

Electronically FILED by
Superior Court of California,
County of Los Angeles
4/16/2024 2:21 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By E. Galicia, Deputy Clerk

1 Michael H. Leb, Esq. (SBN 123042)
2 **LEB DISPUTE RESOLUTIONS**
3 1946 Pasadena Glen Road
4 Pasadena, CA 91107
5 Telephone: (626) 469-5070
6 Email: michael@lebdr.com

7 Patricio T.D. Barrera, (SBN 149696)
8 **BARRERA & ASSOCIATES, APC**
9 2298 E. Maple Avenue
10 El Segundo, California 90245
11 Telephone: 310.802.1500
12 Facsimile: 310.802.0500
13 Email: barrera@BAattorneys.com

14 Attorney for Plaintiff Dak Gilinsky

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

BARRERA & ASSOCIATES
2298 E. MAPLE AVENUE
EL SEGUNDO, CALIFORNIA 90245
TEL 310.802.1500 • FAX 310.802.0500

14 DAK GILINSKY, an Individual
15 Plaintiff,

16 v.

17 DLC, AN ADDISON GROUP COMPANY;
18 ADDISON PROFESSIONAL FINANCIAL
19 aka APFS STAFFING, INC.; AND DOES 1 to
20 10, Inclusive
21 Defendants.

Case No. **24STCV09536**

COMPLAINT FOR DAMAGES FOR:

1. VIOLATION OF CALIFORNIA LABOR CODE SECTION 98.6;
2. VIOLATION OF CALIFORNIA LABOR CODE 1102.5;
3. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
4. DEFAMATION
5. BREACH OF WRITTEN CONTRACT;
6. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
7. VIOLATION OF LABOR CODE SECTIONS 1198.5 AND 432 (PERSONNEL RECORDS)
8. VIOLATION OF LABOR CODE SECTION 226 (PAYROLL RECORDS)

DEMAND FOR JURY TRIAL

1 Plaintiff, Dak Gilinsky (“PLAINTIFF” or “DAK”), by and through his attorneys, alleges as
2 follows:

3 **THE PARTIES**

4 1. DAK is a native of California. At all-time relevant to this complaint, DAK was (and
5 still is) a resident of the County of Los Angeles, State of California.

6 2. Plaintiff is informed and believes and thereon alleges that DLC, an Addison Group
7 Company (“DLC”) is a dba for David M. Lewis Company, LLC, a Delaware limited liability
8 company with its principal place of business and headquarters located in Woodland, Hills, Los
9 Angeles County, California.

10 3. Plaintiff is informed and believes and thereon alleges that Addison Professional
11 Financial aka APFS Staffing Inc. (“APFS”) is a Delaware corporation with its principal place of
12 business in Chicago, Illinois. Plaintiff is further informed and believes that APFS is affiliate of DLC
13 and that APFS and DLC were the joint employers of PLAINTIFF.

14 4. PLAINTIFF does not know the true names and capacities of defendants sued in this
15 Complaint as Doe 1 through Doe 10, inclusive, and therefore sues these defendants by fictitious
16 names under Section 474 of the California Code of Civil Procedure. PLAINTIFF will amend this
17 Complaint to allege the true names and capacities of Doe 1 through Doe 10, inclusive, when
18 ascertained. PLAINTIFF is informed and believe, and on that basis alleges, that each of the
19 defendants named as Doe 1 through Doe 10, inclusive, is responsible in some manner for the
20 occurrence, injury, and other damages alleged in this Complaint. DLC, APFS, and the defendants
21 named herein as DOES 1-10, inclusive will collectively be referred to herein as “DEFENDANTS.”

22 **JURISDICTION AND VENUE**

23 5. Jurisdiction is proper in the LOS ANGELES COUNTY SUPERIOR COURT
24 because this Honorable Court has general subject matter jurisdiction and no statutory exceptions to
25 jurisdiction exist.

26 6. This Court has personal jurisdiction over DEFENDANTS because DLC and the
27 other DEFENDANTS conduct business in Los Angeles, California and the adverse employment
28 actions described herein occurred in the County of Los Angeles.

BARRERA & ASSOCIATES
2298 E. MAPLE AVENUE
EL SEGUNDO, CALIFORNIA 90245
TEL 310.802.1500 • FAX 310.802.0500

1 7. Venue is proper in this Court because DLC’s principal place of business is in Los
2 Angeles, California and all of the acts or omissions giving rise to the causes of action herein took
3 place in in Los Angeles, California.

4 **FACTUAL ALLEGATIONS**

5 8. Dak graduated with honors from the University of California – Berkeley. After
6 college, DAK moved to Los Angeles where he began a career in consulting. Over the past 16 years,
7 DAK has developed a sterling reputation in the market.

8 9. On November 7, 2017, DAK received a written offer of employment from DLC.
9 DLC offered DAK the title of Managing Director, Los Angeles DLC at a salary of \$150,000
10 annualized plus the greater of commissions earned or a non-recoverable draw of \$150,000 over the
11 first twelve months with the non-recoverable draw ending in month 13.

12 10. DAK accepted DLC’s offer and began working for DLC on January 22, 2018. As
13 Managing Director, DAK was responsible for leading the DLC business unit with full P & L
14 responsibility for an operation generating [according to DLC] over \$20 million in revenue and
15 employing 75 full-time billable consultants.

16 11. DAK excelled in his position as Managing Director, Los Angeles DLC. During his
17 first year or so, he hired and developed a new team and returned the Los Angeles business unit of
18 DLC to strong growth (the unit had been struggling with key executive departures at the time DAK
19 was hired) which contributed to a successful sale to ADDISON in January 2019 less than two years
20 after a contemplated sale to ADDISON had failed. During his second year with DLC, DAK
21 performed so well that his compensation nearly doubled (as it was largely commission-based) from
22 about \$300,000 in 2018 to over \$550,000 in 2019.

23 12. In May 2020, the long-time leader of DLC’s Orange County business unit left the
24 company and ADDISON CEO, Tom Moran, promoted DAK to Managing Director of that market
25 in addition to his Los Angeles role. Beginning with that promotion DAK entered into a series of
26 annual compensation plans with DEFENDANTS pursuant to which he was eligible for earned
27 bonuses based on written criteria set forth in the plan.

28 13. DAK worked hard to maintain strong relationships and collaborated with his fellow

BARRERA & ASSOCIATES
2298 E. MAPLE AVENUE
EL SEGUNDO, CALIFORNIA 90245
TEL 310.802.1500 • FAX 310.802.0500

BARRERA & ASSOCIATES
2298 E. MAPLE AVENUE
EL SEGUNDO, CALIFORNIA 90245
TEL 310.802.1500 • FAX 310.802.0500

1 associates across the company. He invested heavily in hiring good people and in growing and
2 developing them. In addition to this leadership, he was the top salesperson at DLC [and among the
3 top, if not the top, salespeople in ADDISON]. In 2020 DAK once again earned over \$550,000. In
4 2021, DAK earned over \$830,000. Again, nearly 80% of DAK’s compensation was based on
5 revenue he directly brought into the company on which he received commission.

6 14. For the calendar year 2022, ADDISON CEO, Thomas Moran, wrote: “Dak and his
7 team had strong performance in 2022. This is a true testament to DAK’s leadership. Well done.”
8 In this review, DAK was evaluated on 46 different performance attributes. According to Moran,
9 DAK “set a new standard” in 3 of these categories: “Keeps team moving forward toward goals even
10 when facing challenges,” “acts as a role model in terms of productivity,” and “builds team morale
11 by maintaining a positive attitude at all times. Moran concluded that DAK “consistently exceeded
12 expectations” in 27 categories and “met expectations” in the rest of the categories

13 15. For the calendar year 2022, the two business units overseen by DAK each beat their
14 revenue plan by about 25%. Orange County beat its gross profit plan by about \$350,000 and Los
15 Angeles beat its gross profit plan by about \$2,000,000. DAK’s business units were the top
16 performers within DLC that year. Based on his outstanding performance, DAK’s compensation for
17 the calendar year 2022 exceeded \$1,000,000.

18 16. In his review of Dak’s 2022 performance, Moran wrote: “Dak will need to stay
19 focused on productivity/activity levels, utilization and consultant performance. I would like to see
20 Dak continue to build his team with the best talent pool possible. Most importantly, I agree with
21 [Dak] in 2023 to get more integrated and collaborative with other Addison brands to ensure that we
22 succeed as a broader Addison team. Very important in 2023.” DAK took Moran’s comments to
23 heart and, in 2023, focused more on management, team development, and cross-company
24 collaboration than on his personal sales production.

25 17. For the calendar year 2023, DLC and DAK entered into the fourth consecutive annual
26 compensation, a document entitled 2023 compensation plan (“2023 Contract”). A true and correct
27 copy of the 2023 Contract is attached hereto as Exhibit A. Pursuant to the 2023 Contract, DAK was
28 entitled to a bonus of up to \$75,000. The components of the bonus were “Based 33.33% on MBO

1 Goal/66.7% of DLC-OC Gross Profit Performance.” The MBO Goal in the 2023 Contract is simply
2 “Grow and develop your Business Development Associates.” In his review of DAK’s 2022
3 performance, Moran indicated that DAK “consistently exceeds expectations” in “identifies talent
4 resources needed to build team while maintaining budget,” “provides vision for long-term growth
5 of the team/organization,” “builds high-performing team(s),” “develops others through coaching,
6 mentoring and leading by example” and “manages turnover on the team.” DAK continued to
7 demonstrate these “People Leadership” attributes in 2023 and achieved his MBO Goal.

8 18. The DLC-OC gross profit target pursuant to the 2023 Contract was \$3,246,114.
9 According to the 2023 Contract, if the business unit hit that target, DAK was entitled to \$50,000 of
10 the \$75,000 bonus. The 2023 Gross Profit for Orange County was \$3,482,466, nearly a 20%
11 improvement over 2022 and over 7% better than the budgeted target. Under the terms of the 2023
12 Contract, this performance entitled DAK to an “additional incentive [up to \$25,000] at CEO
13 discretion.” The bonus for 2023 performance was to be paid in 2024. DAK’s 2023 compensation,
14 which also included a performance-based bonus was over \$840,000. DAK’s personal sales
15 production declined in 2023 because he had, as instructed, shifted his focus away from his personal
16 production and toward team and company development.

17 19. On Friday, February 2, 2024, DAK sent an e-mail to Moran. In this message, DAK
18 pointed out that the Orange County business unit had exceeded its Gross Profit target by 7.3% and
19 he asked Moran how much he would receive for the “CEO discretionary amount” and when the
20 bonus would be paid.

21 20. On Monday, February 5, 2024, Moran replied to DAK’s February 2 message saying,
22 in part, “Your bonus is zero and the CEO discretionary bonus is zero.”

23 21. On Monday, February 12, 2024, DAK replied to Moran’s February 5 message
24 writing, in part: “I was distressed to receive this e-mail last week. I understand other areas of
25 performance may impact your decision with respect to the discretionary portion beyond the earned
26 bonus of \$75k, and I believe that is reasonable. . . However, the memo lays out clear, measurable
27 objectives which I achieved. In California law, this is called an ‘earned bonus’ and must be paid.”

28 22. DAK followed up on Wednesday, February 14, 2024, because Moran had neither

1 acknowledged nor responded to DAK's February 12, 2024 message. In that message, DAK wrote:
2 "This is of great and urgent concern to me, and your reply will determine my next steps."

3 23. On February 19, 2024, DAK wrote Moran a message noting that Moran had not
4 responded to DAK's calls or e-mails regarding the earned bonus. DAK wrote: "As I have stated, it
5 is clear that the company owes me this bonus. The refusal to pay is both a breach of contract and a
6 violation of California law."

7 24. About an hour after DAK sent his February 19, 2024, message, Morgan replied:
8 "Dak, I am not ignoring you, I have received your e-mails and voicemail. I am not responding
9 because my email response to you stands. Manuel will be reaching out to you.

10 25. Shortly thereafter Manuel Azuara texted DAK and asked him to join a video call at
11 4:00 p.m. Pacific Time. Azuara had been inserted between Moran and DAK as DAK's manager in
12 about October 2023.

13 26. After receiving Moran's e-mail reaffirming that Moran was refusing to pay DAK his
14 earned bonus, DAK forwarded that e-mail to Shawna Shah, DLC's head of Human Resources and
15 Peg Buchenroth, Executive Vice President of Human Resources for ADDISON. In this message,
16 DAK reiterates that the company owes him his earned bonus and that he has retained an attorney to
17 engage with the company if the bonus is not paid promptly.

18 27. At the outset of the video call, Azuara asked DAK to brief him on the situation which
19 DAK did. Azuara threatened DAK's job saying, "I'm trying to resolve this bonus situation because
20 I just don't see how we can all work together if you keep pushing this." DAK expressed concern
21 with the implied threat of job termination. Azuara persisted in trying to persuade DAK to give up
22 the bonus based on other factors not contemplated by the 2023 Contract such as the performance of
23 the Los Angeles business unit. Azuara told DAK he should "act as an owner and not think about
24 yourself, but rather what is best for the company." Azuara asked for a week to "work on the issue."
25 DAK asked Azuara to get back to him within two days. Azuara emailed DAK late that that same
26 night and asked to speak with DAK at 8:00 a.m. Pacific Time the next morning.

27 28. On February 20, 2024, at about 8:00 a.m. Pacific Time, Azura continued to push
28 DAK to view this situation "as an owner," and not expect any bonus payment. DAK told Azuara

1 that he is an employee, not an owner, and that he expects to be paid based on his written agreement
2 with the company. Azuara reacted very negatively to DAK's statement. He expressed his opinion
3 that leaders within the company need to act like owners, and think about what's best for the
4 company, not themselves. DAK explained that he applies that approach in his work but that he also
5 expected the company to honor its legal agreements with him. Azuara again threatened DAK's job
6 saying that he doesn't see how we can continue working together if I keep pushing this earned bonus
7 issue.

8 29. Azuara called DAK a few hours later at about 10:20 a.m. Pacific Time. Dak missed
9 the call and Azura texted "call me." DAK returned his call at 10:30 a.m. Pacific Time. Azuara told
10 him that he had met with Moran and Buchenroth, discussed the situation and decided to terminate
11 DAK's employment effective immediately. Azuara gave no reason. He simply told DAK the
12 company would pay him \$50,000 and told him not to solicit any employees or clients. Two minutes
13 later the company cut off DAK's e-mail.

14 30. After Azuara fired DAK, Azuara began calling others within the organization and
15 offering differing and false explanations for why DAK was no longer with the company. He
16 announced in a meeting attended by multiple employees that DAK had left the company over a
17 "disagreement about the future direction of the company." Azuara told others that the company
18 "won't tolerate people building personal fiefdoms, or people doing things that benefit themselves
19 rather than their teams and their markets." He also told people "there was a lot more going on there
20 behind the scenes" implying that DAK had engaged in some sort of impropriety.

21 31. Azuara's comments implying that DAK was not a team player are particularly ironic
22 in this context as DAK has gone to bat for his team in the past when the company considered not
23 paying earned bonuses to employees on DAK's team. DAK prevailed on Moran to make the
24 payments. When he tried to get the company to pay his own earned bonus, Azuara (with the blessing
25 of Moran and Buchenroth) fired him.

26 32. On February 21, 2024, Shah sent DAK an e-mail with information about his final
27 paycheck and benefits. In this message, Shah wrote: "Your presence will be deeply missed,
28 especially considering the wonderful contributions you've made over these past six years."

BARRERA & ASSOCIATES
2298 E. MAPLE AVENUE
EL SEGUNDO, CALIFORNIA 90245
TEL 310.802.1500 • FAX 310.802.0500

1 33. DAK responded to Shah’s February 21, 2024 message later that day asking her why
2 he was terminated and pointing out that her message indicated he would receive a \$50,000 bonus
3 instead of the \$75,000 (minimum) he was due. Shah responded later that evening that she had
4 “referred your request to Peg Buchenroth, our Executive VP of Human Resources.” Although Shah
5 had earlier written that DAK should reach out to Shah if he needed her help, she specifically punted
6 to Buchenroth who had already blessed DAK’s firing

7 34. DAK asked Buchenroth for her response in a message he sent her on February 22,
8 2024. Buchenroth responded two days later as follows: “I’m writing in response to your two
9 questions below. The reason for your termination was unsatisfactory job performance including
10 attitude.

11 35. As to your second question, there is no minimum amount in your compensation plan,
12 and we have paid everything pursuant to the compensation plan that was required to be paid.”

13 36. On February 26, 2024, DAK, through his attorneys, requested copies of payroll and
14 personnel records that the company is legally required to provide him within a certain time frame.
15 The company did not provide the payroll records within the given time frame and did not produce
16 all of the required personnel records.

17 37. Since his termination, DAK has continued to receive calls from former coworkers
18 asking why he was fired. His termination and the ongoing questions have caused him to suffer
19 physical symptoms and emotional distress including, without limitation, rapid and profound weight
20 loss, perseveration, chest pains, sleeplessness, anxiety, guilt, sadness, irritability, frustration, trouble
21 concentrating, heart palpitations, and feelings of impending doom.

FIRST CAUSE OF ACTION

(VIOLATION OF LABOR CODE SECTION 98.6)

(By Plaintiff Against DLC, APFS, and DOES 1-10, inclusive)

24 38. PLAINTIFF restates and incorporates by reference, as though fully set forth herein,
25 each and every allegation set forth in the paragraphs above.
26

27 39. California Labor Code Section 98.6 (“Section 98.6”) which applied to PLAINTIFF’S
28 employment with DEFENDANTS provides, in pertinent part: “[An employer] shall not discharge

1 an employee . . . because the employee . . . has made a written or oral complaint that they are owed
2 unpaid wages. . .”

3 40. Section 98.6 further provides, in pertinent part, that any employee who is discharged
4 in violation of this statute “shall be entitled to reinstatement and reimbursement for lost wages and
5 benefits” and “there is a rebuttable presumption in favor of the employee’s claim” if the employee
6 is fired within 90 days of making a complaint that they are owed unpaid wages.

7 41. Section 98.6 further provides: “An employer who willfully refuses to hire, promote,
8 or otherwise restore an employee or former employee who has been determined to be eligible for
9 rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty
10 of a misdemeanor. . . In addition to other remedies available, an employer who violates this section
11 is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each
12 violation of this section, to be awarded to the employee or employees who suffered the violation.”

13 42. As set forth above, DLC and APFS fired DAK because he had made a written
14 complaint to Moran that he was owed unpaid wages in the form of his annual bonus.
15 DEFENDANTS fired DAK 18 days after he made his written complaint to Moran and the day after
16 Azuara threatened his job if he did not forego the bonus and “act like an owner.”

17 43. As a proximate result of PLAINTIFF’S termination in violation of Section 98.6,
18 PLAINTIFF has suffered and will continue to suffer humiliation, emotional distress, and mental and
19 physical pain and anguish to his damage in a sum according to proof.

20 44. As a proximate result of his termination in violation of Section 98.6, PLAINTIFF
21 has suffered general and special damages in sums according to proof including, without limitation,
22 damages for loss of past and future wages and employment benefits.

23 45. As a proximate result of his termination in violation of Section 98.6, PLAINTIFF
24 has engaged attorneys to prosecute his claims and, as such, has incurred and will continue to incur
25 attorneys' fees which he is entitled to recover pursuant to California law.

26 46. The conduct of DEFENDANTS as alleged herein was carried out or ratified by
27 managing agents of DEFENDANTS and constitutes oppression, fraud or malice as defined in
28 California Civil Code Section 3294 thereby entitling PLAINTIFF, in addition to an award of actual

BARRERA & ASSOCIATES
2298 E. MAPLE AVENUE
EL SEGUNDO, CALIFORNIA 90245
TEL 310.802.1500 • FAX 310.802.0500

1 damages, to an award of punitive damages in an amount sufficient to make an example of and punish
2 DEFENDANTS.

3 **SECOND CAUSE OF ACTION**
4 **(VIOLATION OF LABOR CODE SECTION 1102.5)**

5 **((By Plaintiff Against DLC, APFS, and DOES 1-10, inclusive))**

6 47. PLAINTIFF restates and incorporates by reference, as though fully set forth herein,
7 each and every allegation set forth in the paragraphs above.

8 48. California Labor Code Section 1102.5(b) provides, in pertinent part: "An employer .
9 . . shall not retaliate against an employee for disclosing information . . . to a person with authority
10 over the employee or another employee who has the authority to investigate, discover, or correct the
11 violation or noncompliance . . . if the employee has reasonable cause to believe that the information
12 discloses a violation of state or federal statute . . . regardless of whether disclosing the information
13 is part of the employee's job duties.

14 49. At all relevant times, Labor Code section 1102.5 was in effect and was binding on
15 DLC and APFS. This statute prohibits an employer from retaliating against any employee, including
16 PLAINTIFF, for reporting allegations of illegal conduct engaged in by a fellow employee.

17 50. PLAINTIFFS reported to Moran, Azuara, Shah, and Buchenroth that Moran was
18 violating state law governing the payment of wages due by refusing to pay PLAINTIFF his earned
19 bonus.

20 51. DEFENDANTS retaliated against PLAINTIFF for reporting this violation by firing
21 him.

22 52. Labor Code Section 1102.6 provides: "In a civil action or administrative proceeding
23 brought pursuant to Section 1102.5, once it has been demonstrated by preponderance of the
24 evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged
25 prohibited action against the employee, the employer shall have the burden of proof to demonstrate
26 by clear and convincing evidence that the alleged action would have occurred for legitimate,
27 independent reasons even if the employee had not engaged in activities protected by Section 1102.5.

28 53. PLAINTIFF'S report to executives of DEFENDANTS that the company was

BARRERA & ASSOCIATES
2298 E. MAPLE AVENUE
EL SEGUNDO, CALIFORNIA 90245
TEL 310.802.1500 • FAX 310.802.0500

1 violating California law by not paying him his earned bonus was not only a "contributing factor" in
2 DEFENDANT'S decision to terminate PLAINTIFF, it was the motivating factor as evidenced by
3 the entire course of events leading up to and following PLAINTIFF's termination including the
4 shifting and false reasons proffered by DEFENDANTS in an attempt to justify their unlawful,
5 retaliatory actions.

6 54. As a proximate result of PLAINTIFF'S termination in violation of Section 1102.5,
7 PLAINTIFF has suffered and will continue to suffer humiliation, emotional distress, and mental and
8 physical pain and anguish to his damage in a sum according to proof.

9 55. As a proximate result of his termination in violation of Section 1102.5, PLAINTIFF
10 has suffered general and special damages in sums according to proof including, without limitation,
11 damages for loss of past and future wages and employment benefits.

12 56. As a proximate result of his termination in violation of Section 1102.5, PLAINTIFF
13 has engaged attorneys to prosecute his claims and, as such, has incurred and will continue to incur
14 attorneys' fees which he is entitled to recover pursuant to California law.

15 57. The conduct of DEFENDANTS as alleged herein was carried out or ratified by
16 managing agents of DEFENDANTS and constitutes oppression, fraud or malice as defined in
17 California Civil Code Section 3294 thereby entitling PLAINTIFF, in addition to an award of actual
18 damages, to an award of punitive damages in an amount sufficient to make an example of and punish
19 DEFENDANTS.

20 **THIRD CAUSE OF ACTION**

21 **(WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY)**

22 **(By Plaintiff Against DLC, APFS, and DOES 1-10, inclusive)**

23 58. PLAINTIFF restates and incorporates by reference, as though fully set forth herein,
24 each and every allegation set forth in the paragraphs above.

25 59. Under California law, it is unlawful for an employer to terminate an employee for
26 reasons that violate a fundamental public policy of the State of California.

27 60. California public policy, as reflected in Labor Code Sections 98.6 and 1102.5 and
28 other provisions of the Labor Code makes it unlawful for an employer to retaliate against any

BARRERA & ASSOCIATES
2298 E. MAPLE AVENUE
EL SEGUNDO, CALIFORNIA 90245
TEL 310.802.1500 • FAX 310.802.0500

1 employee for complaining that the employer failed to pay the employee wages due or from reporting
2 that the company was violating California law by not doing so. California public policy encourages
3 employees to insist on their legal rights, to make complaints and reports if they believe an employer
4 is violating those rights, and the law protects employees who do so against retaliation.

5 61. PLAINTIFF’S complaint that he was not paid his earned bonus and his report that
6 that the employer was violating California law by refusing to pay him the earned bonus was a
7 substantial motivating factor in DEFENDANTS’ decision to terminate PLAINTIFF.

8 62. As a proximate result of the termination of PLAINTIFF’S employment in violation
9 of California public policy, PLAINTIFF has suffered and continues to suffer humiliation, emotional
10 distress, and mental and physical pain and anguish, all to his damage in a sum according to proof.

11 63. As a proximate result of the termination of PLAINTIFF’S employment in violation
12 of California public policy PLAINTIFF, has suffered general and special damages in sums
13 according to proof including, without limitation, damages for lost past and future wages and
14 employment benefits.

15 64. The conduct of DEFENDANTS as alleged herein was carried out or ratified by
16 managing agents of DEFENDANTS and constitutes oppression, fraud or malice as defined in
17 California Civil Code Section 3294 thereby entitling PLAINTIFFS, in addition to an award of actual
18 damages, to an award of punitive damages in an amount sufficient to make an example of and punish
19 DEFENDANTS.

20 **FOURTH CAUSE OF ACTION**

21 **(DEFAMATION PER SE and COMPELLED SELF-DEFAMATION)**

22 **(By Plaintiff Against DLC, APFS, and DOES 1-10, inclusive)**

23 65. PLAINTIFF restates and incorporates by reference, as though fully set forth herein,
24 each and every allegation set forth in the paragraphs above.

25 66. On information and belief, DLC and APFS, through their agents, and DOES 1-10,
26 inclusive made defamatory statements about PLAINTIFF to PLAINTIFF himself and to third parties
27 including coworkers and professional colleagues of PLAINTIFF. Information as to the specific
28 identity of the persons publishing the relevant statements, and the recipients of the statements is in

BARRERA & ASSOCIATES
2298 E. MAPLE AVENUE
EL SEGUNDO, CALIFORNIA 90245
TEL 310.802.1500 • FAX 310.802.0500

BARRERA & ASSOCIATES
2298 E. MAPLE AVENUE
EL SEGUNDO, CALIFORNIA 90245
TEL 310.802.1500 • FAX 310.802.0500

1 the possession, custody, or control of DEFENDANTS and third parties, and will be subject to
2 discovery.

3 67. On information and belief, PLAINTIFF believes defamatory statements by DLC and
4 APFS, through their agents, and DOES 1-10, inclusive, were made orally. While defamatory
5 statements may also have been made in writing, PLAINTIFF does not presently have information
6 concerning written statements, which is in the hands of DEFENDANTS and of which
7 DEFENDANTS have superior knowledge, as will be subject to discovery.

8 68. PLAINTIFF does not presently have knowledge of the exact wording of the
9 defamatory statements at issue, other than as alleged hereinabove, such information being in the
10 hands of DEFENDANTS and third parties. On information and belief, the general substance of these
11 defamatory statements includes false express and implied assertions also including insinuation and
12 innuendo that PLAINTIFF’S performance was deficient, his attitude was detrimental to his
13 employer, and that he engaged in unspecified misconduct or other impropriety.

14 69. Such assertions were intended as statements of fact and not opinions.

15 70. PLAINTIFF is informed and believes that DLC and APFS, through their agents, and
16 DOES 1-10, inclusive, by the herein-described acts, conspired to, and in fact, did negligently,
17 recklessly, and intentionally caused excessive and unsolicited internal and external publications of
18 defamation, of and concerning PLAINTIFF, to third persons and the community, and/or with a
19 failure to investigate adequately or verify purported facts underlying the defamatory statements.

20 71. The precise dates of these publications are not presently known to PLAINTIFF, as
21 the information is in the hands of DEFENDANTS. PLAINTIFF is informed and believes the
22 publications were published and foreseeably republished beginning in February 2024 to first cause,
23 and then justify, PLAINTIFF’S wrongful and illegal termination, and to cause PLAINTIFF to be
24 unable to secure new employment with another company despite reasonable efforts to do so.

25 72. These publications were outrageous, negligent, reckless, intentional, and maliciously
26 published and republished by DLC and APFS, through their agents, and DOES 1-10, inclusive, and
27 each of them. PLAINTIFF is informed and believes that the negligent, reckless, and intentional
28 publications by DLC and APFS, through their agents, and DOES 1-10, inclusive and each of them,

1 were and continue to be, foreseeably published and republished by DLC and APFS, through their
2 agents, and DOES 1-10, inclusive, their agents and employees, recipients, and in the community.
3 PLAINTIFF hereby seeks damages for these publications and all foreseeable republications
4 discovered up to the time of trial.

5 73. During the above-described timeframe, , DLC and APFS, through their agents, and
6 DOES 1-10, inclusive, conspired to, and in fact, did negligently, recklessly, and intentionally cause
7 excessive and unsolicited publication of defamation, of and concerning PLAINTIFF, to third
8 persons, who had no need or desire to know. That third person(s) to whom these, DLC and APFS,
9 through their agents, and DOES 1-10, inclusive, published this defamation are believed to be known
10 to, DLC and APFS, through their agents, and DOES 1-10, inclusive, and each of them, but unknown
11 at this time to PLAINTIFFS.

12 74. Further, DLC and APFS, through their agents, and DOES 1-10, inclusive had
13 knowledge and/or reason to believe that PLAINTIFFS would be under a strong compulsion and
14 pressure to disclose the contents of these defamatory false statements to third persons, namely
15 potential employers, colleagues, friends, family, and other individuals, as they in fact did.

16 75. The defamatory publications set forth above consisted of knowingly false and
17 unprivileged communications, tending directly to injure PLAINTIFF AND PLAINTIFF'S personal,
18 business, and professional reputation.

19 76. PLAINTIFF is informed, believes, and fears that these false and defamatory per se
20 statements, including statements regarding PLAINTIFF'S occupational, business, professional, and
21 personal reputation, will continue to be published by, DLC and APFS, through their agents, and
22 DOES 1-10, inclusive, and each of them, and will be foreseeably republished by its recipients, all
23 to the ongoing harm and injury to PLAINTIFF'S occupational, business, professional, and personal
24 reputation. PLAINTIFF also seeks redress in this action for all foreseeable re-publications, including
25 PLAINTIFF'S own compelled self-publication of these defamatory statements.

26 77. The defamatory meaning of all of the above-described false and defamatory
27 statements and their reference to PLAINTIFF, were understood by these above-referenced third-
28 person recipients and other members of the community who are known to DLC and APFS, through

1 their agents, and DOES 1-10, inclusive and each of them, but unknown to PLAINTIFF at this time.

2 78. As a proximate result of the publication and republication of these defamatory
3 Statements and each of them, PLAINTIFF has suffered injury to his personal, business and
4 professional reputation including suffering embarrassment, humiliation, severe emotional distress,
5 shunning, anguish, fear, loss of employment, and employability, and significant economic loss in
6 the form of lost wages and future earnings, all to PLAINTIFF'S economic, emotional, and general
7 damage in an amount according to proof.

8 79. DLC and APFS, through their agents, , and DOES 1-10, inclusive committed the acts
9 alleged herein recklessly, maliciously, fraudulently, and oppressively, with the wrongful intention
10 of injuring PLAINTIFF, for an improper and evil motive amounting to malice (and which abused
11 and/or prevented the existence of any conditional privilege, which in fact did not exist, and with a
12 reckless and conscious disregard of PLAINTIFF'S rights. All actions of DLC and APFS, and DOES
13 1-10, inclusive, its agents and employees, herein alleged were known, ratified, and approved by
14 officers, directors, or managing agents of DLC and APFS, and DOES 1-10, inclusive. PLAINTIFF
15 is, therefore, entitled to recover punitive and exemplary damages from DLC and APFS, through
16 their agents, and DOES 1-10, inclusive for these wanton, obnoxious, and despicable acts in an
17 amount according to proof at the time of trial.

18 **FIFTH CAUSE OF ACTION**

19 **(BREACH OF WRITTEN CONTRACT)**

20 **(By Plaintiff Against DLC, APFS, and DOES 1-10, inclusive)**

21 80. PLAINTIFF restates and incorporates by reference, as though fully set forth herein,
22 each and every allegation set forth in the above paragraphs.

23 81. PLAINTIFF performed all his obligations under the 2023 Contract and any alleged
24 non-performance was justified or excused.

25 82. DLC and APFS breached the 2023 Contract by not paying PLAINTIFF the full
26 amount to which he was entitled.

27 83. As a direct and proximate result of the above-described breach of the 2023 Contract,
28 PLAINTIFF has been damaged in an amount to be proven at trial, but not less than \$25000, plus

1 interest as allowed by law

2 **SIXTH CAUSE OF ACTION**

3 **(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING)**

4 **(By Plaintiff Against DLC, APFS, and DOES 1-10, inclusive)**

5 84. PLAINTIFF restates and incorporates by reference, as though fully set forth herein,
6 each and every allegation set forth in the above paragraphs.

7 85. As set forth above, the 2023 Contract was a valid agreement between PLAINTIFF
8 DLC and APFS.

9 86. Under California law, in every contract or agreement there is an implied promise of
10 good faith and fair dealing. This implied promise means that each party will not do anything to
11 unfairly interfere with the right of any other party to receive the benefits of the contract.

12 87. Good faith means honesty of purpose without any intention to mislead or to take
13 unfair advantage of another. Generally speaking, it means being faithful to one's duty or obligation.
14 This implied promise also requires that any exercise of discretion not be arbitrary or capricious.

15 88. Although PLAINTIFF performed all or substantially all of the significant things that
16 the 2023 Contract required him to do, DLC and APFS did not act fairly in denying him the full
17 bonus he had earned under the 2023 Contract, and DLC and APFS acted arbitrarily and capriciously
18 in denying PLAINTIFF additional bonus compensation he to which he was entitled under the 2023
19 Contract.

20 89. As a direct and proximate result of the above-described breach of the covenant of
21 good faith and fair dealing contained in the 2023 Contract, PLAINTIFF has been damaged in an
22 amount to be proven at trial, but not less than \$25,000, plus interest as allowed by law.

23 **SEVENTH CAUSE OF ACTION**

24 **(VIOLATION OF CAL. LABOR CODE SECTION 1198.5 and 432.5)**

25 **(By Plaintiff Against DLC, APFS, and DOES 1-10, inclusive)**

26 90. PLAINTIFF restates and incorporates by reference, as though fully set forth herein,
27 each and every allegation set forth in the above paragraphs.

28 91. Pursuant to California Labor Code Sections 1198.5 and 432 PLAINTIFF was entitled

BARRERA & ASSOCIATES
2298 E. MAPLE AVENUE
EL SEGUNDO, CALIFORNIA 90245
TEL 310.802.1500 • FAX 310.802.0500

1 to receive a copy of the personnel records relating to his performance or any grievance against him
2 maintained by the employer and any document signed by him relating to his employment within 30
3 days of making a written request for those records.

4 92. PLAINTIFF made such a written request but DLC and APFS did not provide all the
5 required documents within the statutory time frame.

6 93. Pursuant to the statutes, PLAINTIFF is entitled to recover penalties, attorneys fees
7 and costs for the employer's non-compliance.

8 **EIGHTH CAUSE OF ACTION**

9 **(VIOLATION OF CAL. LABOR CODE SECTION 1198.5 and 432.5)**

10 **(By Plaintiff Against DLC, APFS, and DOES 1-10, inclusive)**

11 94. PLAINTIFF restates and incorporates by reference, as though fully set forth herein,
12 each and every allegation set forth in the above paragraphs.

13 95. Pursuant to California Labor Code Section 226, PLAINTIFF was entitled to receive
14 a copy of his payroll records within 21 days of making a written request for those records.

15 96. PLAINTIFF made such a written request but DLC and APFS did not provide the
16 records within the statutory time frame.

17 97. Pursuant to the statute, PLAINTIFF is entitled to recover penalties for the employer's
18 non-compliance.

19 **PRAYER FOR RELIEF**

20 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as

21 Follows:

- 22 1. For general damages, including lost wages and employment benefits according to
- 23 proof;
- 24 2. For special damages, including damages for emotional distress, physical injuries and
- 25 damage to reputation according to proof;
- 26 3. For punitive damages on each cause of action for which they are awardable;
- 27 4. For all civil statutory penalties awardable;
- 28 5. For an award of interest, including prejudgment and post-judgment interest, at the

BARRERA & ASSOCIATES
2298 E. MAPLE AVENUE
EL SEGUNDO, CALIFORNIA 90245
TEL 310.802.1500 • FAX 310.802.0500

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

legal rate;

6. For injunctive relief under the labor code sections cited herein;

7. For an award of attorneys' fees as awardable on each cause of action, under the labor code sections cited herein;

8. For costs of suit incurred;

For such other relief as the Court may deem proper.

DEMAND FOR JURY TRIAL


Plaintiff hereby demands a trial by jury on all issues.

Dated: April 16, 2024

BARRERA & ASSOCIATES, APC

LEB DISPUTE RESOLUTIONS

By:



Michael H. Leb
Patricio Barrera
Attorneys for Plaintiff Dak Galinski

BARRERA & ASSOCIATES
2298 E. MAPLE AVENUE
EL SEGUNDO, CALIFORNIA 90245
TEL 310.802.1500 • FAX 310.802.0500

EXHIBIT A

DocuSign Envelope ID: E1CD9771-DD87-4E9B-BEB3-0797A50EA265

2023 Compensation Plan

Executive: **Dak Gilinsky**

Compensation Components:

Annual Base Salary	\$ 175,000
Annual Potential Bonus	\$ 75,000
MD Commissions & Override for LA	Remains unchanged.
MD Override for DLC-OC	Remains unchanged.

For 2023, your current commissions and override for Los Angeles (LA) remain unchanged. In addition to your LA commissions and override, you remain eligible for an override for DLC Orange County (OC).

Annual Bonus Components: Based 33.33% on MBO Goal / 66.67% on DLC-OC Gross Profit Performance as defined below.

Annual Bonus Plan Structure: If you achieve 100% of your assigned MBO goal, you will receive 33.33% of your annual potential bonus, or \$25,000.

MBO Goal:
1) Grow and develop your Business Development Associates.

If you achieve 100% of the DLC-OC 2023 Gross Profit Budget of \$3,246,114, you will be eligible for remaining 66.67% of your potential bonus. If you achieve between 90% - 100% of the Gross Profit Budget of \$3,246,114, your bonus will be calculated based on the following payout table:

DLC Orange County		
Gross Profit	% Achievement	Total Potential Bonus
< \$2,921,503	< 90%	\$0
\$2,921,503	90%	\$30,000
\$3,083,808	95%	\$40,000
\$3,246,114	100%	\$50,000
> \$3,246,114	> 100%	Additional incentive at CEO discretion

For performance above 100% of the DLC-OC Gross Profit budget, you will be eligible for an additional incentive up to \$25,000 at CEO discretion.

Bonus amount earned will be remunerated after the audit of the 2023 financial statements or prior at CEO discretion. Employee must be actively employed at the time of bonus payout to receive bonus amount. This compensation plan is subject to change at the discretion of the Company.

I have reviewed and acknowledge the above compensation and bonus plan for 2023:

DocuSigned by:
Dak Gilinsky 3/23/2023
Dak Gilinsky, Managing Director Date