

**IN THE CIRCUIT COURT FOR  
THE SEVENTEENTH JUDICIAL  
CIRCUIT IN AND FOR  
BROWARD COUNTY,  
FLORIDA**

ALBERTIN A. CHAPMAN DE LA CRUZ,

Plaintiff,

Case No.: \_\_\_\_\_

-against-

PRO MANAGEMENT RESOURCES INC.,  
ANTHONY CHIRICOSTA, BENITO ZAVALA,  
JR., CHANDLER COSTA, DERRICK COSTA,  
CASSANDRA AGUILAR,

Defendants.

**COMPLAINT AND JURY DEMAND**

Plaintiff Albertin A. Chapman de la Cruz (“plaintiff” or “Mr. Chapman”), for his Complaint against defendants Pro Management Resources Inc. (“PMR”), Anthony Chiricosta (“Chiricosta”), Benito Zavala, Jr. (“Zavala”), Chandler Costa (“C. Costa”), Derrick Costa (“D. Costa”) and Cassandra Aguilar (“Aguilar”), hereby alleges and avers as follows:

**NATURE OF THE ACTION**

For nearly a decade, defendant PMR served as the business manager and financial advisor to Mr. Chapman. In that fiduciary capacity, PMR—acting principally through its owner and principal, defendant Chiricosta, and defendant Zavala, the PMR employee charged with managing the day-to-day aspects of Mr. Chapman’s accounts—assumed responsibility for handling virtually every component of Mr. Chapman’s personal and business finances, including managing all aspects of his banking, credit card and investment accounts, arranging and securing personal and business loans and mortgages for property he acquired, paying all his bills, disbursing funds on his

behalf, preparing his annual tax filings and attending to a host of other financial, accounting and related personal and business management activities on Mr. Chapman's behalf. Mr. Chapman, who does not speak English and has little, if any, knowledge regarding financial and accounting matters, rightfully placed his complete trust and confidence in PMR, Chiricosta and Zavala to act solely in his best interests, to properly manage his financial affairs and to advise and counsel him with respect to the wide range of financial matters that he entrusted to them.

It has recently been revealed, however, that PMR, Chiricosta and Zavala abused that trust to enrich themselves, over an extended period of time, at Mr. Chapman's expense. In that regard, Zavala, enabled by PMR's and Chiricosta's abject lack of oversight and grossly negligent mismanagement of Mr. Chapman's finances and affairs, and in collaboration with defendants C. Costa, D. Costa and Aguilar, diverted significant amounts of Mr. Chapman's funds to the benefit of Zavala, C. Costa, D. Costa and Aguilar—believed to be in excess of \$3,000,000—including, *inter alia*, through repeated and substantial cash transfers and the purchase, without Mr. Chapman's knowledge or consent, of a near one-million dollar residence, automobiles, first-class plane tickets, clothing, jewelry and other luxury goods.

Rather than promptly inform Mr. Chapman of Zavala's embezzlement upon learning of Zavala's misconduct, PMR and Chiricosta instead elected to attempt to conceal those defalcations and to withhold critical information and documentation from Mr. Chapman that might shed light on the full extent of Zavala, C. Costa, D. Costa and Aguilar's unlawful conduct. At the same time, there is a substantial risk that Zavala, C. Costa, D. Costa and Aguilar—who are now aware of Mr. Chapman's knowledge of and investigation into their unlawful activities—may actively attempt to hide or dispose of their assets, including the very property that was purchased using funds diverted from Mr. Chapman, in an effort to avoid the consequences of their unlawful conduct.

In light of the foregoing, Mr. Chapman seeks redress against PMR, Chiricosta and Zavala for the substantial losses he has suffered as a direct result of their fiduciary breaches and mishandling of his finances and affairs, and against defendants Zavala, C. Costa, D. Costa and Aguilar for their conversion, theft and misappropriation to their own benefit of significant funds belonging to Mr. Chapman. As a concomitant to the foregoing, Mr. Chapman also seeks injunctive relief restraining Zavala, C. Costa, D. Costa and Aguilar from transferring, encumbering or disposing of the assets that were acquired with funds stolen from him. In addition, Mr. Chapman requests a fiduciary accounting of the uses of his funds entrusted to PMR, Chiricosta and Zavala during the entirety of Mr. Chapman's relationship with them.

In further support of his Complaint herein, Mr. Chapman alleges and avers as follows:

### **PARTIES**

1. Plaintiff Albertin A. Chapman de la Cruz is an individual, *sui juris*, who resides in Broward County, Florida.
2. Defendant Pro Management Resources Inc. is a corporation organized under the laws of the State of Kentucky, with its principal place of business in Broward County, Florida.
3. Defendant Anthony Chiricosta is an individual, *sui juris*, who, upon information and belief, resides in Broward County, Florida.
4. Defendant Benito Zavala, Jr. is an individual, *sui juris*, who, upon information and belief, resides in Broward County, Florida.
5. Defendant Chandler Costa is an individual, *sui juris*, who, upon information and belief, resides in Hillsborough County, Florida.
6. Defendant Derrick Costa is an individual, *sui juris*, who, upon information and belief, resides in Hillsborough County, Florida.



7. Defendant Cassandra Aguilar is an individual, *sui juris*, who, upon information and belief, resides in Lee County, Florida.

### **JURISDICTION AND VENUE**

8. This is an action seeking damages in excess of \$30,000, an accounting, and injunctive relief, within the jurisdiction of this Court.

9. This Court has personal jurisdiction over defendants pursuant to Fla. Stat. §§ 48.193(1) and (2) in that, *inter alia*, (1) all defendants reside in this State and engage in substantial and ongoing activities within this State; (2) the causes of action asserted herein arise from PMR's, Zavala's and Chiricosta's engagement in business in this State; and (3) all defendants have committed tortious acts within this State, and all acts complained of herein were effected by defendants within this State.

10. Venue is proper in Broward County, Florida pursuant to Fla. Stat. § 47.011 in that, *inter alia*, PMR, Chiricosta and Zavala are residents of Broward County and the causes of action asserted herein accrued in Broward County.

### **FACTUAL BACKGROUND**

11. In or about August of 2011, Mr. Chapman and PMR entered into a written agreement pursuant to which Mr. Chapman engaged PMR as his "business and financial manager." Mr. Chapman and PMR subsequently renewed that agreement in or about September of 2014 and again in February of 2017. (The 2011, 2014 and 2017 agreements between Mr. Chapman and PMR are referred to collectively herein as the "Business Manager Agreement.") Mr. Chapman is not conversant in legal or contractual matters, does not speak English and was not represented by counsel in connection with his entry into the Business Manager Agreement.

12. Upon information and belief, PMR had acted as Mr. Chapman's business manager, albeit without a written agreement between those parties, for some two years before Mr. Chapman and PMR entered into the Business Manager Agreement in August of 2011.

13. A business manager is responsible for handling the financial, accounting, tax, insurance and related activities of its clients who, like Mr. Chapman, receive a substantial income but often do not possess significant knowledge or expertise in those areas. A business manager is a fiduciary of the individuals and entities it represents.

14. Pursuant to the Business Manager Agreement (in which Mr. Chapman is defined as "the Client"), PMR agreed, in exchange for a fixed percentage commission fee based on Mr. Chapman's income, to "provide various services for the Client which includes paying the Client's bills, preparing the Client's tax returns, managing the Client's bank accounts, assisting the Client in obtaining credit and insurance, and providing day to day assistance to the Client."

15. The Business Manager Agreement further provides that, in respect of any loan to Mr. Chapman "arranged" by PMR, Mr. Chapman was required to deposit "all of [his] salary" into an account with that lender "or such other account that [PMR] may direct," and that PMR "shall maintain control and signatory rights in connection with the bank account."

16. During the entirety of the parties' relationship, PMR—acting principally through its owner and principal, Chiricosta, and Zavala, the PMR employee tasked with handling the day-to-day aspects of Mr. Chapman's accounts—exercised control over virtually every aspect of Mr. Chapman's financial, tax and related affairs, including by, *inter alia*, controlling his banking, credit card and investment accounts; arranging for and managing loans and mortgages; paying bills and invoices for goods and other property acquired by Mr. Chapman or on his behalf; preparing his tax returns and related documentation; and otherwise acting under powers of attorney granted to

them by Mr. Chapman to conduct, on his behalf, a wide range of financial, investment, insurance and tax-related transactions.

17. As Mr. Chapman's native language is Spanish and he does not speak English, and he possesses little, if any, knowledge or expertise in financial, accounting and related matters, he relied significantly, indeed virtually exclusively, on Chiricosta and Zavala—also a fluent Spanish-speaker—to assist him in his communications with PMR and with third parties with whom Mr. Chapman conducted business, and to advise and counsel him in respect of the wide range of matters as to which Mr. Chapman entrusted PMR, Chiricosta and Zavala to represent him. Mr. Chapman also relied on Zavala to provide Spanish translations of, and otherwise explain to him, written and verbal communications relating to PMR's provision of business management services to him, as well as all manner of English-language financial, banking, contractual, tax-related and other documentation. In light of the foregoing, Chiricosta and Zavala assumed and were bound by fiduciary obligations to Mr. Chapman in their individual capacities.

18. While Mr. Chapman understandably believed that PMR, Chiricosta and Zavala were at all times acting solely in furtherance of their fiduciary obligations of utmost care and loyalty to him in respect of their management of his finances and related affairs and in the advice and counsel they provided to him, it has recently been revealed that, for a significant portion of the period during which PMR represented Mr. Chapman as his business manager, PMR, Chiricosta and Zavala utterly failed to fulfill those obligations.

19. Specifically, PMR, Chiricosta and Zavala failed to implement and adhere to reasonable and generally accepted accounting and business management practices relating to Mr. Chapman's finances, including, *inter alia*, by failing to maintain even the most basic internal financial controls and documentation reflecting Mr. Chapman's financial condition and cash flow,



including, *inter alia*, any, let alone an accurate, up-to-date general ledger of transactions involving Mr. Chapman's funds and sufficient backup documentation for the same; profit and loss/income statements; statements of cash flows and dispositions of funds; annual budgets and budget-to-actual reports; and bank reconciliations for all banking, investment, retirement and other financial accounts either in Mr. Chapman's name or containing funds belonging to him.

20. In further derogation of their fiduciary duties to Mr. Chapman, PMR, Chiricosta and Zavala also failed to maintain complete and accurate records concerning, *inter alia*, vendors and other third parties who provided services for or on behalf of Mr. Chapman, his family members and his affiliated entities; investments made by Mr. Chapman or using funds belonging to him; property (including real and personal property, motor vehicles and boats) owned or acquired by Mr. Chapman; loans and mortgages taken out by or on behalf of Mr. Chapman; tax returns and related documentation filed with or received from federal, state and local taxation authorities; tax-related backup documentation for or concerning Mr. Chapman; and agreements entered into by Mr. Chapman.

21. PMR also failed to maintain a summary, reconciliation or books and records confirming all amounts it received as commissions, fees or other compensation for its purported services under the Business Manager Agreement. PMR's failure to account for and maintain records of that compensation has rendered it extremely difficult, if not impossible, for Mr. Chapman to ascertain whether PMR properly paid itself strictly in accordance with the Business Manager Agreement.

22. Despite Mr. Chapman's substantial income, Chiricosta and Zavala frequently advised him that he supposedly was experiencing significant cash-flow problems, which, they claimed, rendered them unable to timely pay third party invoices on his behalf, prevented him from

pursuing advantageous investment and business opportunities and resulted in the assessment of interest and penalties against him from creditors and taxation authorities.

23. In a supposed effort to mitigate these financial concerns—but in fact significantly exacerbating them—on various dates during the parties’ relationship, PMR and Chiricosta arranged for and induced Mr. Chapman to take out a series of large, high-interest personal loans, including, in 2016 and 2017, respectively, eight-figure loans under draconian terms and at an extremely high interest rate.

24. In addition to the aforesaid manifest fiduciary breaches, it has now been revealed that Zavala, while purporting to act in Mr. Chapman’s interest, in fact exploited PMR’s and Chiricosta’s utter lack of internal controls, inadequate and deficient recordkeeping and related business practices and abject failure to properly supervise or oversee his work for Mr. Chapman—and the trust that Mr. Chapman placed in him, PMR and Chiricosta as his fiduciaries—to misappropriate for his own benefit and that of his co-conspirators, defendants C. Costa, D. Costa and Aguilar, substantial sums belonging to Mr. Chapman.

25. In that regard, beginning in or around October of 2016 (if not earlier), Zavala began diverting substantial funds of Mr. Chapman to himself, C. Costa—who, upon information and belief, Zavala met at a “nightclub” where C. Costa performed as an exotic dancer and with whom he entered into a romantic relationship—and C. Costa’s brother, D. Costa, through a series of fraudulent transactions, including Western Union wire transfers, unauthorized credit card charges and the purchase for themselves of real estate, luxury goods, airline tickets and automobiles.

26. Specifically, on various dates beginning in 2016 and continuing through early 2020, Zavala initiated Western Union wire transfers directed to himself, C. Costa and D. Costa totaling



over \$560,000. Mr. Chapman did not have knowledge of, nor did he consent to, those wire transfers.

27. In all such instances, Chiricosta approved the requested wire transfers without first taking any steps to confirm their legitimacy or to verify that Mr. Chapman had requested or consented to those transfers of his funds.

28. PMR and Chiricosta also approved and implemented numerous requests by Zavala, without Mr. Chapman's knowledge or consent, to purchase airline tickets and make other travel-related purchases for himself, C. Costa and D. Costa. Notwithstanding that the corresponding travel reservations often plainly identified Zavala, C. Costa and/or D. Costa as the travelers, upon information and belief, PMR and Chiricosta did not make any inquiry to confirm that Mr. Chapman had authorized those purchases.

29. Zavala also opened Chase Bank and Saks Fifth Avenue credit cards in Mr. Chapman's name, which, upon information and belief, he used both to pay for his (Zavala's) own personal expenses and to purchase luxury goods for himself, C. Costa and Aguilar, who, upon information and belief, is a bartender at a "nightclub" (and with whom, upon information and belief, Zavala also maintained a romantic relationship). Mr. Chapman did not have any knowledge of, nor did he consent to, Zavala's acquisition or use of those credit cards.

30. In addition to the foregoing, Zavala also made numerous unauthorized purchases for himself, C. Costa and D. Costa using Mr. Chapman's personal American Express credit card and, in addition, paid certain of his own bills and expenses using funds diverted from Mr. Chapman.

31. Evidently emboldened by PMR's and Chiricosta's failure to inquire into or discover his fraudulent activities—and exploiting Mr. Chapman's lack of knowledge regarding the same—

in or about May of 2019, Zavala, aided and assisted by C. Costa, used funds diverted from Mr. Chapman to purchase a residence in Valrico, Florida, at a cost of approximately \$836,000. C. Costa is listed in public records as the owner of that residence. Mr. Chapman did not have knowledge of, nor did he consent to, the purchase of that property.

32. Upon information and belief, in order to effect this transaction with funds diverted from Mr. Chapman, Zavala advised Chiricosta that the funds for the purchase of the house—which Zavala obtained through a series of fraudulent wire transfers from Mr. Chapman’s accounts—were to be used for the purchase of a residence for the benefit of Mr. Chapman. Remarkably, despite the magnitude of those transactions, Chiricosta simply accepted Zavala’s representations and approved and facilitated the transfers of these substantial amounts without first independently confirming Zavala’s explanations with Mr. Chapman or making any other attempt to inquire into the legitimacy of the transfers or to ascertain the actual use of those funds.

33. Zavala, acting in concert with C. Costa and Aguilar, also diverted funds of Mr. Chapman to purchase at least two luxury automobiles for their use and benefit, *i.e.*, a Cadillac Escalade purchased for \$91,765 and titled in C. Costa’s name, and a Jeep Wrangler purchased for \$48,050 and titled in Aguilar’s name. Mr. Chapman did not have knowledge of, nor did he consent to, the purchase of those automobiles.

34. In or about early 2020, Zavala purchased a \$6,500 Saks Fifth Avenue gift card in his own name using funds diverted from Mr. Chapman. Mr. Chapman did not have knowledge of, nor did he authorize, that purchase.

35. After the Saks gift card was delivered by mail to PMR’s offices, addressed to Zavala, Chiricosta inquired of Zavala about the gift card. While Zavala initially claimed that the gift card had been authorized by Mr. Chapman, Zavala subsequently acknowledged that he had

purchased the card for his own use with Mr. Chapman's funds and, further, that he previously had used Mr. Chapman's funds to make other purchases for his own use and benefit.

36. Upon information and belief, despite having been made aware that Zavala had embezzled and diverted funds from Mr. Chapman, Chiricosta did not immediately inform Mr. Chapman of Zavala's theft. Upon information and belief, Chiricosta delayed notifying Mr. Chapman of Zavala's diversion of Mr. Chapman's funds to avoid the termination of Mr. Chapman's relationship with PMR and Chiricosta, as Mr. Chapman was PMR's most significant client.

37. Upon subsequently learning of the Zavala defalcations—albeit not the full extent and nature of his embezzlement, which remains unknown to Mr. Chapman—Mr. Chapman immediately terminated his relationship with PMR and demanded that PMR cease acting on his behalf, whether as his business manager or in any other capacity. Mr. Chapman additionally revoked all powers of attorney and other authorizations to conduct banking, financial, business or other transactions he previously granted to PMR, Chiricosta or Zavala or that they may have previously exercised on his behalf.

38. As a concomitant to the foregoing, Mr. Chapman requested that PMR forthwith provide to him copies of all files, documents and materials in its possession prepared or received by PMR for or on behalf of, or otherwise relating to, Mr. Chapman, his family members and affiliated entities, including, without limitation, all financial statements and ledgers reflecting Mr. Chapman's financial condition and transactions involving his funds and accounts, together with backup documentation such as cancelled checks, wire transfer confirmations and the like; account statements for all credit and debit card, banking, investment, retirement and other financial accounts maintained by or on behalf of Mr. Chapman; checkbooks and ATM, debit and credit



cards (and online account passwords and user information for such accounts) in Mr. Chapman's name or linked to any account containing funds belonging to Mr. Chapman; billing records and other documents concerning commissions, fees and other amounts paid to PMR by Mr. Chapman or with his funds, including in respect of services provided for Mr. Chapman; schedules of payments to, and invoices of, vendors and other third parties who provided services to Mr. Chapman; documentation concerning property (including, *inter alia*, real estate, automobiles and boats) owned or acquired by Mr. Chapman, or using funds belonging to him; documentation concerning loans and mortgages taken out by Mr. Chapman or in his name; federal, state and local tax filings for Mr. Chapman, together with supporting working papers and backup documentation; and all agreements entered into by or on behalf of Mr. Chapman.

39. While PMR ultimately provided—albeit in piecemeal fashion over a period of months—some documents to Mr. Chapman in response to Mr. Chapman's demand, the files it has produced are both disorganized and woefully incomplete, and significant "gaps" remain in the scope and nature of the documents produced and the time periods covered by those documents. Upon information and belief, PMR and Chiricosta have purposefully delayed their production of books and records to Mr. Chapman and intentionally omitted critical documents from those productions to render it more difficult for Mr. Chapman—who is now acting through new business management and other representatives—to discover the full nature and extent of defendants' fiduciary breaches and the unlawful diversions of Mr. Chapman's funds, and to pursue redress in respect thereof.

40. In that regard, shortly before he terminated PMR's services, Mr. Chapman engaged an experienced and highly regarded business management and accounting firm, CBIZ MHM, LLC

(“CBIZ”), to take over the management of his financial affairs and investigate the prior misappropriations of his funds.

41. CBIZ has commenced and is undertaking an investigation and analysis of the files produced by PMR in an attempt to reconstruct, to the extent possible, Mr. Chapman’s financial history and to identify the full extent of the embezzlement and conversion of his funds by Zavala, C. Costa, D. Costa and Aguilar and any other responsible individuals and the damages sustained by Mr. Chapman as a result of PMR’s woefully inadequate provision of business management services to him. That investigation remains ongoing, and Mr. Chapman reserves the right to amend his Complaint to assert additional allegations and claims, as may be appropriate in light of further information that is revealed.

42. On July 23, 2020, counsel for Mr. Chapman attempted to contact Zavala and C. Costa by email to address these serious matters. Zavala failed to respond to that overture. On August 10, 2020, C. Costa responded to the email addressed to her, stating “I will have my attorney contact you.” As of the date of the filing of this Complaint, no attorney for C. Costa has contacted Mr. Chapman’s counsel.

43. On or about October 8, 2020, Mr. Chapman transmitted to Zavala, C. Costa, D. Costa and Aguilar notices in the form of that contemplated by Fla. Stat. § 772.11, making formal demand for the immediate return of the funds they stole from him. Mr. Chapman expressly reserves the right, as the facts and circumstances warrant, to amend his Complaint to assert a claim for civil theft under that statutory provision against Zavala, C. Costa, D. Costa and Aguilar and/or other appropriate parties.

44. Upon information and belief, Zavala, C. Costa, D. Costa and Aguilar may be attempting to encumber or dispose of assets, including the residence and automobiles that were

purchased with funds belonging to Mr. Chapman, in an effort to avoid the consequences of their unlawful conduct.

45. Upon information and belief, Zavala recently transferred to his former wife his interest in certain real estate located in Broward County, Florida, a property that she subsequently sold to a third party.

**COUNT I-FIDUCIARY ACCOUNTING**  
**(Against Defendant Pro Management Resources Inc.)**

46. Plaintiff realleges and reincorporates herein by reference in their entirety the allegations set forth in paragraphs 1-45 of this Complaint, as if fully set forth herein.

47. As alleged above, PMR exerted sole and exclusive control over plaintiff's funds and his bank, credit card, investment and other financial accounts. In its role as plaintiff's business manager, PMR owed to plaintiff strict and highly sensitive fiduciary duties with respect to each transaction that it—including, without limitation, its employees Chiricosta and Zavala—undertook involving those funds and accounts.

48. Plaintiff has repeatedly requested that PMR provide an accounting to him of all financial activities and transactions involving plaintiff's funds and accounts, including, without limitation, copies of all records, files, documents and materials prepared for plaintiff or on his behalf by PMR, or which concern PMR's provision of business management services to plaintiff, his family members and his affiliated entities.

49. PMR has failed to fully comply with plaintiff's demand that it produce the requested documents and has not provided him with the requested accounting.

50. In light of the foregoing, plaintiff requests that this Court order PMR to provide a detailed accounting to plaintiff identifying and evidencing each and all of the financial activities and transactions involving plaintiff's funds and accounts, including, without limitation, all funds



received, expense and other payments made, and all commissions, fees, compensation, reimbursements and other funds or consideration paid to or on behalf of PMR and/or any third parties with plaintiff's funds and/or from his accounts.

51. To the extent that PMR cannot satisfy its burden in the context of such an accounting to prove with contemporaneous records that each transaction in which it—including its officers or employees—engaged in its capacity as plaintiff's fiduciary was legitimately made on his behalf, plaintiff requests that the Court order PMR to reimburse plaintiff for each such transaction for which there exists such a failure of proof.

**COUNT II-BREACH OF FIDUCIARY DUTY**  
**(Against Defendants Pro Management Resources Inc.,**  
**Anthony Chiricosta, Benito Zavala, Jr.)**

52. Plaintiff realleges and reincorporates herein by reference in their entirety the allegations set forth in paragraphs 1-45 of this Complaint, as if fully set forth herein.

53. As more fully alleged above, in its role as plaintiff's business manager, PMR occupied a fiduciary relationship with, and owed a corresponding fiduciary duty to, plaintiff.

54. Chiricosta and Zavala also assumed fiduciary obligations and duties to plaintiff in their individual capacities as plaintiff's trusted advisors, and plaintiff appropriately placed complete and unqualified trust and confidence in them to at all times act solely in his best interest and with the utmost care and loyalty in respect of the matters that plaintiff entrusted to them.

55. As alleged in detail above, defendants PMR and Chiricosta breached their fiduciary duties to plaintiff, *inter alia*, by:

- a. failing to implement and maintain reasonable and proper accounting and recordkeeping practices and failing to retain crucial documentation and information with respect to plaintiff's accounts and financial affairs;

- b. failing to adequately supervise, manage and oversee Zavala's work in respect of plaintiff's accounts and financial affairs, thus facilitating and enabling Zavala's misappropriation of plaintiff's funds to his own use and benefit and/or to the benefit of defendants C. Costa, D. Costa and Aguilar;
- c. failing to maintain internal accounting controls, checks or balances that would have prevented and/or readily exposed Zavala's defalcations and prevented further diversions of plaintiff's funds;
- d. approving fraudulent wire transfer and other transactional requests of Zavala that resulted in the diversion of funds from plaintiff's accounts without making reasonable and appropriate inquiry to confirm their legitimacy and plaintiff's consent to the same or to ascertain the actual use of those funds;
- e. failing to inform plaintiff of Zavala's misappropriations of his funds promptly after learning of the same; and
- f. failing to provide critical financial and business records in their possession to plaintiff, plaintiff's successor business manager and other representatives.

56. As alleged in detail above, defendant Zavala breached his fiduciary duties to plaintiff, *inter alia*, by exploiting plaintiff's trust and confidence that Zavala would properly manage and oversee plaintiff's finances, and the fact that plaintiff does not speak English and is not knowledgeable of or conversant in financial and business matters, to misrepresent the purpose and nature of Zavala's use of plaintiff's funds, and by diverting those funds, without plaintiff's knowledge or consent, to his own use and benefit and/or the benefit of defendants C. Costa, D. Costa and Aguilar.

57. As a result of the foregoing and other breaches of fiduciary duty, PMR should, without limitation of Mr. Chapman's other remedies, be ordered to disgorge all commissions, fees, compensation and other amounts paid to it by plaintiff or with plaintiff's funds during the period that it acted faithlessly to him—*i.e.*, from at least as early as 2011 (if not earlier) through the present.

58. In addition to the disgorgement remedy sought above, plaintiff has been damaged as a direct and proximate result of defendants PMR, Chiricosta and Zavala's aforesaid breaches of fiduciary duty in an amount to be determined at trial.

**COUNT III-PROFESSIONAL NEGLIGENCE (IN THE ALTERNATIVE)**  
**(Against Defendants Pro Management Resources Inc. and Anthony Chiricosta)**

59. Plaintiff realleges and reincorporates herein by reference in their entirety the allegations set forth in paragraphs 1-45 of this Complaint, as if fully set forth herein.

60. In the alternative to the claim asserted in Count II, above, for breach of fiduciary duty asserted against defendants PMR and Chiricosta, but without waiver of or prejudice to the same, plaintiff asserts this claim against those defendants for their professional negligence in their role as plaintiff's business manager and financial advisor.

61. In their capacity as plaintiff's business manager and financial advisor, PMR and Chiricosta owed a duty of reasonable care to plaintiff in the performance of their professional obligations to him.

62. As alleged in detail above, PMR and Chiricosta failed to exercise the care that a reasonably careful and prudent professional would use under like circumstances by, *inter alia*:

- a. failing to maintain proper accounting and recordkeeping practices and failing to retain crucial documentation and information with respect to plaintiff's accounts and financial and business affairs;



- b. failing to maintain internal accounting controls, checks or balances that would have prevented or readily exposed Zavala's defalcations and prevented further diversions of plaintiff's funds;
- c. failing to adequately supervise, manage and oversee defendant Zavala's work and other activities in respect of plaintiff's accounts and business and financial affairs, thus facilitating and enabling Zavala's misappropriation of plaintiff's funds to his own use and benefit and/or to the use and benefit of defendants C. Costa, D. Costa and Aguilar;
- d. approving fraudulent wire transfer and other transactional requests of Zavala that resulted in the diversion of funds from plaintiff's accounts without making reasonable and appropriate inquiry to confirm their legitimacy and plaintiff's consent to the same or to ascertain the actual use of those funds; and
- e. failing to inform plaintiff of Zavala's misappropriations of his funds promptly after learning of the same.

63. As the direct and proximate result of PMR's and Chiricosta's failure to exercise reasonable care in the performance of their professional obligations to plaintiff, plaintiff has been damaged in an amount to be determined at trial.

**COUNT IV-NEGLIGENT SUPERVISION (IN THE ALTERNATIVE)**  
**(Against Defendant Pro Management Resources Inc.)**

64. Plaintiff realleges and reincorporates herein by reference in their entirety the allegations set forth in paragraphs 1-45 of this Complaint, as if fully set forth herein

65. In the alternative to the claim asserted in Count II, above, for breach of fiduciary duty asserted against defendant PMR, but without waiver of or prejudice to the same, plaintiff asserts this claim against PMR for its negligent supervision of its employee, defendant Zavala.

66. In its role as plaintiff's business manager and financial advisor, PMR owed a duty of care to plaintiff to properly supervise and oversee PMR's employees who were charged with handling plaintiff's accounts and financial and business affairs.

67. As alleged above, PMR failed to exercise reasonable care in its supervision and oversight of Zavala's conduct and activities in connection with his use and management of plaintiff's funds and accounts, and failed to implement and maintain policies and procedures that would have prevented or readily exposed Zavala's embezzlement of plaintiff's funds.

68. PMR knew or should have known of Zavala's unauthorized diversions of plaintiff's funds to his own use and benefit (or to the use and benefit of C. Costa, D. Costa and Aguilar) at, or shortly after, the time that Zavala diverted those funds.

69. Notwithstanding PMR's actual or constructive knowledge of Zavala's embezzlement and misappropriations of plaintiff's funds, PMR unreasonably failed to investigate, discharge Zavala or take other corrective action, thus enabling and facilitating further unauthorized diversions of plaintiff's funds and preventing plaintiff from promptly seeking reimbursement and/or other redress in respect thereof.

70. As the direct and proximate result of PMR's negligent supervision of its employee Zavala, plaintiff has been damaged in an amount to be determined at trial.

**COUNT V-CONVERSION**  
**(Against Defendants Benito Zavala, Jr., Chandler Costa,  
Derrick Costa and Cassandra Aguilar)**

71. Plaintiff realleges and reincorporates herein by reference in their entirety the allegations set forth in paragraphs 1-45 of this Complaint, as if fully set forth herein.

72. As alleged above, defendant Zavala, aided and assisted by defendants C. Costa, D. Costa, and Aguilar, converted substantial funds of plaintiff to their personal use and benefit without any authority or legal basis to do so.

73. Upon information and belief, Zavala, C. Costa, D. Costa and Aguilar wrongfully claim dominion over property—including real estate and automobiles—that was purchased using plaintiff's converted funds.

74. The total amount of Zavala, C. Costa, D. Costa and Aguilar's conversion of plaintiff's funds is presently unknown but, upon information and belief, is, in the aggregate, in excess of \$3,000,000.

75. Plaintiff has been damaged by Zavala, C. Costa, D. Costa and Aguilar's aforesaid conversion of his funds in an amount to be determined at trial.

#### **COUNT VI-UNJUST ENRICHMENT**

**(Against Defendants Pro Management Resources Inc., Benito Zavala, Jr.,  
Chandler Costa, Derrick Costa and Cassandra Aguilar)**

76. Plaintiff realleges and reincorporates herein by reference in their entirety the allegations set forth in paragraphs 1-45 of this Complaint, as if fully set forth herein.

77. As alleged above, defendants Zavala, C. Costa, D. Costa and Aguilar have unjustly enriched themselves, at plaintiff's expense, through their unauthorized diversion of plaintiff's funds to their personal use and benefit.

78. In equity and good conscience, Zavala, C. Costa, D. Costa and Aguilar should be ordered to repay to plaintiff the full amount of his funds that they misappropriated from him.

79. Defendant PMR also has unjustly enriched itself, at plaintiff's expense, through its acceptance and retention of commissions and fees from plaintiff for services that PMR ostensibly



provided to plaintiff, notwithstanding PMR's failure to act in conformance with the requisite duties of care and loyalty in its dealings with and in respect of plaintiff.

80. In equity and good conscience, PMR should be ordered to disgorge and repay to plaintiff all commissions, fees and other compensation and amounts it received from plaintiff during the period in which it acted unfaithfully to him—*i.e.*, from at least as early as 2011 (if not earlier) through the present.

81. As a result of the foregoing, plaintiff seeks a judgment requiring defendants PMR, Zavala, C. Costa, D. Costa and Aguilar to reimburse and pay him for all funds unjustly misappropriated or received by them, in an amount to be determined at trial.

**COUNT VII-INJUNCTION**  
**(Against Defendants Benito Zavala, Jr., Chandler Costa,  
Derrick Costa and Cassandra Aguilar)**

82. Plaintiff realleges and reincorporates herein by reference in their entirety the allegations set forth paragraphs 1-45 of this Complaint, as if fully set forth herein.

83. As alleged above, defendant Zavala, aided and assisted by defendants C. Costa, D. Costa, and Aguilar, converted substantial sums of money from plaintiff, which funds have been diverted and used to purchase personal and real property including, *inter alia*, at least one residence and at least two automobiles.

84. As further alleged above, upon information and belief, Zavala, C. Costa, D. Costa and Aguilar may be attempting to encumber or dispose of that real and personal property in an effort to conceal assets and avoid the consequences of their unlawful conduct.

85. As a result of the foregoing, plaintiff requests an order enjoining Zavala, C. Costa, D. Costa and Aguilar from transferring, disposing of or encumbering any property in their

possession, custody or control that was purchased in whole or in part using funds belonging to plaintiff pending the disposition of this action.

86. Plaintiff has no adequate remedy at law, and will suffer irreparable harm if the requested injunction is not entered against Zavala, C. Costa, D. Costa and Aguilar.

87. Entry of the requested injunction will serve the public interest.

### **PRAYERS FOR RELIEF**

WHEREFORE, based upon the foregoing allegations and averments, plaintiff Albertin A. Chapman de la Cruz respectfully demands judgment against defendants Pro Management Resources Inc., Anthony Chiricosta, Benito Zavala, Jr., Chandler Costa, Derrick Costa and Cassandra Aguilar, as follows:

- A. Awarding plaintiff damages in an amount to be determined at trial;
- B. Ordering defendant Pro Management Resources Inc. to provide a detailed accounting to plaintiff identifying and evidencing each and all financial activities and transactions involving plaintiff's funds and accounts, including, without limitation, all funds received, expense and other payments made, and all commissions, fees, compensation, reimbursements and other funds or consideration paid to or on behalf of PMR and/or any third parties involving plaintiff's funds and accounts;
- C. Enjoining defendants Benito Zavala, Jr., Chandler Costa, Derrick Costa and Cassandra Aguilar from transferring, disposing of or encumbering any property in their possession, custody or control that was purchased in whole or in part using funds belonging to plaintiff; and
- D. Granting such other and further relief as this Court deems just and appropriate.

### **JURY DEMAND**

Plaintiff Albertin A. Chapman de la Cruz hereby requests a jury trial on all claims and issues raised in this action that are so triable.

Date: October 14, 2020

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*s/ Michael I. Kean*

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