTO VS. COTCHETT, PITRE & MCCARTHY, LLP. ET AL

001C06350242

Instructions:

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

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Asim Bhansali (SBN 194925); Kate Lazarus (SBN 268242)
Kwun Bhansali Lazarus LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
TELEPHONE NO.: (415)630-2350 FAX NO:
ATTORNEY FOR (Name): Michael DiSanto

FOR COURT USE ONLY
FILED
San Francisco County Superior Court

MAY 24 2018

CLERK OF THE COURT

BY:  Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME: Civic Center Courthouse

CASE NAME:
DiSanto v. Cotchett, Pitre & McCarthy, LLP 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:
CDC - 18 - 566778
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|---|---|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37) | 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) |
| Other P/PPD/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 P/PPD/WD (23) | Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26) | Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20) |
| Non-P/PPD/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 checked="" type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-P/PPD/WD tort (35) | Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38) | Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42) |
| Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | 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) | Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |

BY FAX
ONE LEGAL LLC

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. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 4
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: May 24, 2018
Kate Lazarus


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

(TYPE OR PRINT NAME)

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 is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

<p>Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i></p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability <i>(not asbestos or toxic/environmental)</i> (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD</p> <p>Non-PI/PD/WD (Other) Tort Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice <i>(not medical or legal)</i> Other Non-PI/PD/WD Tort (35)</p> <p>Employment Wrongful Termination (36) Other Employment (15)</p>	<p>Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract <i>(not unlawful detainer or wrongful eviction)</i> Contract/Warranty Breach—Seller Plaintiff <i>(not fraud or negligence)</i> Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage <i>(not provisionally complex)</i> (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute</p> <p>Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i></p> <p>Unlawful Detainer Commercial (31) Residential (32) Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i></p> <p>Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41)</p> <p>Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment <i>(non-domestic relations)</i> Sister State Judgment Administrative Agency Award <i>(not unpaid taxes)</i> Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case</p> <p>Miscellaneous Civil Complaint RICO (27) Other Complaint <i>(not specified above)</i> (42) Declaratory Relief Only Injunctive Relief Only <i>(non-harassment)</i> Mechanics Lien Other Commercial Complaint Case <i>(non-tort/non-complex)</i> Other Civil Complaint <i>(non-tort/non-complex)</i></p> <p>Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition <i>(not specified above)</i> (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition</p>
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FILED
San Francisco County Superior Court

MAY 24 2018

CLERK OF THE COURT

BY:  Deputy Clerk

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9 Attorneys for Plaintiff Michael DiSanto

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 Michael DiSanto,

13 Plaintiff,

14 v.

15 Cotchett, Pitre & McCarthy, LLP, Philip Gregory,
16 and DOES 1 through 10, inclusive,

17 Defendants.

Case No. **CGC - 18 - 566778**

COMPLAINT

- 1) PROFESSIONAL NEGLIGENCE IN PROSECUTION OF AFFIRMATIVE CLAIM
- 2) BREACH OF FIDUCIARY DUTY REGARDING AFFIRMATIVE CLAIM
- 3) PROFESSIONAL NEGLIGENCE IN DEFENSE OF DEFENSIVE CLAIM
- 4) BREACH OF FIDUCIARY DUTY REGARDING DEFENSIVE CLAIM

DEMAND FOR JURY TRIAL

BY FAX
ONE LEGAL LLC

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1 NATURE OF THE ACTION

2 1. This is an action for professional negligence and breach of fiduciary duty.

3 THE PARTIES

4 2. Plaintiff Michael DiSanto is an individual and resident of the State of Ohio.

5 3. Plaintiff is informed and believes that defendants Cotchett, Pitre & McCarthy ("Cotchett")
6 and Philip Gregory ("Gregory") (collectively "Defendants") are residents of the State of California.

7 4. Plaintiff is informed and believes that at all relevant times Cotchett was a law firm and a
8 limited liability partnership organized and existing under the laws of the State of California, with
9 attorneys duly admitted to practice in the State of California. Cotchett conducted business in the City and
10 County of San Francisco.

11 5. Plaintiff is informed and believes that Gregory is an individual and an attorney licensed to
12 practice law in the State of California, and a resident of the State of California. At all relevant times,
13 Gregory was a partner and agent of Cotchett, and in doing the things herein alleged was acting within the
14 scope of such employment and agency.

15 6. Defendants provided legal services to Plaintiff in an arbitration proceeding in the City and
16 County of San Francisco.

17 7. Plaintiff is unaware of the full names and capacities, whether individual, corporate, or
18 otherwise, of the Defendants named herein as DOES 1 through 10, inclusive, and therefore sues those
19 Defendants by such fictitious names. Pursuant to Code of Civil Procedure Section 474, Plaintiff will
20 seek leave to amend this complaint to allege said Defendants' true names and capacities when
21 ascertained.

22 8. Plaintiff is informed and believes that at all relevant times, each of the Defendants, and
23 DOES 1 through 10, were the agents and/or employees of each of the remaining Defendants, and in
24 doing the things herein alleged, were acting within the course and scope of said agency and/or
25 employment, in that the actions of each of the Defendants as herein alleged were authorized, approved,
26 and/or ratified by each of the other Defendants as principals and/or employers.

1 VENUE

2 9. Venue is proper in this court pursuant to Cal. Code Civ. Pro. § 395 because the majority
3 of all acts complained of in this Complaint occurred in the City and County of San Francisco.

4 GENERAL ALLEGATIONS

5 10. Plaintiff makes the following allegations based on information and belief. Plaintiff's
6 knowledge about certain relevant facts is limited by Defendants' failure to produce to Plaintiff his entire
7 client file, notwithstanding that Plaintiff requested the file on or around January 26, 2018.

8 Plaintiff retains Defendants as counsel for an affirmative claim

9 11. Plaintiff became a partner in the law firm Bingham McCutchen LLP ("Bingham") on
10 March 15, 2013. Pursuant to a Letter Agreement between Plaintiff and Bingham ("Letter Agreement"),
11 dated March 14, 2013, Plaintiff was guaranteed \$2,500,000 in annual compensation from the date he
12 became a Bingham partner through 2015, and \$1,500,000 in annual compensation in 2016, including
13 salary and bonus. Bingham terminated Plaintiff without cause in November 2014 and refused to pay him
14 the guaranteed compensation amount in full.

15 12. As a result of Bingham's breach of the Letter Agreement, Plaintiff decided to initiate an
16 arbitration proceeding in this County against Bingham.

17 13. On or about December 8, 2014, Plaintiff retained Cotchett to represent him in the
18 arbitration proceeding, and to prosecute claims on his behalf against Bingham arising from Bingham's
19 breach of the Letter Agreement. Plaintiff entered into a written engagement agreement with Cotchett
20 (the "Affirmative Claims Retainer") that covered only the prosecution of Plaintiffs' affirmative claim
21 against Bingham for Bingham's failure to pay Plaintiff the guaranteed compensation amount. Gregory
22 assumed the role of lead counsel in Defendants' representation of Plaintiff.

23 14. Defendants' representation of Plaintiff ended no earlier than March 30, 2017. The parties
24 entered into a tolling agreement, suspending the running of any applicable statute of limitations from
25 February 15, 2018 to May 30, 2018.

26 15. In providing legal services to Plaintiff, Defendants had a duty to use such skill, prudence,
27 and diligence as members of the legal profession commonly possess and exercise.

28 16. Under the Affirmative Claims Retainer, Defendants were responsible for securing

1 Plaintiff's rights to all property, including monies, on Plaintiffs' affirmative claim arising from
2 Bingham's breach of the Letter Agreement.

3 **Defendant separately takes on representation of Plaintiff in defending a counterclaim asserted by**
4 **Bingham**

5 17. In approximately February 2016, Bingham asserted counterclaims against Plaintiff in the
6 arbitration proceeding, for alleged fraud and breach of his partnership agreement with Bingham (a
7 separate document from the Letter Agreement). Bingham alleged that a grant of stock options and
8 restricted stock units that Maker Studios ("Maker") (where Defendant was previously Chief Operating
9 Officer and Chief Legal Officer) had awarded to Plaintiff belonged to Bingham, not Plaintiff.
10 Defendants thereafter represented to Plaintiff that they would vigorously and competently defend him
11 against Bingham's counterclaims in the arbitration proceeding. Defendants proposed to Plaintiff a
12 retainer arrangement for their defense of the counterclaims, but the parties ultimately did not enter into
13 any written agreement regarding defense of the counterclaims. Nonetheless, Defendants proceeded to
14 represent Plaintiff in defending Bingham's counterclaims, with Gregory serving as lead counsel with
15 respect to the counterclaims as well.

16 18. The evidentiary hearing on Plaintiff's claims against Bingham and Bingham's
17 counterclaims against Plaintiff occurred April 26-29, 2016 in San Francisco, California. The arbitrator
18 issued a final award on February 11, 2017, entering an award of money to Bingham on its counterclaims
19 and nothing to Plaintiff on his claims. After entry of the final arbitration award, Plaintiff made a
20 payment to Bingham in exchange for a discharge of any further liability arising out of the arbitration
21 award against him.

22 **Defendants' negligence in prosecuting Plaintiff's claim against Bingham**

23 19. Defendants' work prosecuting Plaintiff's claims against Bingham fell below the standard
24 of care.

25 20. First, Defendants failed to obtain discovery or interview potential witnesses that would
26 have been favorable to Plaintiff's claims. Plaintiff specifically informed Defendants of the documents
27 and witnesses needed to support his claims, but Defendants nevertheless failed to investigate and obtain
28 this discovery. By way of example only, the Letter Agreement was approved by a vote of the Bingham

1 partnership, but Defendants never sought to interview any partner who approved the Letter Agreement,
2 including individuals who had left the Bingham partnership after the Letter Agreement was approved. In
3 another example, Defendants did not attempt to contact Bingham's head of recruiting. Additionally,
4 Plaintiff, not defendants, contacted the legal recruiter whom Bingham had retained to recruit partner-
5 level candidates, and obtained a declaration from her.

6 21. Second, when Bingham did not produce crucial documents about the Letter Agreement,
7 Defendants failed to move to compel Bingham to do so.

8 22. Third, Defendants failed to spend sufficient time meeting with and preparing witnesses,
9 including Plaintiff himself, before the evidentiary hearing. By way of example only, Defendants failed
10 entirely to prepare Plaintiff for his testimony at the hearing, even though his testimony would be critical
11 to his claims. Defendants failed to discuss likely lines of questioning with Plaintiff, including likely
12 attacks by Bingham's counsel.

13 23. Fourth, having not investigated or interviewed relevant witnesses, Defendants failed to
14 call these same witnesses at the evidentiary hearing, which prejudiced Plaintiff's prosecution of his
15 claims. Defendants called only two witnesses, Plaintiff himself and Bingham's legal recruiter.

16 24. Fifth, Defendants failed to elicit crucial testimony from witnesses who did testify at the
17 hearing. By way of example only, Defendants did not elicit testimony from Bingham's legal recruiter
18 about her understanding as to the meaning of the guaranteed income provision in the Letter Agreement,
19 even though she had provided a declaration to Plaintiff stating that Bingham had guaranteed Plaintiff
20 \$2,500,000 per year for three years, and \$1,500,000 in the fourth year.

21 25. Sixth, the work Defendants did do on Plaintiff's behalf fell below the standard of care.
22 Defendants did not allocate sufficient resources to handle Plaintiff's matter competently. Gregory did
23 not, and on information and belief, was unable to, allocate a sufficient level of time and attention to be
24 able to perform consistently with the standard of care. This problem was exacerbated by Defendants'
25 failure to adequately staff Plaintiff's case.

26 26. Frequently, Defendants' work product was shoddy, poorly written, omitted important
27 arguments and evidence, and was provided to Plaintiff with insufficient time for him to properly evaluate
28 and comment on the work before it had to be submitted. For example, Defendants gave drafts of the

1 opening brief, closing brief, and challenge to the arbitrator's interim award at the last minute.
2 Furthermore, Defendants rejected Plaintiff's request that they prepare explanatory slides to be used at the
3 evidentiary hearings, which Bingham did as part of its presentation.

4 27. As a direct and proximate result of the negligence, poor advice, below standard care,
5 mistakes, and other wrongdoing by Defendants, Plaintiff has been harmed and incurred substantial
6 damages with respect to this prosecution of his affirmative claims against Bingham. Plaintiff's damages
7 with respect to his affirmative claims are believed to be not less than \$3 million. Plaintiff reserves the
8 right to amend this Complaint to allege the actual amount of damages when those figures become more
9 certainly calculable.

10 **Defendants' negligence in defending Bingham's claim against Plaintiff**

11 28. In approximately February 2016, Bingham asserted counter-claims against Plaintiff in the
12 arbitration proceeding for alleged fraud and breach of his partnership agreement with Bingham.

13 29. Defendants failed to timely and properly object that Bingham could not assert these
14 counterclaims because Bingham had failed to satisfy a condition precedent that the parties must attempt
15 mediation before asserting claims. Had Defendants properly and timely asserted this objection, Bingham
16 would not have been allowed to go forward on its counterclaims against Plaintiff until the condition
17 precedent had been satisfied.

18 30. The failure by Defendants to timely and properly assert this objection deprived Plaintiff of
19 the opportunity to settle the matter before an interim award was entered against him. Had mediation of
20 the counterclaims been timely conducted, Plaintiff and Defendants also would have been educated on the
21 nature and details of the counterclaims before the evidentiary hearing was held. Defendants' failure to
22 protect Plaintiff's rights thereby deprived Plaintiff of the opportunity to learn specific theories, facts,
23 evidence, and details from Bingham about its counterclaims, to identify damaging evidence and
24 arguments by Bingham, and to identify evidence needed by Plaintiff to properly contest those
25 counterclaims.

26 31. Defendants also failed to timely and properly argue and object that the JAMS procedural
27 rules—upon which the arbitrator relied—could not supersede the express terms of the Bingham
28 partnership agreement, which contained the mediation condition precedent. Had Defendants timely and

1 properly asserted this objection, it is more likely than not that the arbitrator would have agreed and
2 required Bingham to attempt to mediate the counterclaims with Plaintiff before arbitration of those
3 counterclaims could occur.

4 32. Rather than protect Plaintiff's right to mediate Bingham's claims before the arbitration
5 moved forward on the counterclaim, Defendants agreed in writing, without permission or consultation
6 with Plaintiff, that Bingham could assert its counterclaims against Plaintiff in the same arbitration
7 proceeding, with the evidentiary hearing only two months away.

8 33. Having improperly agreed to allow Bingham's claims to go forward in the rapidly
9 approaching arbitration proceeding, Defendants, separately from their negligence in the prosecution of
10 Plaintiff's affirmative claims, then also did not comply with the standard of care in their defense of
11 Bingham's counterclaims.

12 34. First, Defendants did not state any affirmative defenses to Bingham's counterclaims,
13 including such potentially applicable affirmative defenses as laches, estoppel, ratification, unclean hands,
14 and Bingham's failure to satisfy the condition precedent of mediating before asserting the counterclaims
15 in arbitration. By way of example only, Defendants did not assert that Plaintiff detrimentally relied on
16 Bingham's knowledge and acceptance that the Maker equity grant belonged to Plaintiff.

17 35. Second, despite having had less than two months' notice of Bingham's February 2016
18 counterclaims against Plaintiff, and Bingham's failure to produce evidence, Defendants wrongly and
19 negligently pushed for the evidentiary hearing to go forward in April 2016. Defendants did this even
20 though there had been inadequate time for Defendants to investigate, gather evidence, and evaluate
21 Bingham's counterclaims against Plaintiff, marshal the evidence and arguments to contest those
22 counterclaims, and to advise Plaintiff on strengths, weaknesses, and risks of the counterclaims.
23 Defendants negligently failed to request a postponement of the evidentiary hearing and did not even
24 discuss with Plaintiff whether such a postponement should be requested, and the possible risks and
25 benefits of postponing the evidentiary hearing.

26 36. Third, Defendants failed to properly advise Plaintiff of the risk of loss on the
27 counterclaims or to discuss Plaintiff's options after the counterclaims were asserted, including whether
28 he should retain experienced defense counsel to represent or advise him on the counterclaims.

1 Defendants failed to assign competent defense counsel with sufficient experience to evaluate and defend
2 Plaintiff against the counterclaims. Instead, Defendants misrepresented to Plaintiff that there was
3 essentially no risk that Plaintiff would lose on the counterclaims, and they failed to advise Plaintiff
4 regarding possible settlement opportunities.

5 37. Fourth, Defendants failed to obtain discovery or interview potential witnesses that would
6 have been favorable to Plaintiff's defense to Bingham's counterclaims. Plaintiff informed Defendants of
7 relevant documents and witnesses, but Defendants nevertheless failed to investigate and obtain this
8 discovery. For example, Defendants failed to interview potential relevant witnesses whose identities and
9 significance were known to Defendants. These witnesses, at a minimum, included Maker officers and
10 directors who each would have provided important testimony that the Maker equity grant was intended to
11 go to Plaintiff, not Bingham, had been given for past services by Plaintiff to Maker, and that the equity
12 was not in exchange for legal services from Bingham. Defendants also failed to even attempt to contact
13 Bingham partners who, if testifying truthfully, would have testified that Plaintiff had disclosed the equity
14 grant to Bingham both before and after he became a Bingham partner, and that Bingham had agreed that
15 it was not entitled to any of the equity because it had not been given to Plaintiff in exchange for
16 providing legal services. Additionally, Defendants failed to introduce documentary evidence that was in
17 Defendants' possession that showed Bingham's knowledge of Plaintiff's equity grant. Defendants also
18 failed to advise Plaintiff about the possible need for an expert on equity grants. Bingham called such an
19 expert, while Plaintiff did not.

20 38. Fifth, when Bingham did not produce crucial documents about Bingham's claims
21 regarding the Maker equity, Defendants failed to move to compel Bingham to do so.

22 39. Sixth, Defendants failed to spend sufficient time meeting with and preparing crucial
23 witnesses, including Plaintiff himself, before the hearing in the arbitration proceeding in April 2016.
24 Defendants failed entirely to prepare Plaintiff for his testimony at the evidentiary hearing, even though
25 his testimony would be critical to his defense against Bingham's counterclaims. Defendants failed to
26 discuss likely lines of questioning with Plaintiff, including likely attacks by Bingham's counsel.

27 40. Seventh, having not investigated or interviewed relevant witnesses, Defendants failed to
28 call these same witnesses at the evidentiary hearing, which unfairly prejudiced Plaintiff's defense to the

1 counterclaims. Similarly, Defendants failed to introduce helpful and relevant documentary evidence that
2 was in their possession.

3 41. Eighth, Defendants failed to elicit clear testimony from the witnesses who did testify at
4 the hearing, including Plaintiff himself. This testimony that would have substantiated Plaintiff's defense
5 to the counterclaims.

6 42. Ninth, on information and belief, Defendants misjudged the counterclaims as frivolous,
7 and therefore Defendants failed to adequately prepare Plaintiff's defense to the counterclaims.

8 43. Tenth, the work Defendants did do on Plaintiff's behalf fell below the standard of care.
9 Defendants did not allocate sufficient resources to handle Plaintiff's matter competently. Gregory did
10 not, and on information and belief, was unable to, allocate a sufficient level of time and attention to be
11 able to perform consistently with the standard of care. This problem was exacerbated by Defendants'
12 failure to adequately staff Plaintiff's case.

13 44. Frequently, Defendants' work product was shoddy, poorly written, omitted crucial
14 arguments and evidence, and was provided to Plaintiff with insufficient time for him to properly evaluate
15 and comment on the work before it had to be submitted. For example, Defendants omitted from
16 Plaintiff's post-hearing brief crucial arguments regarding the arbitrator's power to rule on the
17 counterclaims at that time, an omission upon which the arbitrator relied in ruling that Plaintiff had
18 waived any challenge to arbitration of the counterclaims.

19 45. As a direct and proximate result of the negligence, poor advice, below standard care,
20 mistakes, and other wrongdoing by Defendants, Plaintiff has been harmed and incurred substantial
21 damages. Plaintiff's damages are believed to be not less than \$3.7 million, plus attorneys' fees incurred
22 in preparing for a potential attempt to overturn or reduce the award against him.

23 46. Plaintiff reserves the right to amend this Complaint to allege the actual amount of
24 damages when those figures become more certainly calculable.

25 **FIRST CAUSE OF ACTION: PROFESSIONAL NEGLIGENCE IN PROSECUTION OF**
26 **PLAINTIFF'S AFFIRMATIVE CLAIM**
(Against All Defendants)

27 47. Plaintiff incorporates by reference paragraphs 1-16 and 18-27, inclusive, as though fully
28 set forth herein.

1 48. Defendants' conduct was neglectful, dilatory, negligent, and fell below the recognized
2 standard of care owed by attorneys to their clients in the State of California.

3 49. Were it not for Defendants' wrongdoing, Plaintiff would have been successful in the
4 prosecution of his claims against Bingham, and the resulting judgment against Bingham would have been
5 collectible.

6 50. As a direct and proximate result of Defendants' wrongdoing, Plaintiff has been harmed
7 and incurred substantial damages. Plaintiff's damages are believed to be not less than \$3 million.
8 Plaintiff reserves the right to amend this complaint to allege the actual amount of damages when those
9 figures become more certainly known to him.

10 **SECOND CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY IN PROSECUTION OF**
11 **PLAINTIFF'S AFFIRMATIVE CLAIM**
12 **(Against All Defendants)**

13 51. Defendants owed fiduciary duties to Plaintiff to act at all times in utmost good faith and in
14 Plaintiff's best interest, to perform legal services for Plaintiff with reasonable care and skill, and to not
15 expose Plaintiff to any unnecessary risk.

16 52. Plaintiff incorporates by reference paragraphs 1-16 and 18-27, inclusive, as though fully
17 set forth herein.

18 53. Defendants breached their fiduciary duties to Plaintiff by doing the acts and omissions as
19 alleged paragraphs 19-27.

20 54. As a direct and proximate result of Defendants' breach, Plaintiff has been harmed and
21 incurred substantial damages. Plaintiff's damages are believed to be not less than \$3 million. Plaintiff
22 reserves the right to amend this complaint to allege the actual amount of damages when those figures
23 become more certainly known to him.

24 **THIRD CAUSE OF ACTION: PROFESSIONAL NEGLIGENCE IN DEFENSE OF CLAIM**
25 **ASSERTED AGAINST PLAINTIFF**
26 **(Against All Defendants)**

27 55. Plaintiff incorporates by reference paragraphs 1-10, 14-15, 17-18, and 28-46, inclusive, as
28 though fully set forth herein.

 56. Defendants' conduct was neglectful, dilatory, negligent, and fell below the recognized

1 standard of care owed by attorneys to their clients in the State of California.

2 57. Were it not for Defendants' wrongdoing, Plaintiff would have been successful in his
3 defense of claims brought against him by Bingham.

4 58. Alternatively, were it not for Defendants' wrongdoing, Plaintiff would have settled
5 Bingham's claim for a lower amount than Plaintiff paid to Bingham.

6 59. As a direct and proximate result of Defendants' wrongdoing, Plaintiff has been harmed
7 and incurred substantial damages. Plaintiff's damages are believed to be not less than \$3.7 million.
8 Plaintiff reserves the right to amend this complaint to allege the actual amount of damages when those
9 figures become more certainly known to him.

10 **FOURTH CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY IN DEFENSE OF CLAIM**
11 **ASSERTED AGAINST PLAINTIFF**
(Against All Defendants)

12 60. Defendants owed fiduciary duties to Plaintiff to act at all times in utmost good faith and in
13 Plaintiff's best interest, to perform legal services for Plaintiff with reasonable care and skill, and to not
14 expose Plaintiff to any unnecessary risk.

15 61. Plaintiff incorporates by reference paragraphs 1-10, 14-15, 17-18, and 28-46, inclusive, as
16 though fully set forth herein.

17 62. Defendants breached their fiduciary duties to Plaintiff by doing the acts and omissions as
18 alleged paragraphs 28-46.

19 63. As a direct and proximate result of Defendants' breach, Plaintiff has been harmed and
20 incurred substantial damages. Plaintiff's damages are believed to be not less than \$3.7 million. Plaintiff
21 reserves the right to amend this complaint to allege the actual amount of damages when those figures
22 become more certainly known to him.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, as a result of the foregoing, Plaintiff DiSanto prays for relief as follows:

25 On the FIRST CAUSE OF ACTION

- 26 1. Recovery of actual damages, according to proof at trial but not less than \$3 million;
27 2. Pre-judgment interest at the legal rate; and
28 4. Such other and further relief as the Court deems just and proper.

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On the SECOND CAUSE OF ACTION

1. Recovery of actual damages, according to proof at trial but not less than \$3 million;
2. Pre-judgment interest at the legal rate; and
4. Such other and further relief as the Court deems just and proper.

On the THIRD CAUSE OF ACTION

1. Recovery of actual damages, according to proof at trial but not less than \$3.7 million;
2. Pre-judgment interest at the legal rate; and
4. Such other and further relief as the Court deems just and proper.

On the FOURTH CAUSE OF ACTION

1. Recovery of actual damages, according to proof at trial but not less than \$3.7 million;
2. Pre-judgment interest at the legal rate; and
4. Such other and further relief as the Court deems just and proper.

Dated: May 24, 2018

KWUN BHANSALI LAZARUS LLP

By: 

ASIM M. BHANSALI
KATE E. LAZARUS

Attorneys for Plaintiff Michael DiSanto

**SUMMONS
(CITACION JUDICIAL)**

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

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

Cotchett, Pitre & McCarthy LLP, Philip Gregory, and DOES 1-10 inclusive

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

Michael DiSanto

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS 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.sucorte.ca.gov), 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.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister St, San Francisco, CA 94102

CASE NUMBER:
(Número de caso) **CGC-18-566778**

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):
Kate Lazarus, 4 Embarcadero Center, Suite 1400, San Francisco, CA 94111, (415) 630-2350

BY FAX
ONE LEGAL LLC

DATE: May 24 2018
(Fecha) **MAY 24 2018**

Clerk, by _____, Deputy
(Secretario) _____ (Adjunto)

Clerk of the Court

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NEYL WEBB



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
 - by personal delivery on (date):