

DAVID S. RATNER (SBN 316267)
SHELLEY A. MOLINEAUX (SBN 277884)
RATNER MOLINEAUX, LLP
2950 Buskirk Ave., Suite 300
Walnut Creek, CA 94597
Tel: (925) 239-0899
david@ratnermolineaux.com
shelley@ratnermolineaux.com

Attorneys for Plaintiff
MARK DOWNIE

ELECTRONICALLY FILED
Superior Court of California,
County of Placer
09/25/2024 at 09:41:24 AM
By: Cristina Vallan-Brown
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF PLACER

MARK DOWNIE, individually,

Plaintiff,

v.

JOHN MOURIER CONSTRUCTION, INC., a
California corporation; and DOES 1 through 50,
inclusive.

Defendants.

Case No. S-CV-0052331

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

1. Breach of Oral Contract
2. Promissory Estoppel
3. Unjust Enrichment
4. Breach of Implied Covenant of Good Faith and Fair Dealings
5. Unfair Competition, Bus. & Prof. Code § 17200

DEMAND FOR JURY TRIAL

1. Plaintiff MARK DOWNIE (“Downie”), individually, brings this action against Defendants JOHN MOURIER CONSTRUCTION, INC. (“JMC”), a California corporation, and DOES 1 through 50, inclusive.

PARTIES

2. Plaintiff is, and at all times relevant to this action was, a resident of Granite Bay, California. The events giving rise to this action arose in Roseville, California.

3. Plaintiff is informed and believes, and based thereon alleges, that Defendant JMC is a California corporation specialized in designing and building master-planned communities in California. JMC is authorized to do business in California.

1 and ran point on moving 300 acres through the specific plan process with other developers in the City of
2 Roseville, CA.

3 13. After Plaintiff successfully helped JMC grow its business, John Mourier III (“Mr.
4 Mourier”), JMC’s owner and President fired Mr. Downie citing differences in management style. Mr.
5 Mourier had used Downie to build up JMC and then terminated Downie.

6 14. Twenty-five years later Downie learned that Mr. Mourier told Laura Mourier (“Ms.
7 Mourier”), another JMC owner and its Secretary that Downie had “left on his own” and was not fired by.

8 15. In May of 2015 JMC rehired Mr. Downie pursuant to a one-year written employment
9 agreement to facilitate the sale of JMC. *See Exhibit A*

10 16. Downie used the services of Builder Advisor Group (BAG) to market JMC to other
11 builders. Downie worked tirelessly to build up JMC so that the company could receive the maximum sales
12 price.

13 17. In 2015, multiple offers came in from other builders via BAG. Downie continued to focus
14 on acquiring land to increase the land pipeline lot count and increase sales to increase the number of homes
15 in the backlog.

16 18. Offers to purchase JMC were extended by Toll Brothers and Tri-Pointe.

17 19. D.R. Horton then made a real offer in 2015 and was interested in Downie, as he was one of
18 the top Pretax Income (“PTI”) producers when he worked for them previously. D.R. Horton offered around
19 \$20 million over JMC’s valuation.

20 20. Downie communicated with Mr. Mourier that Downie would work for D.R. Horton
21 and run JMC for D.R. Horton because Mr. Mourier had previously explained to Downie that Downie had
22 to make the ultimate compensation deal with whoever purchases JMC.

23 21. 20. At a meeting with D.R. Horton, Mr. Mourier made a counteroffer to get the offer
24 price up. D.R. Horton and Mr. Mourier continued discussions.

25 22. Downie was disappointed with Mr. Mourier’s unrealistic counteroffer, making it clear that
26 Mr. Mourier had no intention to sell. Downie felt that he was being used and lied to in order to use his
27 abilities to build up a company for Mr. Mourier’s personal benefit. Mr. Mourier saw the projections of
28 what the prospective income would be for JMC after Downie built up the company and wanted to keep it

1 for himself.

2 23. In December of 2015, Mr. and Ms. Mourier called Downie in for a year-end review where
3 they expressed their satisfaction with his performance and desire to continue employing him in the future.

4 24. Downie relied on the statements made by Mr. and Ms. Mourier that they wanted Downie to
5 stay employed with JMC.

6 25. Mouriers took Downie's idea to construct a "build to rent single family detached housing"
7 without giving him any credit or compensation. Mr. Downie was excluded from participation in the
8 income, even though it was Downie's idea and Downie worked on the project.

9 26. Mr. Downie was able to grow JMC's number of home closings by 35% during the 24-month
10 period and could have grown the company significantly more had Mouriers not moved \$56 million out of
11 the homebuilding to purchase office buildings. The Mouriers never communicated to Mr. Downie that they
12 would be taking some of the PTI that Mr. Downie had participated in creating and removing it from the
13 homebuilding operations.

14 27. On October 11, 2017, Mr. Downie and JMC entered into an agreement to modify Downie's
15 bonus program making it effective January 1, 2017, wherein Mr. Downie was to be paid a percentage of
16 company's pre-tax income. Mr. Downie was to be paid a higher percentage of the company's pre-tax
17 income on any land deals Mr. Downie negotiated for the company for the life of the deals. Payments were
18 to be made every six (6) months on June 30th and December 31st of each year. (See Mark Downie Bonus
19 Program – 2017 Bonus Calculation Changes – October 9, 2017, referenced hereto as **Exhibit B**)

20 28. The year-end payment was an estimate as the monthly financials were up to eight months
21 behind. A true-up payment was made months later, typically in March. However, the mid-year payment
22 was never made on time and usually wasn't made until sometime in September and even then, was an
23 estimate at times. As part of the agreement, Mr. Downie was entitled to 4% interest on Work in Progress
24 ("WIP") in the bonus calculation. Mr. Downie is owed 4% interest on all the late bonus payments that were
25 never paid on time including the true up payments that were also made months after the due date.

26 29. Additionally, Mr. Mourier instructed Mr. Downie to engage in conduct designed to make
27 him look unreliable within that business community, thereby undermining his future credibility.
28 Throughout the end of 2019 and beginning of 2020, Mr. Downie built a strong relationship with Matt

Villalobos (“Villalobos”) of Raintree and put together a deal to purchase two lot size segments, 60-foot-wide lots and 70-foot-wide lots. Mr. Mourier then asked Mr. Downie to tell the seller that JMC is only interested in buying the bigger 70-foot-wide lots. Mr. Downie was forced to call Villalobos and work to create a new deal at Mr. Mourier’s request. Villalobos was not happy about the call, but Downie was able to break the contract and restructure it to purchase only the larger 70-foot-wide lots. After finishing the new contract, two weeks later, Mr. Mourier instructed Mr. Downie that he wanted the 60-foot-wide lots back. Mr. Downie informed Mr. Mourier how difficult the initial call was to restructure to 70-foot-wide lots and how difficult it would be to go back and restructure the deal again.

30. In an additional example of the above, Mr. Downie structured a deal with Taylor Builders (“Taylor”) to get the best homebuilding lots at Fiddymment Ranch. Mr. Downie lowered Mr. Mourier’s approved price by \$5,000/lot as Mr. Downie believed that Taylor would accept it. Taylor approved this amount, and they began working on putting together the three Purchase and Sale Agreements (“PSA’s”) which were executed on March 24, 2020.

31. However, Mr. Mourier then wanted Downie to go back to Taylor and get a \$10,000/lot discount on each of the three deals. Mr. Mourier took advantage of the working relationship Downie formed with Taylor and used Downie to try to get the discount. Mr. Downie was able to secure the discount, but this caused him substantial embarrassment with Taylor.

32. Mr. Mourier continued to make Mr. Downie chase deals for the company and then purposely changed his mind after the task was successfully done. Mr. Mourier then forced Mr. Downie to repeatedly embarrass himself professionally by backing out of deals or restructuring deals that hurt his professional relationships he built with Sellers.

33. In August of 2020, Mr. Mourier spoke to Mr. Downie again about another large land deal that Mr. Downie had been tirelessly working on for the past eight months. Mr. Downie reminded Mr. Mourier multiple times that Mr. Downie believed the land deal was the most valuable land in the Sacramento Metropolitan Statistics Area. Mr. Mourier informed Mr. Downie that “if you pull this off, I’ll give you 25% of the pre-tax number for both Whitney and the Fiddymment deals”. Mr. Downie accepted and relied on Mr. Mourier’s verbal promise to the pay increase PTI bonus percentages on Fiddymment Ranch and Whitney Ranch if Mr. Downie is successful in getting the balance of Whitney Ranch for the company.

1 34. On November 16, 2020, Mr. Downie successfully signed the three PSA's for Whitney
2 Ranch deals, each with a 30 day feasibility.

3 35. In Q4 of 2020, Mr. Mourier explained to Mr. Downie that JMC is going to get "financing
4 and really blow this thing up and grow the company". As a result of Mr. Mourier's instruction, Mr. Downie
5 began working on getting financing to grow, and started looking for significantly more land.

6 36. After Mr. Downie completed the remaining Whitney Ranch deals for the company, Mr.
7 Mourier effectively stopped Mr. Downie from participating in any more land deals from that point forward,
8 except for a small ten lot which was intended to be a part of the Whitney Ranch deal. Mr. Downie also had
9 been working with Taylor Builders ("Taylor") on remapping Parcel 1A in Whitney Ranch, but it was not
10 ready to go into contact until additional approvals were secured by Taylor Builders. Taylor Builders were
11 reserving Parcel 1A for JMC due to the relationship Mr. Downie had created with Taylor. Mr. Mourier
12 began calling Taylor directly. Instead of allowing Mr. Downie to communicate with Taylor, Mr. Mourier
13 began to take deals away from Mr. Downie after letting Mr. Downie complete the Letter of Intent ("LOI").
14 Mr. Mourier also began to exclude Mr. Downie from meetings on deals.

15 37. Throughout 2021 and 2022, Mr. Mourier continued to exclude Mr. Downie from deals and
16 did not keep Mr. Downie apprised of properties he was selling. Mr. Mourier undermined Mr. Downie's
17 efforts to create more PTI. Mr. Mourier effectively limited Mr. Downie's earnings.

18 38. In December of 2021, Mr. Downie received his second six month estimated bonus payment.
19 The estimated payment did not reflect the increase PTI percentages (25%) on the Fiddymont and Whitney
20 Ranch deals, as Mr. Mourier had promised, and which Mr. Downie had produced. When Mr. Downie
21 confronted Mr. Mourier about the missing bonus, Mr. Mourier said it was an oversight and that it will be
22 included in the year end true-up.

23 39. In March of 2022, Mr. Downie learned that Mr. Mourier was interested in land in Yuba City
24 despite previous statements that he would never be interested in land in Yuba City. Mr. Downie was asked
25 to go to Yuba City to look at the land. The next day Mr. Downie secured a good connection with a local
26 farmer who had land to sell in Yuba City. Mr. Mourier repeated to Mr. Downie that he was impressed with
27 Mr. Downie's abilities to secure a contract and that he was very interested in this land in Yuba City.

28 40. However, after Mr. Downie drafted the LOI and emailed it to Mr. Mourier for his review

1 he received a phone call from Mrs. Mourier in which she explained that she never wanted to purchase land
2 in Yuba City. Mr. Downie had to call his contact back and explain that the owners did not want to move
3 forward. Again, Defendants continued to harm Mr. Downie's reputation, casting Mr. Downie in a negative
4 light to sellers.

5 41. Mrs. Mourier later admitted to Mr. Downie that Mr. Mourier was "throwing him under the
6 bus" and lying to her about Mr. Downie, stating that he had sought out land in Yuba City without prior
7 approval. Mr. Downie explained to Mrs. Mourier that he would never seek land without approval.

8 42. On April 29, 2022, at 2:40PM, Mr. Mourier conducted a meeting with Mr. Downie.
9 Mr. Mourier had a written list and began asking Downie some unusual questions. At this meeting, Mr.
10 Mourier then gave Mr. Downie a Memorandum of Understanding between himself, Mrs. Mourier, and Mr.
11 Downie with Mr. Mourier's signature already attached. Mr. Mourier explained that he wanted Mr. Downie
12 in the office at 8:00 AM daily and Mr. Downie reminded Mr. Mourier that their agreement upon hiring
13 was 8:30 AM due to Mr. Downie's younger school aged children, even though he began his workday from
14 home well before 8:00 AM daily. Mr. Mourier then handed Mr. Downie a Job Description and asked Mr.
15 Downie to go through his job description. This made Mr. Downie incredibly suspicious that after seven
16 years with the company he would have to go through what he does for the company with Mr. Mourier.
17 There was a mutual agreement to continue the discussion on Monday at 9:00 AM.

18 43. On May 2, 2022, Mrs. Mourier walked into Mr. Downie's office and terminated him without
19 reason or cause except to state that Mr. Mourier explained to her, being that she was absent from their
20 meeting on April 29, 2023, that Mr. Downie had insulted Mr. Mourier and that Mr. Downie hadn't been
21 coming into work at 8:00AM.

22 44. Over the period of the past 7 years, Mr. Downie has created amazing growth and profits for
23 the company. Mr. Downie successfully concluded an ICE audit that resulted in no fines, no penalties, and
24 no criminal prosecution. Mr. Downie successfully handled many legal issues, and put together two
25 incredibly large land deals, among multiple other land deals via professional contacts. Mr. Downie also
26 was able to fix all contracts and documents that were well over 20 years old and archaic.

27 45. On information and belief, Mr. Mourier's intent was to terminate Mr. Downie in an effort
28 to avoid having to pay Mr. Downie under the agreement he made for putting together the Fiddymment and

1 Whitney Ranch deals as well as on the balance of other ongoing active projects.

2 46. On May 13, 2022, Mr. Downie received a FedEx letter and check signed by Mr. Mourier
3 that did not include the increased PTI percentages for any closings at the Fiddymment Ranch F-10
4 communities as promised to Mr. Downie by Mr. Mourier.

5 47. As a direct result of the continued treatment by Defendants, Mr. Downie's emotional health
6 has been negatively affected and he finds himself experiencing extreme depression, anxiety, lack of sleep,
7 stress and emotional episodes.

8 ***FIRST CAUSE OF ACTION***

9 *Breach of Oral Contract*

10 *(Against All Defendants)*

11 48. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
12 forth in this Complaint.

13 49. Under California law, all contracts may be oral, except those specifically required by statute
14 to be in writing. Cal. Civ. Code § 1622, 1624. An employment contract is not specifically required by
15 statute to be in writing. See Cal. Civ. Code § 1624. A contract may be partly written and partly oral, the
16 terms of which may be proven by both written and oral evidence. *Lande v. Southern California Freight*
17 *Lines* (1948) 85 Cal.App.2d 416, 420-421.

18 50. Here, Plaintiff and JMC entered into a written employment agreement on 4/24/2015 for a
19 one-year term. A new agreement was entered into by Mr. Mourier and Downie in the 2017 Bonus
20 Calculation Changes Agreement that became effective on 1/1/2017. As part of the agreement, Mr. Downie
21 was entitled to 4% interest on Work in Progress ("WIP") in the bonus calculation. Mr. Downie is owed 4%
22 interest on all the late bonus payments that were never paid on time including the true up payments that
23 were also made months after the due date.

24 51. In August of 2020, Mr. Mourier spoke to Mr. Downie about another large land deal that Mr.
25 Downie had been tirelessly working on for the past eight months. Mr. Downie reminded Mr. Mourier
26 multiple times that Mr. Downie believed the land deal was the most valuable land in the Sacramento
27 Metropolitan Statistics Area. Mr. Mourier informed Mr. Downie that "if you pull this off, I'll give you
28

1 25% of the pre-tax number for both Whitney and the Fiddymment deals". Mr. Downie accepted and relied
2 on Mr. Mourier's verbal promise to the pay increase PTI bonus percentages on Fiddymment Ranch and
3 Whitney Ranch if Mr. Downie was successful in getting the balance of Whitney Ranch for the company.

4 52. Plaintiff was a California employee subject to the rights and protections of the State of
5 California. Accordingly, the portion of his employment terms governed by his oral agreement with JMC
6 is also subject to California law. Plaintiff and Mr. Mourier agreed orally to certain terms that would
7 increase Plaintiff's pay percentage to 25% of the pre-tax number for the Whitney and Fiddymment Ranch
8 deals, if Plaintiff was successful in getting the balance of Whitney Ranch land deal for the company.
9 These lots were the most valuable lots in Placer County and sought after by other builders in the area.
10 Plaintiff successfully secured these land deals for JMC and was waiting on his compensation payment as
11 promised by Mr. Mourier before his termination.

12 53. Defendants breached the oral contract governing Plaintiff's employment when they
13 terminated him without compensating him for the Whitney Ranch and Fiddymment Ranch land deals
14 according to the oral agreement between Mr. Mourier and Downie.

15 54. Plaintiff was successful in securing the land for the company thus fulfilling his portion of
16 the oral agreement.

17 55. Plaintiff relied on this promise and continued working hard, and overtime to secure the
18 deal.

19 56. Defendants breached this oral agreement by failing to pay the amounts owed to Plaintiff
20 and instead terminated Plaintiff to avoid paying him the promised compensation.

21 57. As a direct and proximate result of Defendants' actions against Plaintiff, as alleged above,
22 Plaintiff has suffered special damages including but not limited to loss of wages, including front and back
23 pay, and benefits, plus consequential damages in an amount to be proven at time of trial, in excess of the
24 minimum jurisdictional requirements of this Court.

25 58. Plaintiff is further entitled to prejudgment interest in an amount to be shown at trial.

26 **SECOND CAUSE OF ACTION**

27 *Promissory Estoppel*

28 *(Against All Defendants)*

59. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in this Complaint.

60. Where an employee relies on a promise to the employee's detriment, the employer may be estopped from denying the promise. (i.e., the promise will be enforced) under a theory of promissory estoppel. "The elements of promissory estoppel are (1) a clear promise, (2) reliance, (3) substantial detriment, and (4) damages measured by the extent of the obligation assumed and not performed." *Toscano v. Greene Music* (2004) 124 Cal.App.4th 685, 692 (internal quotes omitted).

61. Defendants made clear and unambiguous promises to Plaintiff regarding his compensation structure. Plaintiff was promised to be compensated upon closing certain land deals and relied, in good faith, on Defendants' promise to receive pay increase percentages on these land deals.

62. Defendants breached the agreement by failing to compensate plaintiff for his work in closing the Whitney Ranch and Fiddymment Ranch deals, and instead terminated him and refuses to pay all owed compensation. Specifically, Defendants failed to pay Plaintiff for the 25% pay increase on the Whitney Ranch deals after he secured the land deals during his employment. Such a breach is unconscionable and an indication of Defendants' bad faith business practices.

63. As a result of Defendants broken promise, Plaintiff has not received the majority of her owed compensation for the work she performed.

64. In refusing to pay Plaintiff his full compensation under the employment agreement, Defendants failed to fulfill its promises, and injustice can be avoided only by enforcing the above promises. Plaintiff will be unconscionably injured, and Defendants will be unconscionably and unjustly enriched, if the promises are not enforced. Plaintiff has been damaged as set forth above.

THIRD CAUSE OF ACTION

Unjust Enrichment

(Against All Defendants)

65. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in this Complaint.

66. Plaintiff was promised to be compensated upon closing certain land deals and relied, in

1 good faith, on Defendants' promise to receive pay increase percentages on these land deals.

2 67. Defendants breached the agreement by failing to compensate plaintiff for his work and
3 instead terminated him to avoid doing so.

4 68. It would be unjust for Defendants to retain those benefits and reap the rewards of their
5 improper actions. The events recounted constitute unjust enrichment by Defendants, and they should be
6 forced to disgorge all funds obtained due to this action as a matter of equity.

7 ***FOURTH CAUSE OF ACTION***

8 *Breach of Implied Covenant of Good Faith and Fair Dealings*

9 *(Against All Defendants)*

10 69. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
11 forth in this Complaint.

12 70. Plaintiff and Defendant entered into a valid and binding written contract for employment.

13 71. Part of Plaintiff's written and oral employment contract, he was responsible for closing
14 certain land deals and, as such, Defendants promised to pay bonus compensation to Plaintiff for
15 successfully performing these duties. This was a requirement of Plaintiff's employment with JMC.

16 72. Plaintiff was promised to be compensated with an increased percentage (25%) upon
17 closing of the Whitney Ranch land deals and relied, in good faith, on Defendants' promise to receive a
18 bonus pay increase percentage on this land deal.

19 73. Defendants failed to comply with the implied contract specifically for the closing of the
20 Whitney Ranch land deal, which among other things, required Defendants to pay Plaintiff 25% on the
21 balance of the Whitney Ranch deal.

22 74. The conditions required for Defendants to perform under the implied contract between
23 Plaintiff and Mr. Mourier.

24 75. Defendants have unfairly interfered with Plaintiff's right to receive the benefit of the
25 agreement by, among other things, refusing to pay Plaintiff compensation owed to him and refusing to
26 engage with Plaintiff to justify this discrepancy and ultimately terminating Plaintiff's employment to
27 avoid paying this compensation. By acting in this manner, Defendants have not acted fairly and in good
28

1 faith, and frustrated and subverted the terms of the contract that Plaintiff was required to enter into as a
2 condition of his employment.

3 76. Defendants' unfair interference with Plaintiff's right to receive the benefit of the contract
4 has harmed Plaintiff in an amount to be proven at trial.

5 ***FIFTH CAUSE OF ACTION***

6 *Unfair Competition, Business and Professions Code §17200*

7 *(Against All Defendants)*

8 77. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
9 forth in this Complaint.

10 78. As a result of Defendants' failure to pay Plaintiff her contractually owed compensation, as
11 detailed above, and in breach of the Parties' Agreement, Defendants are liable for unfair competition in
12 violation of the California Business and Professions Code. See Bus. & Prof. Code § 17200.

13 79. Defendants, by engaging in the unlawful, unfair, deceptive, and fraudulent practices alleged
14 herein, have enriched themselves at the expense of Plaintiff, and have gained an unfair competitive
15 advantage over law-abiding employers.

16 80. As a remedy for Defendants' actions constituting unfair competition, Defendants are liable
17 to pay restitution to Plaintiff in the amount of due but unpaid compensation, plus interest, costs, expenses,
18 and attorney fees, in amounts to be proven at trial. See Bus. & Prof. Code § 17203; Civ. Code §§ 3287,
19 3288.

20
21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them, as
23 follows:

- 24 1. Compensatory damages including emotional distress damages and lost wages, benefits
25 and interest in a sum according to proof;
26 2. Interest on judgment, including prejudgment interest, at the legal rate;
27 3. Punitive damages in a sum according to proof;
28

4. Attorney's fees and costs; and

5. For any further legal and equitable relief, the Court deems proper.

Dated: September 25, 2024.

RATNER MOLINEAUX, LLP



David S. Ratner

Shelley A. Molineaux

Attorneys for Plaintiff Mark Downie