

1 LAW OFFICES OF
2 WAGNER & JONES
3 Nicholas Wagner #109455
4 1111 East Herndon,
Suite 317
Fresno, California 93720
(559) 449-1800

FILED

NOV 15 2006

FRESNO COUNTY SUPERIOR COURT

By [Signature] GS-DEPUTY

5 Attorneys for Plaintiff JANET ORLANDO

This case has been assigned to
Judge Mark W. Snauffer for all purposes

SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

10 JANET ORLANDO,

11 Plaintiff,

12 v.

13 CAROLINA CASUALTY INSURANCE
14 COMPANY, MONITOR LIABILITY
15 MANAGERS, INC., and DOES 1
through 20, inclusive,

16 Defendants.

CASE NO.

06 CE CG 03839 MWS

COMPLAINT FOR COMPENSATORY AND
PUNITIVE DAMAGES

(1) Breach of Contract

(2) Fraud

FIRST CAUSE OF ACTION

(Breach Of Contract)

17
18
19
20 1. Plaintiff, JANET ORLANDO (hereinafter "ORLANDO ") is
21 informed and believes and thereon alleges, that at all times herein
22 mentioned, Defendant, CAROLINA CASUALTY INSURANCE COMPANY
23 (hereinafter "CAROLINA"), is a corporation, doing business in the
24 State of California and in the County of Fresno. Defendant,
25 MONITOR LIABILITY MANAGERS, INC. (hereinafter "MONITOR"), is a
26 corporation doing business in the State of California and in the
27 County of Fresno.
28

1 and battery arising out of her employment with Alarm One. This
2 lawsuit was entitled Janet Orlando v. Alarm One, et al., Fresno
3 County Superior Court Case No. 04 CECG03545 DSB. This case (No. 04
4 CE CG 3545 DSB) was consolidated with another case entitled Jessica
5 P. Dakin, Kristy Moren, and Crystal Melendez v. Alarm One, Rob
6 Harland, and Dena Domanakis, Case No. 04CECG01288 DSB.

7 6. In April 2006, Orlando v. Alarm One went to trial in
8 Fresno Superior Court. Prior to trial, Dakin, Moren & Melendez
9 settled their case against all Defendants therein. Following a
10 jury trial, in Orlando v. Alarm One the jury found in favor of the
11 Plaintiff ORLANDO and against the Defendants and awarded ORLANDO
12 1.7 million dollars. Judgment was entered on May 9, 2006.
13 Following the entry of Judgment, the Court awarded Plaintiff
14 attorneys' fees, costs and post judgment, interest thereby
15 increasing the Judgment, to over \$1.9 million. As of the date of
16 the present lawsuit, with interest and other attorneys' fees, such
17 Judgment is in excess of \$2 million.

18 7. At all relevant times set forth herein, Defendant,
19 CAROLINA Casualty Ins. Co. was and is the liability insurer for
20 Alarm One. During the period of time that ORLANDO was employed by
21 Alarm One, CAROLINA insured Alarm One for, among other things,
22 liability for personal injury, employment torts, and wrongful
23 employment practices caused by Alarm One and its employees and
24 agents. Pursuant to such policy of insurance, CAROLINA defended
25 Alarm One in Fresno County Superior Court Case No. 04 CECG 03545
26 DSB. In addition to defending Alarm One, CAROLINA conducted
27 settlement negotiations on behalf of Alarm One in Fresno County

1 Superior Court Case No. 04 CECG 03545 DSB. On behalf of Alarm One,
2 CAROLINA paid the settlements entered into between Alarm One and
3 plaintiffs Kristy Moren, Jessica Dakin and Crystal Melendez in Case
4 No. 04 CECG 03545 DSB.

5 8. Following the Entry of Judgment 14 in case No. 04 CE CG
6 03545, Alarm One filed a Notice of Appeal as to the Judgment. On
7 July 31, 2006, pending appeal in Case No. 04CECG03545 DSB, ORLANDO,
8 CAROLINA, MONITOR and Alarm One entered into a contract to settle
9 the above-referenced Judgment in Case No. 04CECG03545 DSB and all
10 their claims that ORLANDO had against Alarm One and defendants
11 CAROLINA and MONITOR. ORLANDO agreed to settle all such claims
12 against Alarm One, CAROLINA and MONITOR for the sum of \$1.4
13 million. A true and correct copy of the Settlement Agreement is
14 attached hereto as Exhibit "A" and incorporated by reference.

15 9. MONITOR LIABILITY MANAGERS was retained by defendant
16 CAROLINA to administer and adjust the claims made by ORLANDO and
17 the other Plaintiffs against Alarm One in Case No. 04CECG 03545 DSB
18 and 04 CECG 01288 DSB. MONITOR is the agent of CAROLINA and agreed
19 to be bound by the terms of the Settlement Agreement, (Exhibit
20 "A").

21 10. Plaintiff, ORLANDO, has performed all her duties and
22 obligations pursuant to the subject settlement agreement, except
23 for those terms and conditions that she has been prevented from
24 performing due to the conduct of Defendants and third party, Alarm
25 One.

26 11. On or about September 15, 2006, defendants CAROLINA,
27 MONITOR, and Alarm One, breached the terms of the Settlement

1 Agreement, by stating that they would not pay the money owed to
2 ORLANDO pursuant to the agreement. Following such breach and its
3 refusal to pay, CAROLINA, MONITOR and Alarm One offered to settle
4 with Plaintiff, Janet Orlando for a lesser amount than what
5 Defendants and Alarm One previously agreed to pay. Admittedly,
6 Defendants and Alarm One breached the settlement agreement in order
7 to negotiate a lesser settlement payment and in order to gain
8 leverage over ORLANDO on any further settlement negotiations.

9 12. As a result of such breach of the settlement contract by
10 defendants, CAROLINA and MONITOR, plaintiff Janet ORLANDO has
11 suffered damages of \$1.4 million dollars plus interest at the legal
12 rate of 10% per annum.

13
14 **SECOND CAUSE OF ACTION**

15 **(Fraud)**

16 **(Against all Defendants)**

17 13. Plaintiff repeats and realleges all the allegations and
18 facts set forth in paragraphs 1 - 12 of the First Cause of Action
19 and incorporates them by reference as though set forth in full
20 herein.

21 14. Defendants, CAROLINA and MONITOR and third party Alarm
22 One by and through their agents and attorneys, fraudulently induced
23 Plaintiff to enter into the aforementioned settlement agreement
24 (Exhibit "A") by, among other things, misrepresenting the financial
25 condition of Alarm One. In inducing Plaintiff to agree to enter
26 into the settlement agreement as set forth herein and thereby
27 agreeing to accept an amount much less than the aforementioned

1 Judgment, Defendants and Alarm One by and through their agents and
2 attorneys, represented that the ability of Alarm One to pay the
3 Judgment was much less than the true ability of Alarm One to pay
4 the Judgment. This was a material misrepresentation of fact which
5 was made by Defendants in order to induce Plaintiff to enter into
6 the settlement agreement as set forth herein. ORLANDO relied on
7 these misrepresentations in agreeing to the settlement agreement
8 and at the time the misrepresentations were made, ORLANDO did not
9 know them to be false. Such reliance by ORLANDO on the material
10 misrepresentations made by Defendants resulted in damage and injury
11 to ORLANDO. At the time that Defendants, by and through their
12 agents and attorneys, made such material misrepresentations, they
13 knew such representations to be false or had no reasonable basis to
14 believe them to be true.

15 15. Defendants, CAROLINA and MONITOR and Alarm One also
16 committed a fraud upon Plaintiff by entering into the
17 aforementioned settlement agreement without the intent to perform
18 the terms of the settlement agreement. At the time Defendants and
19 Alarm One entered into the aforementioned settlement agreement,
20 they had no intention of performing the terms of the settlement
21 agreement.

22 16. Defendants entered into the settlement agreement not with
23 the intent of performing the terms of the settlement agreement but
24 with the fraudulent intent to gain leverage over ORLANDO in future
25 settlement negotiations. Furthermore, Defendants MONITOR, CAROLINA
26 CASUALTY, and Alarm One by and through their agents and attorneys
27 made material misrepresentations to ORLANDO by stating that they

1 were under a legal obligation to obtain the approval of an unnamed
2 third party creditor to enter into the settlement agreement. Such
3 statement was a material misrepresentation because Defendants and
4 Alarm One were allowed to enter into the settlement agreement
5 without the approval of such unnamed third party creditor.

6 17. Following the Defendants' breach of the settlement
7 agreement by refusing to abide by its terms, Defendants, by and
8 through their agents and attorneys, offered ORLANDO a settlement
9 that was significantly less than the settlement set forth in
10 Exhibit "A", evidencing the fact that at the time Defendants
11 entered into the settlement agreement, they did so without the
12 intent to honor the settlement agreement and with the fraudulent
13 intent of gaining negotiating leverage in order to induce
14 Plaintiff to accept a lesser settlement amount later.

15 18. Plaintiff relied on the misrepresentations of Defendants
16 in entering into the settlement agreement. At the time the parties
17 entered into the settlement agreement, Plaintiff did not know the
18 true intentions of Defendants.

19 19. As a result of the fraudulent intent and
20 misrepresentations of Defendants, plaintiff has suffered damages
21 and injuries.

22 20. As a result of the fraudulent conduct and material
23 misrepresentations of Defendants as set forth above, Plaintiff
24 suffered emotional distress, including aggravation, humiliation,
25 anxiety, sleeplessness, and physical pain and suffering.

26 21. The misrepresentations and fraud as set forth herein
27 committed by MONITOR and CAROLINA CASUALTY were done with the

1 intent to cause injury and harm to Plaintiff. Defendants committed
2 such fraud in order to impede and prevent Plaintiff's ability and
3 right to recover the Judgment as set forth herein. As a result,
4 exemplary damages should be assessed against Defendants in order to
5 make an example of and punish the Defendants and to deter such
6 future conduct.

7
8 **WHEREFORE**, ORLANDO prays for Judgment against Defendants,
9 MONITOR and CAROLINA as follows:

10 1. For economic damages against defendants, and each of them
11 in the amount of 1.4 million dollars (\$1,400,000.);

12 2. For interest pursuant to the Settlement Agreement at the
13 legal rate of 10%;

14 3. For Attorney's Fees according to proof;

15 4. For general damages for emotional distress and pain and
16 suffering, according to proof;

17 5. For consequential damages arising from the fraud of
18 Defendants, according to proof.

19 6. For punitive damages in the amount of 4.2 million dollars.

20 7. For Costs of suits herein;

21 ///

22 ///

23 ///

24 ///

25 ///

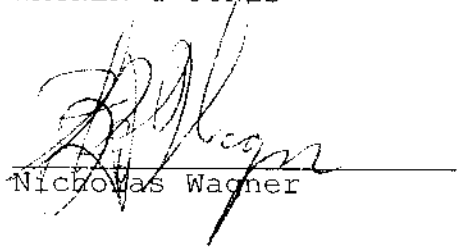
26 ///

27 ///

1 8. For any other relief that the court may deem just and
2 appropriate.

3
4 DATED: November 15, 2006

LAW OFFICES OF
WAGNER & JONES

5
6
7
8 
Nicholas Wagner

9 Orlando, Carolina