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10 Attorneys for Cross-Complainant
11 VERTICAL COMPUTER SYSTEMS, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

JAMES SALZ, an individual,
Plaintiff,

v.

VERTICAL COMPUTER SYSTEMS,
INC., a Delaware corporation; NOW
SOLUTIONS, INC., a Delaware
corporation; PRIORITY TIME SYSTEMS,
INC., a Nevada corporation; LEONARD
CHERMACK, an individual; and DOES1
through 100, inclusive,

Defendants.

VERTICAL COMPUTER SYSTEMS, INC.,
a Delaware corporation,

Cross-Complainant,

v.

JAMES SALZ, an individual; BIGGINS
LAW, INC., a California corporation; and
ROES 1 through 10, inclusive,

Cross-Defendants.

CASE NO.: 24STCV05304

CROSS-COMPLAINT FOR:

- 1. BREACH OF FIDUCIARY DUTY;**
- 2. LEGAL MALPRACTICE;**
- 3. FRAUD;**
- 4. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AND**
- 5. VIOLATION OF BOOKS & RECORDS DEMAND**

Dept.: 68
Complaint Filed: March 1, 2024
Judge: Hon. Pfahler
Trial Date: Not set

1 **SUMMARY OF ACTION**

2 1. Like many start-ups, VERTICAL COMPUTER SYSTEMS, INC. (“VCSY”) was
3 a software company that relied on its in-house General and Corporate Counsel to help it navigate
4 business decisions, raise capital through public and private offerings, and steer through
5 undesirable litigation that often trouble a new company. JAMES SALZ (“Salz”) filled that role
6 for VCSY for many years beginning in 2001. VCSY relied on its counsel, Salz, to advocate and
7 act in the best interests of the company.

8 2. Salz, a licensed California attorney, represented that he had the expertise, training,
9 and skill to help VCSY and its leadership weather difficult business and legal issues. Salz served
10 as the “in-house corporate counsel” from 2001 through 2023, when he was placed on unpaid
11 medical leave. As the self-identified “go-to person,” Salz convinced VCSY to rely on him for
12 most of its legal matters. Where Salz did not have certain expertise, Salz represented to VCSY
13 that he would bring in top-notch attorneys as outside counsel who could help VCSY with
14 complex litigation throughout the United States.

15 3. Salz also insisted that he have a role on the Board of Directors and an Officer role
16 as Secretary for VCSY. With these roles as a Director and Secretary, Salz had fiduciary
17 obligations that he owed to VCSY in addition to his role as its legal counsel. VCSY relied on its
18 Director and Secretary to advocate and act in the best interests of the company.

19 4. After Salz abruptly took medical leave in February 2023, VCSY began to discover
20 Salz’s breaches of his fiduciary duties of loyalty and confidentiality, misrepresentations made to
21 the company, moonlighting for other law firms and lawyers that created significant conflicts of
22 interest and exposure, and his failures to guide the company through competent legal
23 representation.

24 5. VCSY also later discovered that Salz was supervising Biggins Law, a law firm that
25 Salz had touted to the company as qualified attorneys to defend it in a contentious, bet-the-
26 business litigation. Biggins Law continued to communicate with Salz as the “legal counsel”
27 through August 2023. VCSY would later learn that Salz had or was concurrently providing legal
28 services under BIGGINS LAW, INC. (“Biggins Law”), and neither Salz nor Biggins Law

1 disclosed the conflicts of interest.

2 6. Based on Salz's and Biggins Law's misconduct, VCSY has suffered significant
3 harm, including exposure to costly litigation from usurious loans and deals that Salz negotiated,
4 hiring an incompetent attorney as defense counsel, negotiating a settlement several weeks prior to
5 trial after over three years of litigation because VCSY had little to no leverage, and forcing VCSY
6 to hire other attorneys to protect the company from significant exposure.

7 **THE PARTIES AND JURISDICTION**

8 7. VCSY incorporates by reference the paragraphs above as if fully set forth herein.

9 8. Salz is an individual who resided and currently resides in the County of Los
10 Angeles, State of California at all times relevant in this action.

11 9. VCSY is a Delaware corporation authorized to do business and doing business in
12 the County of Los Angeles, State of California at all times relevant in this action.

13 10. Biggins Law is a law corporation in California. Its lawyers, including Chad
14 Biggins and Salz, are licensed attorneys in California. Biggins Law does business in the County
15 of Los Angeles, State of California at all times relevant in this action.

16 11. The true names and capacities whether individual, corporate associate, or
17 otherwise, of Cross-Defendant ROES 1 through 10, inclusive, are unknown to VCSY at the times
18 of filing this Cross-Complaint, and therefore, VCSY sues these Cross-Defendants under fictitious
19 names. VCSY is informed and believes, and thereon alleges, that each of the Cross-Defendants
20 designated as a ROE cross-defendant was in some way responsible for the events and happenings
21 referred to in this Cross-Complaint, and, thus, proximately caused injury and damage to VCSY.
22 VCSY will ask for leave from the Court to amend its Cross-Complaint to provide the ROE cross-
23 defendants' true names or capacities when VCSY ascertains them.

24 12. The Court has subject-matter jurisdiction over this case because the amount in
25 controversy exceeds \$25,000.

26 13. The County of Los Angeles, Stanley Mosk Courthouse, is the proper venue for this
27 action under California Code of Civil Procedure section 395(a). All events that gave rise to this
28 Cross-Complaint took place in the County of Los Angeles.

1 PRELIMINARY ALLEGATIONS

2 14. VCSY incorporates by reference the paragraphs above as if fully set forth herein.

3 15. From 2001 through 2023 when he went on unpaid medical leave, Salz served as
4 in-house General or Corporate Counsel for VCSY. VCSY expected that Salz’s role as General or
5 Corporate in-house counsel would be multifaceted, encompassing a wide range of legal and
6 strategic responsibilities that were crucial for the company’s growth and sustainability, especially
7 as VCSY weathered the COVID-19 pandemic.

8 16. Salz represented that he had the legal expertise and convinced VCSY that he could
9 advise them on legal compliance, risk management, contract management including drafting and
10 reviewing contracts that were sound and aligned with VCSY’s interests, investment and
11 fundraising including venture capital financing and angel investments, dispute resolution and
12 litigation, and communicating with VCSY’s Board and potential investors. VCSY relied on
13 Salz’s representations to its detriment because he did not have the expertise nor did he have
14 VCSY’s best interests in mind.

15 17. Based on representations made by Salz to VCSY and the public, including public
16 statements filed in offerings with the Securities and Exchange Commission as well as a private
17 offering to potential investors, Salz represented that he was working exclusively and full-time
18 with VCSY as its in-house General and Corporate Counsel. In a private offering memorandum
19 provided to third parties that Salz reviewed, Salz represented that he was the “sole in-house
20 corporate attorney” for VCSY. Thus, VCSY understood and relied upon Salz’s loyalty and full-
21 time dedication to the company. VCSY had no reason to believe that its in-house General and
22 Corporate Counsel was moonlighting on other matters.

23 18. VCSY is informed and alleges that Salz had been working for other law firms as a
24 lawyer during the time that he was purportedly working exclusively and full-time for VCSY. Salz
25 was providing legal services for law firms including but not limited to Ellenoff Grossman &
26 Schole LLP and Biggins Law, including active litigation with Biggins Law in *Ducksung Inc. vs.*
27 *Silla America Inc, et al* in the Superior Court of California – County of Los Angeles. VCSY is
28 informed and believes that Salz has marketed himself as an attorney at “Law Offices of Chad

1 Biggins” in Los Angeles on the Internet, including websites such as Lawyers.bio and
2 LawyerDB.org. Salz and Biggins Law concealed this information from VCSY and did not
3 disclose that there may be conflicts or that he may be exposing the company to potential legal
4 malpractice claims from clients that he was representing without VCSY’s knowledge.

5 19. In addition to moonlighting for other law firms without VCSY’s knowledge, Salz
6 was also acting as the President and Founder of Trusted LASIK Surgeons during the period that
7 he was allegedly working exclusively and full-time for VCSY.

8 20. Despite Salz’s role as in-house General and Corporate Counsel and his fiduciary
9 obligations to VCSY, Salz also became involved in loaning funds to VCSY to keep it afloat
10 during tough times, especially during the COVID-19 pandemic. Although Salz’s ethical
11 obligations precluded Salz from entering into business transactions and promissory notes with
12 VCSY where Salz acquired a pecuniary interest, Salz did not advise VCSY to seek independent
13 counsel or obtain any written waiver of any conflict as required under the Rules of Professional
14 Conduct, namely RPC 1.8.1.

15 21. VCSY, on several occasions, offered to make payments to Salz on loans that he
16 made to the company. However, Salz refused to accept the payments because he wanted to treat
17 them as unpaid wages to the detriment of the company. Salz did not advise the company that this
18 could be a conflict of interest for VCSY.

19 22. Knowing VCSY’s precarious financial conditions, Salz counseled VCSY in
20 January 2013 to enter usurious loans with compounding interest with third parties, including
21 Robert Farias (“Farias”) and Lakeshore Investment LLC. These usurious loans exposed VCSY
22 and its subsidiary, NOW SOLUTIONS, INC., Inc. (“NOW Solutions”), to litigation and the risks
23 of losing ownership to a minority owner. Salz negotiated these usurious loans with
24 unconscionable interest rates including contracts where Farias obtained a 25% interest in VCSY’s
25 subsidiary, NOW Solutions, and pledge of all personal intellectual property of the entity for no
26 consideration.

27 23. Salz’s counsel and advice resulted in expensive and prolonged litigation for VCSY
28 that harmed its viability for over three years. VCSY relied on Salz as its in-house General

1 Counsel to evaluate risks and exposure related to these loans with third parties.

2 24. In addition to negotiating usurious loans with third parties, Salz, in his individual
3 capacity, also negotiated employment-type contracts and agreements with VCSY that solely
4 benefitted him in 2020. VCSY's then owner, Richard Wade, was under significant duress to sign
5 contracts that benefitted Salz without advice and counsel from independent counsel.

6 25. After Salz exposed VCSY to questionable loans and litigation in California, Salz
7 endangered VCSY to a "bet-the-business" litigation known as the *Lakeshore* Action in May 2019,
8 where third party Farias was seeking to enforce over \$3-\$5 million in usurious loans that Salz had
9 previously negotiated.

10 26. Salz, as the General and Corporate Counsel, hired attorney Chad Biggins
11 ("Biggins") of Biggins Law for the defense in the *Lakeshore* Action. Salz did not disclose his
12 prior relationship with Biggins Law to VCSY, that he continued to do legal work for Biggins
13 Law, or that he was sharing office space with Biggins Law. Salz failed to disclose this actual
14 and/or potential conflict of interest to his client VCSY. Instead, Salz advised VCSY that Biggins
15 Law was a reputable, top-notch firm that would aggressively defend VCSY.

16 27. Subsequently, VCSY retained Biggins Law to defend it and paid Biggins Law
17 over \$150,000 to represent it in the *Lakeshore* Action. Biggins and Salz had repeatedly advised
18 VCSY that it had a strong defense that the loans were usurious and signed under duress, but their
19 missteps in the litigation weakened VCSY's ability to put on a viable defense and leverage a
20 strong settlement.

21 28. Throughout Biggins Law's defense and representation, Salz was supervising
22 VCSY's outside counsel, Biggins. Salz, whose role was to guide and counsel VCSY as its in-
23 house General and Corporate Counsel, failed to advise VCSY that Biggins's legal services were
24 below the standard of care, that Biggins had made serious missteps that hampered VCSY's
25 defense, and that Biggins had made false representations to VCSY's leadership about the status of
26 the litigation.

27 29. VCSY is informed and alleges that Biggins, under Salz's supervision, failed to
28 take necessary steps to protect VCSY in its defense in the *Lakeshore* Action. Biggins's and

1 Salz's, as attorneys for VCSY, failures included but are not limited to:

- 2 a. failure to communicate material and significant events in the litigation;
- 3 b. forcing VCSY to incur additional attorneys' fees and costs to fight a demurrer
4 for Biggins's failure to draft cognizable causes of action in the Cross-
5 Complaint;
- 6 c. forcing VCSY to hire another lawyer, D. Jay Ritt (who is currently
7 representing Salz in his employment lawsuit) to represent VCSY to amend the
8 Cross-Complaint because Biggins did not have the expertise to handle it
9 himself;
- 10 d. failure to collect bank records and other files early in the *Lakeshore* Action to
11 prepare the defense and exposing VCSY to the likely possibility that all
12 evidence would be destroyed based on third parties' recordkeeping practices;
- 13 e. failure to secure and designate a forensic accounting expert and a business
14 valuation expert in a financial fraud and contract lawsuit despite notice of the
15 designation of experts by opposing counsel in November 2019;
- 16 f. failure to evaluate the valuation of the minority interest in Now Solutions at the
17 time of the transfer in March 2013;
- 18 g. exposing VCSY to discovery sanctions including failures to respond to written
19 discovery and the risks of admissions being deemed admitted;
- 20 h. failure to conduct appropriate discovery including depositions of key
21 witnesses;
- 22 i. failure to notify key witnesses that they were needed for trial;
- 23 j. failure to turn over responsive and admissible documents that would have
24 supported VCSY's defense and left VCSY with limited admissible evidence as
25 it approached trial;
- 26 k. failure to gather material information regarding payments by third parties and
27 accounting as trial approached and the discovery window closed;
- 28 l. the failure to file jury fees on at least three occasions which resulted in

1 VCSY's waiver of a jury trial;

- 2 m. false representations to VCSY that the jury trial was denied without truthfully
3 advising VCSY that the company had waived jury by failing to file jury fees;
4 n. overbilling for legal services that were duplicative, excessive, block billing, or
5 administrative in violation of the Rules of Professional Conduct and Business
6 & Professions Code; and
7 o. potential sharing or referral of attorneys' fees without disclosure to VCSY in
8 violation of the Rules of Professional Conduct.

9 30. Biggins, under Salz's supervision, proposed two experts to VCSY in January 2023
10 with a potential budget over \$80,000. Biggins communicated to an expert that the expert
11 disclosure deadline in the *Lakeshore* Action was quickly approaching. Yet, Biggins admitted
12 under oath that he was unaware that opposing counsel had served a demand for expert disclosure
13 on his office and failed to calendar the deadline to disclose expert information. Both Salz and
14 Biggins failed to advise VCSY of the significant harm of going to trial without the proper experts
15 in place.

16 31. In January 2023, prior to trial in the *Lakeshore* Action, Salz began to realize that
17 VCSY could be liable for the loans in the *Lakeshore* Action especially with the state of VCSY's
18 defense that Biggins and Salz had set up. Although losing the *Lakeshore* Action was always a
19 risk, Salz and Biggins represented that VCSY had strong defenses *if* they had actually taken the
20 steps to prepare the defenses for trial.

21 32. Rather than take the necessary steps to remedy missteps in the *Lakeshore* Action's
22 litigation, Salz acted in his self-interest and began to negotiate a deal with VCSY where he would
23 be given priority interest on his promissory notes or where NOW Solutions would either absorb
24 VCSY's debt to Salz or grant new security interests in the subsidiary. Salz was purely focused on
25 his own self-interest rather than the detriment to VCSY and other interested parties. Salz, who
26 was acting as VCSY's in-house General and Corporate Counsel, did not advise VCSY to seek
27 independent counsel to evaluate Salz's and Biggins's suggestion to issue priority liens.

28 33. Salz circumvented VCSY leadership and attempted to pitch this deal of giving him

1 a priority lien while VCSY was trying to secure venture \$3.5 million in capital in a private
2 offering. VCSY is informed and believes that Salz's unethical conduct, as the purported in-house
3 General and Corporate Counsel, Director, and Secretary of the company, scared away potential
4 investors and resulted in the private offering falling apart. Salz was warned on several occasions
5 that his self-serving plan was not approved by a majority of the Board and Salz's continued
6 efforts to advise others about his plan was a violation of his fiduciary obligations.

7 34. Rather than protect VCSY's interests, Salz and Biggins attempted to convince
8 VCSY to give Salz his priority lien. It appeared that Biggins, VCSY's outside counsel, was more
9 concerned about protecting Salz's loan than the significant exposure that the company was facing
10 due to the ill-prepared defense.

11 35. In February 2023, Salz advised VCSY that he was taking medical leave due to his
12 mental and physical health. Biggins maintained that Salz was the direct point of contact for the
13 company. Although Salz was on unpaid medical leave, Salz continued to communicate with
14 Biggins regarding the defense of the *Lakeshore* Action through late 2023.

15 36. Although Salz was on unpaid medical leave, Biggins continued to advise VCSY
16 that it needed to include Salz in all litigation strategies because Salz was a Director, employee,
17 and "legal counsel." In June 2023, Biggins repeated that he thought the loans in the *Lakeshore*
18 Action were usurious and the lawsuit could be defended, but advised VCSY to assign priority
19 liens to Salz as a "friendly creditor" so Salz had priority over any judgment by Farias if VCSY
20 lost the *Lakeshore* Action.

21 37. Subsequently, VCSY was forced to hire outside counsel to assist and evaluate the
22 damage to VCSY's defense in the *Lakeshore* Action in August 2023. VCSY incurred significant
23 attorneys' fees to evaluate discovery, a motion to continue trial, a motion to re-open expert
24 discovery, and investigation and research into qualified experts. VCSY's new counsel spent over
25 150 hours of attorney hours to get the defense teed up for the *Lakeshore* Action in the three
26 months leading up to trial. VCSY's new counsel was severely hampered by the prior
27 mishandlings by Salz, Biggins Law, and ROES 1 through 10. Biggins Law was replaced as
28 VCSY's counsel in August 2023.

1 38. VCSY was forced to scramble to prepare for trial with a defense that had been
2 mismanaged. Despite evidence that the *Lakeshore* Action was defensible, VCSY, through its new
3 counsel, negotiated a settlement just weeks prior to trial where VCSY released claims in a
4 separate action, paid to resolve the claims after almost three years of litigation, and secured its
5 shares to keep the company viable. VCSY should not have been in this position of defending
6 usurious loans that Salz negotiated and approved the VCSY's leadership.

7 **FIRST CAUSE OF ACTION**

8 **Breach of Fiduciary Duty (Against Salz, Biggins Law, and ROES 1 through 10)**

9 39. VCSY incorporates by reference the paragraphs above as if fully set forth herein.

10 40. Salz, Biggins Law, and ROES 1 through 10 are attorneys licensed in the State of
11 California. They owe a fiduciary duty to VCSY as their client. The fiduciary duty imposed on a
12 lawyer includes a duty to act with the utmost good faith in the best interests of VCSY, including
13 but not limited to duties of care and loyalty.

14 41. Salz also owed fiduciary duties to VCSY as a Director and Secretary of VCSY
15 under the corporation's By Laws and Delaware General Corporation Law. Salz was required to
16 make informed decisions based on all material information that was reasonably available to him,
17 including acting with care when making decisions or acting for the corporation. Salz was also
18 required to act in good faith, independently, and disinterestedly to advance the best interests of
19 the corporation and its stakeholders.

20 42. Salz, Biggins Law, and ROES 1 through 10 failed to disclose to VCSY that they
21 had serious conflicts of interest when Salz was moonlighting for other law firms, including
22 Biggins Law, who Salz had recommended to VCSY to retain for the defense of the *Lakeshore*
23 Action. This caused significant harm to VCSY because it relied on Salz to supervise Biggins's
24 representation and defense strategies in the *Lakeshore* Action for several years. Salz, who did not
25 disclose that he had a conflict of interest, breached his duty of care and loyalty by failing to
26 advise his client, VCSY, that Biggins Law had several litigation missteps that hampered VCSY's
27 defense in the *Lakeshore* Action.

28 43. Salz's, Biggins Law's, and ROES 1 through 10's breaches of their fiduciary duties

1 included:

- 2 a. failure to disclose their conflicts of interest, namely Salz's employment or
- 3 business relationship with Biggins Law;
- 4 b. acting in their best interests to negotiate priority liens in the *Lakeshore* Action
- 5 that undermined VCSY's credibility, including VCSY's ability to raise capital;
- 6 c. failure to properly prepare the case for trial, including retention of experts,
- 7 production of admissible evidence, and securing key witness testimony;
- 8 d. failure to file jury fees on at least three occasions which resulted in VCSY's
- 9 waiver of a jury trial and fraudulent representations to VCSY regarding the
- 10 reasons why it did not have a jury trial;
- 11 e. overbilling for legal services that were duplicative, excessive, block billing, or
- 12 administrative in violation of the Rules of Professional Conduct and Business
- 13 & Professions Code;
- 14 f. retaining D. Jay Ritt to assist VCSY with amending the Cross-Complaint,
- 15 sharing confidential attorney-client communications with Mr. Ritt, and later
- 16 using Mr. Ritt to prosecute Salz's employment claims against VCSY;
- 17 g. potential sharing or referral of attorneys' fees without disclosure to VCSY in
- 18 violation of the Rules of Professional Conduct;
- 19 h. Salz, acting in his own best interests, also negotiated agreements and deals
- 20 with VCSY that were detrimental to the company without advising his client
- 21 that it needed to seek independent counsel and obtain a written conflict of
- 22 interest waiver. These agreements and deals included loans and amendments to
- 23 agreements regarding accrual of wages, vacation, and compensation. VCSY
- 24 did not give informed consent to Salz's conduct; and
- 25 i. attempting to negotiate priority liens for Salz in the *Lakeshore* Action that
- 26 undermined VCSY's credibility amongst interested shareholders and investors.

27 44. VCSY was harmed by Salz's, Biggins Law's, and ROES 1 through 10's breach of
28 the fiduciary duties to use reasonable care and remain loyal to the corporation. Salz's, Biggins

1 Law's, and ROES 1 through 10's conduct was a substantial factor in causing VCSY's harm.

2 45. VCSY is entitled to compensatory damages and punitive damages where it is
3 proven by clear and convincing evidence that Salz, Biggins Law, and ROES 1 through 10 has
4 been guilty of fraud or malice. Where VCSY proves that Salz, Biggins Law, and ROES 1 through
5 10 intended to negotiate deals with a conscious disregard for the rights of VCSY or intentionally
6 misrepresented or concealed material facts about the *Lakeshore* Action or the risks of entering
7 agreements under duress, punitive damages should be awarded.

8 **SECOND CAUSE OF ACTION**

9 **Legal Malpractice (Professional Negligence) (Against Salz, Biggins Law, and ROES 1**
10 **through 10)**

11 46. VCSY incorporates by reference the paragraphs above as if fully set forth herein.

12 47. Salz, Biggins Law, and ROES 1 through 10 are attorneys licensed in the State of
13 California. Throughout their representation, they failed to use the skill and care that a reasonably
14 careful attorney would have used in similar circumstances. This level of skill, knowledge, and
15 care is the "standard of care," which Cross-Defendants breached.

16 48. Salz, a licensed California attorney, represented that he had the expertise, training,
17 and skill to help VCSY and its leadership weather difficult business and legal issues. Salz served
18 as the "in-house corporate counsel" from 2001 through 2023, when he was placed on unpaid
19 medical leave. As the "go-to person," VCSY relied on Salz for most of its legal matters. Where
20 Salz did not have certain expertise, Salz represented to VCSY that he would bring in top-notch
21 attorneys as outside counsel who could help VCSY with complex litigation throughout the United
22 States.

23 49. Biggins Law represented that it had the expertise, skill, and knowledge to handle a
24 breach of contract claim in California.

25 50. Throughout Biggins Law's defense and representation, Salz was allegedly
26 supervising VCSY's outside counsel, Biggins. Salz admits that he was the "lead advisor to
27 outside counsel on significant litigation." Salz, whose role was to guide and counsel VCSY as its
28 in-house General and Corporate Counsel, failed to advise VCSY that Biggins's legal services

1 were below the standard of care and that Biggins had made serious missteps that hampered
2 VCSY's defense. Biggins Law and Biggins continued to keep Salz involved in the litigation as
3 lead counsel and communicate with Salz through August 2023.

4 51. VCSY is informed and alleges that Biggins, under Salz's supervision, failed to
5 take necessary steps to protect VCSY in its defense in the *Lakeshore* Action. Biggins Law's and
6 Salz's failures included but are not limited to:

- 7 a. failure to communicate material and significant events in the litigation;
- 8 b. forcing VCSY to incur additional attorneys' fees and costs to fight a demurrer
9 for Biggins's failure to draft cognizable causes of action in the Cross-
10 Complaint;
- 11 c. forcing VCSY to hire another lawyer, D. Jay Ritt (who is currently
12 representing Salz in his employment lawsuit) to represent VCSY to amend the
13 Cross-Complaint because Biggins did not have the expertise to handle it
14 himself;
- 15 d. failure to collect bank records and other files early in the *Lakeshore* Action to
16 prepare the defense and exposing VCSY to the likely possibility that all
17 evidence would be destroyed based on third parties' recordkeeping practices;
- 18 e. failure to secure and designate a forensic accounting expert and a business
19 valuation expert in a financial fraud and contract lawsuit despite notice of the
20 designation of experts by opposing counsel in November 2019;
- 21 f. failure to evaluate the valuation of the minority interest in Now Solutions at the
22 time of the transfer in March 2013;
- 23 g. exposing VCSY to discovery sanctions including failures to respond to written
24 discovery and the risks of admissions being deemed admitted;
- 25 h. failure to conduct appropriate discovery including depositions of key
26 witnesses;
- 27 i. failure to notify key witnesses that they were needed for trial;
- 28 j. failure to turn over responsive and admissible documents that would have

1 supported VCSY's defense and left VCSY with limited admissible evidence as
2 it approached trial;

- 3 k. failure to gather material information regarding payments by third parties and
4 accounting as trial approached and the discovery window closed;
- 5 l. the failure to file jury fees on at least three occasions which resulted in
6 VCSY's waiver of a jury trial;
- 7 m. false representations to VCSY that the jury trial was denied without truthfully
8 advising VCSY that the company had waived jury by failing to file jury fees;
- 9 n. overbilling for legal services that were duplicative, excessive, block billing, or
10 administrative in violation of the Rules of Professional Conduct and Business
11 & Professions Code; and
- 12 o. potential sharing or referral of attorneys' fees without disclosure to VCSY in
13 violation of the Rules of Professional Conduct.

14 52. Biggins, under Salz's supervision, proposed two experts to VCSY in January 2023
15 with a potential budget over \$80,000.00. Biggins communicated to an expert that the expert
16 disclosure deadline in the *Lakeshore* Action was quickly approaching. Yet, Biggins admitted
17 under oath that he was unaware that opposing counsel had served a demand for expert disclosures
18 on his office and failed to calendar the deadline to disclose expert information. Both Salz and
19 Biggins failed to advise VCSY of the significant harm of going to trial without the proper experts
20 in place.

21 53. VCSY would have obtained a better result of Salz, Biggins Law, and ROES 1
22 through 10 had acted as reasonably careful attorneys. VCSY would have been prepared to defend
23 itself at trial, leverage a better settlement, and would not have waived or release claims in other
24 matters that had significant value had Salz, Biggins Law, and ROES 1 through 10 properly
25 represented it in its defense.

26 54. VCSY was harmed and its damages were caused by Salz's, Biggins Law's, and
27 ROES 1 through 10's conduct in an amount in excess of \$100,000.

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1 **THIRD CAUSE OF ACTION**

2 **Fraud (Against Salz, Biggins Law, and ROES 1 through 10)**

3 55. VCSY incorporates by reference the paragraphs above as if fully set forth herein.

4 56. Salz, Biggins Law, and ROES 1 through 10 are attorneys licensed in the State of
5 California. Biggins Law and ROES 1 through 10 represented VCSY through August 2023. Salz
6 acted as VCSY's in-house General and Corporate Counsel from 2001 through 2023, when Salz
7 was placed on unpaid medical leave.

8 57. VCSY is informed and alleges that Salz, Biggins Law, and ROES 1 through 10
9 made false representations that harmed VCSY. Salz, Biggins Law, and ROES 1 through 10
10 represented that there was no conflict of interest in retaining Biggins Law to represent VCSY in
11 the *Lakeshore* Action. Salz and Biggins Law represented that Biggins Law had the expertise to
12 defend VCSY in a bet-the-business litigation.

13 58. Yet, Salz, Biggins Law, and ROES 1 through 10 concealed that Salz was secretly
14 working as an attorney for Biggins Law. Salz also concealed that he was working for a New York
15 law firm while he was allegedly the sole and exclusive in-house counsel for VCSY. These
16 representations were false or made recklessly without regard for its truth.

17 59. Salz misrepresented that he was working exclusively and full-time for VCSY as
18 he was moonlighting for other law firms and still acting as the President of Trusted Lasik
19 Surgeons.

20 60. VCSY reasonably relied on Cross-Defendants' representations that they were
21 working in the best interests of the company. Instead, Salz had hired Biggins, the owner of a law
22 firm that he was also providing legal services for and through, without advising VCSY of the
23 conflict of interest. Salz also hired D. Jay Ritt to assist VCSY to revise the underlying Cross-
24 Complaint, shared confidential information with Mr. Ritt, and later used said information to retain
25 Mr. Ritt to prosecute his employment claims.

26 61. With Biggins leading the helm of the defense in the *Lakeshore* Action, Salz,
27 Biggins Law, and ROES 1 through 10 attempted to convince VCSY to give Salz a priority lien as
28 VCSY faced a potential judgment in the *Lakeshore* Action. These representations were not

1 intended to benefit the company but rather in the self-interests of Cross-Defendants.

2 62. Throughout the *Lakeshore* Action, Salz, Biggins Law, and ROES 1 through 10
3 misrepresented the defense strategy to VCSY. Although they told VCSY that they had put
4 together a strong case, Salz, Biggins Law, and ROES 1 through 10 had failed to take necessary
5 steps including conducting discovery, securing key evidence and documents, designating key
6 experts, and paying jury fees for a jury trial. Salz, Biggins Law, and ROES 1 through 10 falsely
7 stated that they had been interviewing and securing experts but failed to do so. Salz, Biggins Law,
8 and ROES 1 through 10 misrepresented the court's denial of a jury trial and exposed VCSY to
9 having to pay \$75,000.00 as bond if VCSY wanted a jury trial. VCSY did not discover all of
10 these false representations until it was forced to retain new counsel.

11 63. Salz, Biggins Law, and ROES 1 through 10 also repeatedly advised VCSY that
12 VCSY was failing to act to protect Salz's lien or that it would not harm the VCSY's shareholders.
13 Salz continued to represent that it was in the best interests to grant new securities without
14 truthfully advising VCSY regarding the risks or exposures of taking such action.

15 64. VCSY was harmed by the fraud and concealment, and its reliance on
16 representations made by Salz, Biggins Law, and ROES 1 through 10 was a substantial factor in
17 causing VCSY's harm. VCSY is entitled to compensatory damages in an amount in excess of
18 \$100,000 and punitive damages where it is proven by clear and convincing evidence that Salz,
19 Biggins Law, and ROES 1 through 10 has been guilty of fraud or malice. Where VCSY proves
20 that Salz, Biggins Law, and ROES 1 through 10 intended to negotiate deals with a conscious
21 disregard for the rights of VCSY or intentionally misrepresented or concealed material facts about
22 the *Lakeshore* Action or the risks of entering agreements under duress, punitive damages should
23 be awarded.

24 **FOURTH CAUSE OF ACTION**

25 **Breach of Implied Covenant of Good Faith and Fair Dealing (Against Salz)**

26 65. VCSY incorporates by reference the paragraphs above as if fully set forth herein.

27 66. From 2001 through 2023 when Salz took unpaid medical leave, Salz served as in-
28 house General or Corporate Counsel for VCSY. Salz's role as General or Corporate in-house

1 counsel was multifaceted, encompassing a wide range of legal and strategic responsibilities that
2 were crucial for the company's growth and sustainability, especially as VCSY weathered the
3 COVID-19 pandemic. Salz was a W-2 employee for VCSY.

4 67. As an employee of VCSY, Salz had an implied contractual duty to his employer.
5 He had an undivided duty of loyalty and cannot act to the detriment of his or her employer, while
6 employed. Salz's duty of loyalty is an implied contractual duty and from his relationship to
7 VCSY where he owes a fiduciary duty to act loyally for the company's benefit in any matter
8 connected with the agency relationship.

9 68. Salz has breached his duty of loyalty and the implied covenant of good faith and
10 fair dealing where he took actions which are inimical to the best interests of VCSY. VCSY
11 alleges that Salz's breaches of the implied covenant of good faith and fair dealing include but are
12 not limited to:

- 13 a. His providing of legal services to outside law firms and lawyers including
14 Biggins Law and Ellenoff Grossman & Schole LLP while he was allegedly
15 working exclusively for VCSY;
- 16 b. His false representations that he was working full-time for VCSY and
17 demanding full-time wages when he, in fact, was working for other companies;
18 including Trusted Lasik Surgeons; and
- 19 c. His communication to third parties, such as Biggins and D. Jay Ritt, of
20 confidential information of VCSY, including the loans and debts of VCSY,
21 that were not related to the defense of the *Lakeshore* Action.

22 69. VCSY was harmed by Salz's conduct and is entitled to damages, including the
23 disgorgement of any wages he was paid or claims he is owed. This would include wages paid or
24 owed to Salz while he was breaching his duty of loyalty, even if he allegedly performed work.
25 VCSY is also entitled to any appropriate attorneys' fees and costs where available in the By Laws
26 or by statute.

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- 1 1. That Salz take nothing by virtue of his Complaint on file in the underlying action
2 and that his Complaint be dismissed with prejudice;
- 3 2. For general damages in an amount to be proven at trial;
- 4 3. For special damages in a sum according to proof;
- 5 4. For punitive damages in a sum according to proof;
- 6 5. For rescission of any employment contracts and/or agreements that were entered
7 by VCSY under duress, fraud, or mistake;
- 8 6. For the costs of suit incurred herein;
- 9 7. For such other and further relief as the Court deems just and proper.

GARCIA HONG LAW APC

11 Dated: May 31, 2024

By:



Valerie Garcia Hong, Esq.
Mark A. Simpliciano, Esq.
Attorneys for Cross-Complainant
VERTICAL COMPUTER SOLUTIONS, INC.

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