

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

TROY STATCZAR,

Plaintiff,

vs.

No. D-101-CV-2019-02971
Case assigned to Wilson, Matthew Justin

THORNBURG INVESTMENT
MANAGEMENT, INC., JASON
BRADY, NIMISH BHATT, DANA
JONES, AND GARRETT
THORNBURG,

Defendants.

COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO HUMAN RIGHTS
ACT, COMMON-LAW WRONGFUL DISCHARGE, FRAUD IN THE
INDUCEMENT OF CONTRACT, BREACH OF EXPRESS OR IMPLIED
CONTRACT, BAD FAITH, INTERFERENCE WITH CONTRACT AND
PROSPECTIVE ECONOMIC ADVANTAGE, CIVIL CONSPIRACY, AND
PUNITIVE DAMAGES

Plaintiff Troy Statczar (“Mr. Statczar”), by and through his counsel, Trent A. Howell, brings this Complaint against Thornburg Investment Management, Inc. (“TIM”), Jason Brady (“Brady”), Nimish Bhatt (“Bhatt”), Dana Jones (“Jones”), and Garrett Thornburg (“Thornburg”).

INTRODUCTION

1. On June 24, 2019, TIM fired Mr. Statczar for accurately reporting sexual favoritism/discrimination. In early 2019, Mr. Statczar began doubting the work of Erin Carney (“Carney”), TIM Head of Strategic Development. In March, he expressed this to co-workers, including TIM Managing Directors (“M.D.’s”); he noted—despite her poor strategic decisions—Carney advanced quickly within TIM; and he questioned if she and her supervisor, TIM Chief Executive Officer (“CEO”) Brady, were in a relationship. In April, he directly reported to an M.D. he believed Carney and Brady were having an affair. In the week of May 13th, Mr.

Statczar took some of his concerns about Carney’s strategic decisions directly to Brady. On May 21st, Mr. Statczar met with TIM Human Resources (“HR”) Director Jones and gave an update on his own team. In this meeting, Jones did not cite any problems with Mr. Statczar’s work or any complaints from his team about him, but Mr. Statczar did state complaints against TIM Chief Financial Officer (“CFO”) Bhatt. On June 7th, Bhatt demoted Mr. Statczar and falsely accused him of “intrusive behavior” with his subordinate, Ponn Lithiluxa (“Lithiluxa”). On June 13th and 15th, Mr. Statczar reported Bhatt’s retaliation to Jones and asked TIM to investigate and to apply supervisor/subordinate rules to Bhatt, as well as “equally ... to all Thornburg employees.” In direct response, Brady fired Mr. Statczar on June 24th. But within weeks, it became known Brady had confessed to TIM that he and Carney *are* having an affair. Brady thus admitted Mr. Statczar was correct: others—even the CEO—were in fact violating supervisor/subordinate rules. The timing of Brady’s confession suggests he only disclosed it because of Mr. Statczar’s questions and reports. But even after Brady confessed, TIM and Thornburg only made Brady stop supervising Carney. TIM and Thornburg did not discipline Brady, Carney, Bhatt, or Jones. And TIM and Thornburg made no effort to rehire or to clear the name of Mr. Statczar.

2. On these facts, Mr. Statczar states claims under the New Mexico Human Rights Act (“NMHRA”) for discrimination and retaliation; common-law wrongful discharge; fraud in inducement of contract; breach of express or implied contract for continuing employment, good-faith investigation, and non-retaliation; breach of the implied covenant of good faith and fair dealing; interference with contract and prospective economic advantage; and civil conspiracy. He also seeks punitive damages.

PARTIES AND JURISDICTION

3. Mr. Statczar at all relevant times was a resident of Santa Fe, New Mexico.

4. TIM is a privately held investment management corporation, registered as an investment adviser with the U.S. Securities and Exchange Commission (“SEC”), and has filed registration exemptions in several Canadian provinces. As of December 31, 2018, TIM’s client assets under management (“AUM”) exceeded \$40 billion dollars on a discretionary basis and over \$1 billion dollars in model assets. TIM is and/or at all relevant times was a corporation formed under the laws of Delaware but having its principal place of business—its “nerve center,” or “the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities”—at 2300 North Ridgetop Road, Santa Fe, New Mexico 87506, thereby operating and maintaining offices in Santa Fe County, making venue in this Court proper pursuant to NMSA §38-3-1(A).

5. Brady at all relevant times was a resident of Santa Fe, New Mexico; transacted business from which this case arises in Santa Fe, New Mexico; and engaged in tortious acts toward and causing harm to Mr. Statczar from which this case arises in Santa Fe, New Mexico.

6. Bhatt at all relevant times was a resident of Albuquerque, New Mexico; transacted business from which this case arises in Santa Fe, New Mexico; and engaged in tortious acts toward and causing harm to Mr. Statczar from which this case arises in Santa Fe, New Mexico.

7. Jones at all relevant times was a resident of Santa Fe, New Mexico; transacted business from which this case arises in Santa Fe, New Mexico; and engaged in tortious acts toward and causing harm to Mr. Statczar from which this case arises in Santa Fe, New Mexico.

8. Thornburg founded TIM in 1982, currently owns 100% of TIM’s voting shares, and is Chairman of its Board of Directors (“Board”). Thornburg at all relevant times was a resident of Santa Fe, New Mexico; transacted business from which this case arises in Santa Fe,

New Mexico; and engaged in tortious acts toward and causing harm to Mr. Statczar from which this case arises in Santa Fe, New Mexico.

9. The wrongful transaction of business and tortious conduct alleged herein was committed in, directed by Defendants to, and arises from their recruiting, contractual, and employment actions in or from Santa Fe County, New Mexico, thereby conferring jurisdiction and venue over the parties and subject matter hereto in this Court.

10. The court has jurisdiction over the parties and subject matter pursuant to Article VI, §13 of the Constitution of the State of New Mexico and NMSA § 28-1-13(A) and (C).

FACTUAL ALLEGATIONS

11. Mr. Statczar is an accomplished and well-regarded finance-industry professional with over 25 years of experience.

12. From July 2008 through March 2017, Mr. Statczar was Director of U.S. Fund Administration/Operations for Henderson Global Investors (“Henderson”), Chicago, Illinois, and Treasurer of Henderson Global Funds.

13. Between December 2016 and April 2017, Defendants recruited Mr. Statczar to leave Henderson and to join TIM as its Director of Fund Administration.

14. Mr. Statczar detrimentally relied on Defendants’ representations in the recruitment process by leaving his stable, established, high-paying position at Henderson in Chicago, Illinois and moving to Santa Fe, New Mexico.

15. Aside from his base pay and arrangement at Henderson, by leaving its employment at the time that he did, Mr. Statczar also forewent substantial bonuses and/or deferred compensation.

16. Effective April 17, 2017, TIM hired Mr. Statczar into the position of Director of

Fund Administration.

17. The lead recruiter for TIM was Bhatt, who had known Mr. Statczar for over 20 years and, in fact, worked closely with him at BISYS Fund Services, Inc. in Columbus, Ohio.

18. Bhatt's recruitment of Mr. Statczar was a full admission and acknowledgement of Mr. Statczar's extraordinary skill set and career-long work. Mr. Statczar worked specifically for Bhatt for their years at BISYS Fund Services, Inc. And Bhatt hired Mr. Statczar to work directly under him again at TIM.

19. The position Bhatt sought out Mr. Statczar to fill was one of TIM's highest. Leading a team of eight professionals, Mr. Statczar was to administer and oversee \$40 billion AUM in TIM Mutual Funds/ "UCITS" (Undertakings for Collective Investment in Transferable Securities)/LP/CIT ("Funds"). In this role, Mr. Statczar was to ensure development and execution of a risk-focused oversight model fit to the market, regulatory, and business environment in which the Funds operate. Mr. Statczar was to be a key participant and stakeholder developing and launching new Funds and leading Fund-related initiatives. Mr. Statczar was to be highly visible within the organization and work cross-functionally with all levels of management in areas including: Portfolio Management, Operations, Legal, Compliance, Product and Strategic Development, Sales/Distribution, Client Service, Corporate Finance and the various vendors that provide services to the Funds. He also was to provide support for ongoing reporting/relationships with the various governing bodies that oversee the Funds, including the Thornburg Investment Trust Board.

20. In the recruitment process, TIM and Bhatt induced Mr. Statczar to leave his Henderson position and to accept the TIM position through assurances of job security, of orderly processes, of compliance with generally accepted industry practices, and by cultivating

expectations of continuing employment for a reasonable period unless terminated by just cause.

21. For example, TIM significantly leveraged Mr. Statczar's annualized compensation into "deferred compensation," guaranteeing approximately 25% of annualized compensation to be awarded in December 2017 and payable over a three-year period.

22. For the fiscal year 2017, TIM advised Mr. Statczar that of his total compensation, approximately 25% would come as a "deferred bonus award."

23. As described to Mr. Statczar in the interview process, at the time of hire, and thereafter, TIM's "deferred bonus award":

a. would be "earned" by his faithful performance of his job duties in 2017, although it would be paid out over a three-year period;

b. once "earned," would be preserved and paid out by TIM to Mr. Statczar in good faith at the appropriate time;

c. would not be interfered with by TIM terminating Mr. Statczar's employment before the "deferred bonus award" was payable, except for good cause; and

d. would also not be withheld or modified except in compliance with TIM's other workplace policies, including but not limited to those regarding workplace conduct, investigation, discipline, and termination.

24. Mr. Statczar justifiably and detrimentally relied upon this compensation structure by accepting TIM's offer of employment, by leaving other gainful employment to accept the TIM position, by fully and fairly performing his TIM job duties in the years 2017 and 2018, and by earning his "deferred bonus award" for the years 2017 and 2018.

25. Similar to its representations in the recruitment process, at the time Mr. Statczar began employment, TIM continued to (A) describe the deferred bonus as having been fully

earned in 2017 and owed by TIM so long as Mr. Statczar made good faith efforts to do his job, unless TIM should terminate him for cause, and (B) hold itself out as being committed to orderly, generally-accepted employment processes that would both allow him to raise workplace issues, insure him workplace issues would be responsibly managed with a degree of due process, and prevent him from being unjustly terminated, except for good cause.

26. For example, TIM had and has a written policy that directed Mr. Statczar to report issues he may have to Human Resources. The TIM policy for “Reporting Complaints” instructs:

Any employee who believes he or she is being discriminated against or harassed based on any of the grounds stated above must report it immediately to his or her direct supervisor, any Managing Director, or Human Resources staff member, whomever the employee feels comfortable with, but not the person who is alleged to have discriminated against or harassed the employee. The Company will investigate the complaint, and if determined appropriate, will prepare a plan of action designed to correct the issue and prevent a reoccurrence. The Company may inform the employee who made the complaint of its determination.

TIM Employee Handbook (June 2018), p. 3 (emphasis added).

27. TIM also had and has a published policy against retaliation for reports to Human Resources. The Thornburg Standards of Professional Conduct provide:

Employees can raise concerns and make reports without fear of reprisal. Anyone found to be engaging in any type of harassment or of unlawful discrimination may be subject to disciplinary action, up to and including termination of employment.

TIM Employee Handbook (June 2018), p. 3 (emphasis added).

28. Similarly, the Thornburg Anti-Retaliation Policy reads:

Under no circumstances will an employee be penalized for reporting what the employee believes in good faith to be discrimination or harassment under this policy. If you believe that you are being retaliated against for bringing a complaint of harassment or discrimination, you should report such conduct immediately to your direct supervisor, any Managing Director or the Human Resources Department. Any supervisor or manager who retaliates against an employee for making a complaint may be subject to disciplinary action up to and

including termination.

TIM Employee Handbook (June 2018), p. 4 (emphasis added).

29. Likewise, to comply with the Investment Advisers Act of 1940, TIM maintained a Code of Business Conduct and Ethics, which provides:

Conflicts of Interest

Each Supervised Person shall be scrupulous in avoiding any conflict of interest with regard to TIM's interest. A conflict of interest occurs when an individual's private interest interferes with the interests of TIM or its Investment Clients. *A conflict situation can arise when a Supervised Person pursues interests that prevent the individual from performing his or her duties for TIM or an Investment Client objectively and effectively.* Conflicts of interest also arise when a Supervised Person or member of the individual's family receives undisclosed, improper benefits as a result of the individual's positions with TIM.

TIM Code of Business Conduct and Ethics (March 2019), p. 35 (emphasis added).

30. And the same Code further committed to TIM employees that TIM would not retaliate against any employee for reporting any "suspected" violation of such policies:

Whistleblowing/Reporting Fraudulent, Illegal or Unethical Activity

All Supervised Persons are required to report suspected fraudulent, illegal, or other unethical activity (including violations of this Code) to his or her supervisor immediately. Supervisors who are notified of any such activity must immediately report it to TIM's Chief Compliance Officer. *Anyone who does not feel comfortable reporting this activity to the relevant supervisor may instead contact TIM's Chief Compliance Officer. No TIM employee shall take any disciplinary or retaliatory action against any individual for acting in good faith, reporting, or causing to be reported, violations of this Code or fraudulent, illegal, or unethical activity occurring at TIM, Thornburg Investment Trust or Thornburg Securities Corporation (or for assisting in an authorized investigation of such activity), whether such reporting is internal or involves any federal government agency, as described below.*

Id. (emphasis added).

31. The referenced policy also defined "Supervised Person" broadly to include "any director, managing director, officer (or other person occupying a similar status or performing

functions similar to any of those persons) or employee of TIM, and any other persons who are subject to TIM's supervision and control." *Id.*, p. 43.

32. Based on the above representations and additional promises of TIM described herein, Mr. Statczar formed and held throughout his TIM employment a belief TIM had extended, formed an agreement for, and intended to honor to him an offer and arrangement of employment to be continued in good faith, not be terminated without good cause, conducted according to its Employee Handbook, and not subject him to reprisal or retaliation for complaints of misconduct, unequal treatment, or conflicts of interest by TIM or any of its other employees.

33. For his exceptional job performance in 2017 and 2018, Mr. Statczar received substantial bonuses and outstanding performance appraisals by TIM and Bhatt, himself.

34. On March 26, 2019, TIM provided its evaluation of Mr. Statczar in a "360° Feedback Report."

35. On a scale of 1 (Strongly Disagree) to 7 (Strongly Agree), TIM's 360° Feedback Report scored Mr. Statczar highest (above 6 points) for "Acts with Integrity—Is open, honest and inclusive," "Models the Way—Treats others with dignity and respect," "Inspires Continuous Improvement and Innovation—Takes initiative to solve problems," "Acts with Integrity—Maintains a larger perspective of what is best for the whole," and "Provides Clear Direction and Feedback—Works with team members in setting appropriate goals."

36. However, as detailed below, in an abrupt reversal on June 24, 2019, TIM —by and through Brady—fired Mr. Statczar.

37. As summarized above and detailed below, Defendants—through and in culmination of a civil conspiracy—terminated Mr. Statczar in concert (aiding, abetting, inciting, compelling or coercing each other and/or other persons), with discriminatory motives, and in

“reprisal” against Mr. Statczar for having engaged in two clusters of “opposition” conduct, as to each of which he had a reasonable, good-faith belief that Defendants had engaged in “a[n] unlawful discriminatory practice” under the NMHRA.

a. In the first half of 2019, Mr. Statczar questioned the experience and strategic decisions of Thornburg co-worker Carney, who upon information and belief was hired in June 2018 and promoted within six months to M.D., in close connection with her undisclosed, sexual relationship with her direct supervisor, Brady. Before being terminated by Brady, himself, Mr. Statczar in March raised questions of Carney’s performance and of her relationship with Brady to co-workers; in April inquired with a TIM M.D. whether Carney was having an affair with Brady; and in the week of May 13th, expressed to Brady, himself, concerns with strategic decisions under Carney’s purview. In these respects, Mr. Statczar expressed objection and engaged in opposition-activity against suspected “sexual favoritism” in the workplace.

b. Mr. Statczar also submitted a May 21, 2019 oral report to TIM HR and June 13 and 15, 2019 Memoranda (“Statczar Memos”) to HR regarding ageist and disability-related remarks by Bhatt and—once again—TIM’s selective application of unwritten work-relationship protocols.

38. As further detail on the above-noted circumstances, Mr. Statczar states as follows.

39. From the outset when she was hired in June 2018, Brady placed and kept Carney in a position where he directly supervised and managed her.

40. Soon after her hire, during a summer sales meeting dinner in June 2018 at Rio Chama Steakhouse, Carney told the table Brady had flown her out to Santa Fe, taken her out for

a round of golf, told her he would create any position for her, and asked her to name her salary.

41. As already noted, upon information and belief, Brady personally saw to and expedited Carney's progression to an M.D. role with its attending path to partner/owner interest in Thornburg.

42. Brady also used these situations to place himself and Carney together on numerous business trips, traveling the world on business initiatives.

43. While Mr. Staczar had some suspicion of these situations during the first nine months (from June 2018 through March 2019) of Carney's employment with TIM, it was not until he began working on a project directly with Carney in the first fiscal quarter of 2019 that Mr. Staczar developed more detailed questions and concerns regarding her experience and strategic decisions.

44. Toward the end of 2018, Mr. Staczar began working with Carney on the launch of the Thornburg Summit Fund (a new Investment Company Act of 1940 mutual fund). There were several strategic questions she was not able to answer, even though she is the "Head of Strategy." Mr. Staczar in emails pushed back on Carney, asking her to make the decision or for her to direct her questions to the appropriate areas within the company. It became apparent Carney did not seem to know what she was doing, from a technical or strategic perspective.

45. In the first half of 2019, Mr. Staczar worked with Carney on the creation of the Bandelier Fund (a private fund with a somewhat unique investment strategy and low target asset raise). Mr. Staczar questioned the rationale given that this product did not seem to align with TIM's core competencies and distribution experience. Mr. Staczar also questioned why TIM would spend approximately \$200,000 on legal fees drafting offering documents (with multiple and substantial revisions) on a product that was not fully planned, thought-out, or vetted, and

why TIM would want to launch a product that is extremely expensive to service and also carries significant risk for operational units that are not equipped to handle the fund's complex investments and structure.

46. Carney was also working to expand TIM's global footprint. To that end, Carney requested that Mr. Statczar's team register TIM's Undertakings for Collective Investment in Transferable Securities ("UCITS") products on a retail basis in Hong Kong and Singapore to the cost of approximately \$1,000,000. After further research, Mr. Statczar's team determined that TIM would be able to register the UCITS products in these markets on a private placement basis for approximately \$100,000, representing a significant savings.

47. As a result of these developments, in March and April of 2019, Mr. Statczar had discussions with various TIM coworkers as to the prudence of Carney's strategic decisions. And in mid-April 2019, Mr. Statczar inquired with TIM M.D.'s Directors whether Carney's advancement corresponded with Brady and Carney being involved in a romantic relationship.

48. Shortly after, Mr. Statczar raised questions on Carney's strategic decisions to Brady, himself. In the week of May 13th, Brady took Mr. Statczar to a work lunch. Mr. Statczar asked Brady if he had any feedback on Mr. Statczar or his team, and Brady replied he felt Mr. Statczar and his team were doing well. Brady then asked if Mr. Statczar had thoughts on where TIM may improve. Mr. Statczar stated two concerns that fell, in whole or in part, upon Carney. First, while observing that teams within Thornburg are not aligned to achieve goals, Mr. Statczar gave the example of the expansion of distribution platform for UCITS business. Mr. Statczar noted operational teams were working to register funds in many foreign jurisdictions, but other parts of the company were not working towards same goal. Little or no thought was given to updating the company website for foreign investors or jurisdictions. And overall, the distribution

rollout strategy seemed half-baked. Second, Mr. Statczar noted the company's strategy for UCITS business needs to be improved. Mr. Statczar stated, "For example, we offer share classes that are no longer relevant, are not consistent across funds, and do not offer share classes in the currencies for the countries in which we are offering funds." As criticisms of strategy of the TIM UCITS business, these comments reflected directly upon Carney, though Mr. Statczar did not name her in the conversation. Brady expressed no resentment at that point. Instead, first, he asked Mr. Statczar to set up a meeting with TIM HR (Jones) to discuss his team update. And finally, he thanked Mr. Statczar for the discussion.

49. However, within weeks of Mr. Statczar (first) questioning Carney's decisions to coworkers, (then) inquiring with TIM M.D.'s on the Brady/Carney relationship, and (finally) directing questions on Carney's strategic decisions to Brady himself, Defendants began and rapidly escalated the following retaliation, which culminated in their termination of Mr. Statczar on June 24th.

50. On May 21, 2019, Mr. Statczar met with HR per Brady's instruction, and in that discussion, Mr. Statczar related to HR certain, offensive remarks TIM Chief Financial Officer Bhatt had made to Mr. Statczar on March 6, 2019. (Bhatt's March 6th remarks are detailed in **Exhibit 1** (Statczar's June 15th Memo to HR).)

51. **Two weeks later, on June 5th, Bhatt passed over Mr. Statczar for a Directorship role he previously offered on TIM's UCITS Fund Range; and Bhatt stated Mr. Statczar's reporting of Bhatt's prior remarks to others was the reason.** At the end of a weekly team update on June 5, 2019, Bhatt pulled Mr. Statczar aside and said he was withdrawing the UCITS Directorship role, because TIM was "re-thinking the board composite." Before this date, Bhatt had advised Mr. Statczar he was to take the place of Bettie Kroutil ("Kroutil"), another M.D., as

she had requested to be removed from the UCITS Board at the end of 2018. But in his June 5th discussion with Mr. Statczar, Bhatt claimed Mr. Statczar would no longer receive the position, because Kroutil knew of and had agreed to Thornburg's hope for her to remain on the Board. *Mr. Statczar asked Bhatt if Mr. Statczar had done anything to cause this, or to make Bhatt change his mind from previously recommending Mr. Statczar for the Directorship. Bhatt replied, "No, not with the UCITS, but you did break the sacred cardinal rule." Mr. Statczar asked what that was, and Bhatt said, "I know of at least two people on this floor you told about the personal hygiene comment." Thus, **Bhatt, as TIM CFO, admitted he withdrew the UCITS Directorship as a direct result of Mr. Statczar reporting Bhatt's offensive remarks to TIM HR.*** Mr. Statczar replied that, because Bhatt had not identified what the "hygiene" issue was, and because Bhatt in no way implied the matter was confidential, Mr. Statczar had in fact inquired with HR and team members to see if there was anything he needed to or should change as to his hygiene. Bhatt replied, "The only reason I told you was that was because I was looking out for you and didn't want others talking behind your back." Lastly, Bhatt said, "You know Troy, you're like a broken window. When I look up, I see cracks. And you know broken windows cannot be repaired—only replaced."

52. After the conversation ended and Mr. Statczar returned to his office, he e-mailed the legal team at Dechert, LLP to advise them no further work should be done to qualify or document Mr. Statczar as a Director of UCITS Fund Range. Mr. Statczar copied this e-mail to Bhatt and Kroutil, only to keep them in the loop. But moments after he did, Kroutil e-mailed Mr. Statczar to ask what was happening. And in the ensuing discussion, Kroutil stated, in fact, she had no idea TIM expected her to stay on UTICS, and instead until the moment of his e-mail, she had understood Mr. Statczar was still to fill her position. Thus, Kroutil admitted the other reason

Bhatt had cited for withdrawing the UCITS Direct role from Mr. Statczar was false (and, thus, only a pretext for retaliation).

53. Two days later, on June 7th just after 4:00 p.m., Bhatt called Mr. Statczar to HR. With him was Jones. Bhatt presented Mr. Statczar with a “Memo of Concern” (“Bhatt Memo”), which accused Mr. Statczar of being “overly friendly” and “intrusive” with one of his direct reports, Lithiluxa, which Bhatt said was against TIM expectations for “appropriate boundaries in the workplace.” See **Exhibit 2** (Bhatt Memo, dated June 7, 2019). (Notably, Bhatt did not cite any TIM policy on the matter.) On that basis, Bhatt removed Lithiluxa from Mr. Statczar’s supervision, assigned her to report directly to Bhatt, and ordered Mr. Statczar to limit his communication with Lithiluxa and other employees in several ways.

54. Despite its retaliatory impetus, accusing tone, and the fact it came just days after Bhatt’s other actions against Mr. Statczar, the Bhatt Memo did/does not state TIM had any intent to enact further, current discipline based on these allegations. To the contrary, Bhatt—who was, again, Mr. Statczar’s direct supervisor, CFO, and an M.D.—wrote: “I believe that you can be a valuable part of the fund administration team and look forward to seeing positive results from our discussion.”

55. Upon delivery of the Bhatt Memo in the June 7th meeting, Mr. Statczar sat in the HR office with Jones and Bhatt and listened to Bhatt essentially read the letter. They asked him to sign the letter, and he asked them for the weekend to review and process the matter.

56. After the meeting, Bhatt promptly left the office, but Mr. Statczar continued to discuss it with Jones, as he had a few questions. Mr. Statczar told Jones he was shocked to receive the written letter, shocked if Lithiluxa felt the way Bhatt implied, and shocked Bhatt never gave him opportunity to tell his side before Bhatt simply took unilateral action against Mr.

Statczar. Mr. Statczar asked Jones if Lithulaxa had filed a formal complaint against him. Jones first replied, “No.” Then she added, “Well, we had a discussion with her.” *Mr. Statczar also asked Jones what she thought the issue with his relationship with Bhatt might be. Jones replied, “I think Nimish is a private person and was expecting you to keep the personal hygiene comment to yourself.” Thus, Jones, as Director of TIM HR, also admitted Bhatt’s actions were in retaliation for Mr. Statczar having reported him to TIM HR.*

57. Replying to the Bhatt Memo, on June 13th, Mr. Statczar sent his own Memorandum to Bhatt and Jones. *See Exhibit 3* (Statczar Memorandum, dated June 13, 2019). In this Memorandum, Mr. Statczar defended himself against the false accusations of “intrusive behavior.” Because those particular accusations came from Bhatt, and Mr. Statczar had not yet begun to suspect they were retaliation for his own reports of the Brady/Carney affair, Mr. Statczar did not specifically name the Brady/Carney affair again in his Memorandum. However, because Bhatt was claiming to state and to enforce TIM standards on supervisor and subordinate interaction, Mr. Statczar did insist TIM investigate and equally, fairly apply its workplace standards to the conduct of Bhatt and Lithiluxa. (Like Mr. Statczar, Bhatt had known Lithiluxa the past 20 years, socialized with her outside the office, and took occasional lunches with her; in addition, Bhatt and Lithiluxa were sharing rides together to and from work.) And—more broadly—he concluded:

Regardless of what Thornburg’s unpublished expectations for workplace etiquette may have been or may now be, the characterizations of my behavior in the Memo are false and defamatory. In addition, ***if Thornburg is implementing a policy of not having people that are long-term friends report to each other, I respect and will comply with that policy.*** If Thornburg is implementing new policies on the other topics Nimish mentions in the “Memo of Concern” (e.g., coworker lunches, coworker texts and e-mails after 5:00 p.m., etc.), I respect and will comply with those, as well. ***I only request that any such policy be clearly communicated and equally applied to all Thornburg employees.*** and that—in that process—I not be

unfairly scandalized or prejudiced.

Ex. 3 at 6 (emphasis added). *Thus, Mr. Statczar’s June 13th Memorandum again invoked concerns he had conveyed to M.D.’s—that TIM was letting its highest male supervisors cross professional boundaries with female subordinates to an unacceptable/unlawful degree.*

58. As previously noted, Mr. Statczar also sent a separate, June 15th Memorandum, strictly to Jones. There, he reiterated the impropriety of remarks and conduct of Bhatt and Jones, and concluded:

I feel threatened, targeted, and abused by [Bhatt]’s passive-aggressive comments. There were signs of discrimination in [Bhatt]’s hygiene and “broken window” remarks. Further, *both he and you have acknowledged his recent adverse actions against me were in retaliation for my reporting the same to Human Resources. In turn, I request that Thornburg—through a neutral representative other than yourself—investigate the matter in good faith, remove and correct [Bhatt]’s June 7, 2019 Memo of Concern from my personnel file, and take other corrective action to ensure neither [Bhatt] nor you retaliate against me for my May 21st report to Human Resources, for my June 13th Memo defending myself against [Bhatt]’s June 7, 2019 Memo of concern, or for the complaints I am now transmitting in this additional Memo. Finally,* while in each of my referenced Memos, I have identified some of the apparent reasons for [Bhatt] falsely attacking me in his Memo of concern, *I respectfully request that Thornburg examine [Bhatt]’s own conduct toward [Lithiluxa], to determine whether he, himself, is conforming to the standard of conduct upon which he has purported to discipline me.*

Ex. 1, p. 4 (emphasis added).

59. In each of these respects, Mr. Statczar raised issues through proper channels within TIM, pursuant to the Handbook, with a reasonable, good-faith belief: (1) the conduct he complained of could be discrimination and retaliation; (2) Bhatt was falsely accusing him of “intrusive” or harassing conduct toward Lithiluxa; (3) if anyone at TIM was being intrusive toward a direct subordinate, it was other managers at TIM; and (4) TIM was applying its purported conduct standards in a selective, discriminatory way.

60. *Nine calendar days—five work days—after Mr. Statczar e-mailed his June 15th*

Memorandum to Jones/HR, Brady personally fired him. And Brady did so:

(a) in an abrupt reversal of TIM's prior assessments of Mr. Statczar's performance,

(b) in a humiliating display in front of persons including Jones, whom Mr. Statczar had accused of retaliation,¹ and

(c) with remarks acknowledging Brady's termination was in reaction to Mr. Statczar's June 13th and June 15th Memoranda.

61. The meeting was scheduled by a meeting request Jones e-mailed to Mr. Statczar the afternoon of Friday, June 21st. In no way forewarning it was about discipline—let alone termination, Jones simply requested a meeting on Monday, June 24, at 8:30 a.m. Mr. Statczar agreed. However, when that time came, Mr. Statczar was surprised to see not only Jones, but also Herring and Brady, present. Brady started the meeting by saying, "Thornburg is a firm that prides itself on giving constructive feedback to its employees." *Brady went on to say, "Your responses to the feedback provided by Nimish were both an attack on the message and an attack on the messenger, which makes us question your ability to effectively lead your team. As a result, we are terminating your employment with Thornburg with immediate effect."* **Thus, Brady, as TIM CEO, made clear for a third time TIM was directly punishing Mr. Statczar for communicating with HR.** Giving Mr. Statczar no opportunity to respond, Brady then left the conference room.

62. Jones handed Mr. Statczar a proposed separation agreement, discussed high level details, and then asked if Mr. Statczar had any questions. Mr. Statczar asked three questions:

Question 1. "Was an investigation done this week as the result of my response

¹ Another TIM HR representative, Jennifer Herring ("Herring"), was also present.

to Nimish's memo of concern?" Jones answered, "Yes."

Question 2. "Who performed the investigation?" Jones answered, "I cannot discuss that information."

Question 3. "Was an investigation on Nimish's conduct performed as requested in my note to Thornburg?" Jones answered, "Yes, and appropriate actions were taken."

63. At this point, Mr. Statczar turned in his employee badge and company iPad and was escorted out of the building by Jones. The entire termination meeting took less than 20 minutes.

64. Brady's pretext for terminating Mr. Statczar is astonishingly hypocritical.

65. Upon information and belief, just weeks after Brady terminated Mr. Statczar, on August 19, 2019, Brady's wife filed against Brady for divorce, and shortly thereafter, it became known that Brady, himself, went before the TIM Board to admit he was, in fact, having an affair with his direct subordinate, Carney, who was also married.

66. Equally astonishing, TIM did not subject Brady or Carney to any discipline. Upon information and belief, as a result of Brady's disclosure, TIM only changed the organization chart, so that Carney now reports to Thornburg instead of to Brady.

67. This differential, more favorable treatment of Carney and of Brady further illustrates Defendants' termination of Mr. Statczar arose from Defendants' discriminatory and retaliatory motives.

68. Further, by undertaking direct management of lower-level employees, Thornburg, himself, stepped beyond normal duties of a Board Chairman and acted as an actual or apparent officer specifically to facilitate—and thus personally, knowingly ratified, aided, and abetted—

continuation of Brady's unlawful/policy-violating relationship and employment practices.

69. Defendants, including Thornburg, also continued to aid, abet, and ratify Brady's individual discrimination and retaliation by allowing him to retain authority and decision-making responsibility over whether to take any corrective action in favor of Mr. Statczar.

70. On September 21, 2019 TIM's counsel, Attorney Jeff Lowry, committed for "the Thornburg folks" to attempt to mediate the dispute with Mr. Statczar on October 29, 2019.

71. However, when Mr. Statczar in good faith appeared at the mediation on October 29, 2019, the only persons who attended for TIM were Brady, Bhatt, and Jones.

72. To date, no Defendant has offered or attempted to reinstate Mr. Statczar to his position and good standing at TIM.

73. To date, all Defendants—including Thornburg, himself—are thus complicit in continued retaliation against Mr. Statczar.

74. By his March, April, May, and June 2019 comments to TIM Managing Directors, HR, Bhatt, and Brady regarding Carney and Brady, Mr. Statczar through proper TIM channels raised a reasonable question of whether Brady was engaged in sexual favoritism/discrimination, including but not limited to "quid pro quo" harassment, with his direct subordinate, Carney.

75. As used by federal and state courts when applying employment discrimination laws such as NMHRA, the concept of sexual harassment by "quid pro quo" includes a consensual relationship between a superior and subordinate, where that relationship has an actual, anticipated, or perceived effect on the supervisor's employment decisions toward the subordinate.

76. Sexual favoritism—or a direct supervisor giving one employee preferential workplace treatment and workplace advancement while the two are having a romantic or sexual

relationship—violates the NMHRA.

77. Sexual favoritism—or a direct supervisor giving one employee preferential workplace treatment and workplace advancement while the two are having a romantic or sexual relationship—amounts to sexual discrimination under the NMHRA.

78. Allegations of sexual favoritism amount to allegations of sexual discrimination under the NMHRA.

79. A quid pro quo relationship between a superior and subordinate, even if consensual, still amounts to discrimination on the basis of sex “in matters of compensation, terms, conditions or privileges of employment” under the NMHRA. *See* NMSA § 28-1-7(A).

80. By allowing its managers to give preferential workplace treatment to employees whom they directly supervise and with whom they are having a sexual relationship, an employer encourages all employees to believe that sexual conduct with a direct supervisor is the way to get ahead in the workplace.

81. When a male supervisor gives preferential workplace treatment to a female employee whom he directly supervises in connection with sexual conduct between the two, male employees who report to that male supervisor do not have equal opportunity to compete for advancement.

82. These concerns have been recognized and addressed in various forms of workplace regulation for decades.

83. Since January 1, 1990, the Equal Employment Opportunity Commission (“EEOC”) has published its formal position that “sexual favoritism in the workplace which adversely affects the employment opportunities of third parties may take the form of implicit “quid pro quo” harassment and/or “hostile work environment” harassment.” *See* EEOC Policy

Guidance on Employer Liability under Title VII for Sexual Favoritism (available at <https://www.eeoc.gov/policy/docs/sexualfavor.html>).

84. For 23 years, the New Mexico Supreme Court has taken an even broader stance against supervisor/subordinate relationships, finding allegations of a single manager showing “sexual favoritism” to a subordinate-paramour will amount to “allegations of sexual discrimination” under the NMHRA. *See Martinez v. City of Grants*, 1996-NMSC-061, ¶ 11, 122 N.M. 507, 927 P.2d 1045.

85. In light of and in addition to this state of NMHRA law, generally accepted human resources practices require a regulated business of the size, seriousness, and fiduciary responsibilities of TIM to have a written policy—distributed to all employees—stating whether persons in a sexual relationship are allowed directly to supervise or be supervised by each other, allowed to engage in workplace favoritism toward each other, or required to disclose the same to other persons.

86. Indeed, in a 2018 survey of 150 human resources executives, the executive coaching firm Challenger, Gray & Christmas found 78% of companies had policies discouraging dating between subordinates and managers.

87. National media have spotlighted the existence and enforcement of such policies at our nation’s better-known companies for years, including:

- a. This month, McDonald’s Corporation fired CEO Steve Easterbrook for a consensual relationship with an employee. Heather Haddon, *McDonald’s Fires CEO Steve Easterbrook Over Relationship With Employee*, Wall Street Journal, November 4, 2019 (available at <https://www.wsj.com/articles/mcdonalds-fires-ceo-steve-easterbrook-over-relationship-with-employee->

[11572816660?mod=searchresults&page=1&pos=11&mod=article_inline](https://www.wsj.com/articles/nevada-regulator-seeks-to-ban-steve-wynn-from-states-casino-industry-11571166499)).

b. Last month, the Nevada Gaming Control Board filed a complaint to ban former Wynne Resorts Ltd. CEO Steve Wynn from holding a casino license, based on finding “a pattern of Mr. Wynn recklessly engaging in sexual conduct with subordinate employees, which even if it was consensual as maintained by Mr. Wynn, is oblivious to the significant power imbalance between the CEO of a major gaming company and subordinate employees.” Katherine Sayre, *Nevada Regulator Seeks to Ban Steve Wynn From State’s Casino Industry*, Wall Street Journal, October 15, 2019 (available at <https://www.wsj.com/articles/nevada-regulator-seeks-to-ban-steve-wynn-from-states-casino-industry-11571166499>).

Wynne resigned as CEO in February 2018 when the allegations of the consensual relationships first came to light. *Id.*

c. In March, Warner Brothers CEO Kevin Tsujihara resigned over a consensual relationship. Joe Flint, *Warner Bros. Chairman, CEO Kevin Tsujihara to Step Down*, Wall Street Journal, March 18, 2019 (available at <https://www.wsj.com/articles/warner-bros-chairman-ceo-kevin-tsujihara-to-step-down-11552929877>).

d. In February, REI CEO Jerry Stritzke resigned over a consensual relationship. Jena McGregor, *REI’s CEO and the era of zero tolerance: ‘Errors of judgment were made’*, Washington Post, February 13, 2019 (available at <https://www.washingtonpost.com/business/2019/02/13/reis-ceo-era-zero-tolerance-errors-judgment-were-made/>).

e. In December 2018, KEMET Corporation CEO Per-Olof Loof resigned

over a consensual relationship with an employee. *KEMET Announces Leadership Transition*, Globe Newswire, December 20, 2018 (available at <http://newsroom.kemet.com/news-releases/news-release-details/kemet-announces-leadership-transition>).

f. In June 2018, Intel Corporation CEO Brian Krzanich resigned over a consensual relationship with an employee. Don Clark, *Intel C.E.O. Brian Krzanich Resigns After Relationship With Employee*, New York Times, June 21, 2018 (available at <https://www.nytimes.com/2018/06/21/technology/intel-ceo-resigns-consensual-relationship.html>).

g. In 2017, during which the #MeToo movement effectively began, 12 CEO's left their posts due to sexual harassment and misconduct allegations, including Harvey Weinstein in October 2017. See Challenger Gray, *In Age of #MeToo, More Companies Crack Down on CEOs', Top Leaders' Consensual Relationships*, Challenger Gray, February 2019 (available at <http://www.challengergray.com/press/press-releases/age-metoo-more-companies-crack-down-ceos-top-leaders-consensual-relationships>).

h. In 2016, Priceline Group CEO Darren Huston resigned for a consensual relationship with an employee. Reuters, *Priceline's CEO Is Resigning Over an Improper Relationship With an Employee*, Fortune Magazine, April 28, 2016 (available at <https://fortune.com/2016/04/28/priceline-ceo-huston-resigns/>).

i. In 2012, Best Buy CEO Brian Dunn resigned over a consensual relationship with an employee. Aaron Smith, *Best Buy: Ex-CEO had 'relationship' with employee*, Money Magazine, May 16, 2012 (available at

<https://money.cnn.com/2012/05/14/news/companies/best-buy-ceo/index.htm>).

j. Also in 2012, Highmark, Inc. fired CEO Kenneth Melani for a consensual relationship with an employee. Anna Wilde Mathews, *Highmark CEO fired after fight with mistress's husband sues*, Wall Street Journal, April 1, 2012 (available at <https://www.wsj.com/articles/SB10001424052702304023504577318211313543068>).

k. The same year, Restoration Hardware CEO Gary Friedman resigned over a consensual relationship with an employee. Andrew Ross Sorkin, *Restoration Hardware Co-Chief Steps Down After an Inquiry*, New York Times, April 1, 2012 (available at <https://dealbook.nytimes.com/2012/08/16/restoration-hardware-co-chief-steps-down-after-an-inquiry/>).

l. In 2005, Boeing CEO Brian Dunn resigned over a consensual affair. Chris Isidore, *Boeing CEO out in Sex Scandal*, Money, March 7, 2005 (available at https://money.cnn.com/2005/03/07/news/fortune500/boeing_ceo/).

88. Despite this being the long-settled state of NMHRA law and generally accepted human resources standards, TIM—with the actual or apparent knowledge and approval of HR Director Jones—had *no written policy* prohibiting supervisors—even its CEO—from having a sexual relationship with and showing sexual favoritism to a direct subordinate.

89. Nor did TIM effectively advise employees it had any *unwritten practice* on such relationships, either.

90. And to the extent it in any way or on any occasion claimed to have a practice regarding such relationships, TIM—with the actual or apparent knowledge and approval of HR Director Jones—only did so in a selective, inconsistent, and unreliable fashion.

91. For example, even when its CEO, Brady, was caught in and admitted violating the law and generally accepted human resources practices on sexual favoritism, TIM in no way made the occurrence a “teachable moment” for staff. Upon information and belief, TIM—with the actual or apparent knowledge and approval of HR Director Jones:

- a. received Brady’s admission privately, within its Board of Directors;
- b. did not acknowledge the relationship or TIM’s awareness of the same to its full staff;
- c. did not discipline Brady, Carney, Bhatt, or Jones for failing to address, for acting to conceal, or for retaliating against persons who attempted to oppose the sexual favoritism;
- d. thus conveyed to all employees that TIM takes no position *against* sexual favoritism;
- e. thus also conveyed to all employees that TIM will only punish persons who report such relationships, instead of persons who engage in them; and
- f. at the same time, still did not circulate a formal communication to all TIM employees stating—one way or the other—whether and what it had as a policy regarding sexual favoritism.

92. The above facts are also astonishing because—as noted above—with TIM working in the extensively regulated financial services industry, all Defendants were well informed and aware of the basic concept, necessity, and process to avoid, to disclose, and to take corrective action as to conflicts of interest arising from personal and professional relationships.

93. Yet Defendants chose to have no published policy on the matter of supervisor/subordinate relationships.

94. In addition, Defendants Bhatt and Brady—as well as HR Director Jones—still took it upon themselves to enact formal, retaliatory employment actions against Mr. Statczar on behalf of TIM, without deferring the matters to neutral persons who were not operating under a conflict of interest.

95. And finally, upon information and belief, at no point from when Mr. Statczar first raised questions of the Brady/Carney affair in March 2019 until the present (seven months later) did TIM remove or reverse the decision-making authority Brady—in an obvious conflict of interest—exercised in retaliation against Mr. Statczar to effect and to sustain his termination from TIM.

96. Nonetheless, by his discussions with TIM HR regarding Bhatt, Lithiluxa, and other TIM staff’s conduct under “unwritten” supervisor/supervisee relationship protocols, Mr. Statczar through proper TIM channels raised a reasonable question of whether TIM was fairly and consistently—or unfairly and in discriminatory fashion—applying its own policies and practices, let alone complying with NMHRA.

97. As President and CEO of TIM, Brady had ultimate executive authority to act on behalf of TIM in all matters.

98. As President and CEO of TIM, Brady had ultimate authority to hire, discipline, promote, demote, and fire every employee of TIM other than himself.

99. As President and CEO of TIM, Brady knowingly, willfully promoted and facilitated the award of an ownership interest in TIM to a woman he directly supervised and with whom he was having a sexual relationship.

100. As President and CEO of TIM, Brady knowingly, willfully terminated a man who questioned (a) the existence, nature, and impact of Brady’s sexual relationship with Carney, and

(b) the overall climate and consistency in which TIM was applying its standards for supervisor/supervisee relationships.

101. As President and CEO of TIM, Brady did both the acts described in paragraphs 98 and 99 with the authority and consent of TIM.

102. As Chairman of the Board, 100% owner of TIM voting shares, and an actual and/or *de facto* officer of TIM, Thornburg had ultimate executive authority to supersede Brady on behalf of TIM in all matters.

103. As Chairman of the Board, 100% owner of TIM voting shares, and an actual and/or *de facto* officer of TIM, Thornburg had ultimate authority to hire, discipline, promote, demote, and fire Brady.

104. As Chairman of the Board, 100% owner of TIM voting shares, and an actual and/or *de facto* officer of TIM, Thornburg knowingly, willfully allowed Brady to promote and facilitate the award of an ownership interest in TIM to a woman Brady directly supervised and with whom Brady was having a sexual relationship.

105. As Chairman of the Board, 100% owner of TIM voting shares, and an actual and/or *de facto* officer of TIM, Thornburg knowingly, willfully aided, abetted, and ratified Brady terminating and continuing to retaliate against Mr. Staczar for questioning (a) the existence, nature, and impact of Brady's sexual relationship with Carney, and (b) the overall climate and consistency in which TIM was applying its standards for supervisor/supervisee relationships.

106. As Director of TIM Human Resources and an M.D. of TIM, Jones had ultimate responsibility to know and ultimate authority to police and to enforce generally accepted human resources practices and employment laws for the protection of TIM employees on matters including discrimination and retaliation.

107. As Director of TIM Human Resources and an M.D. of TIM, Jones knowingly, willfully allowed and did not take reasonable actions to oppose Brady engaging in unlawful sexual favoritism and discrimination by promoting and facilitating the award of an ownership interest in TIM to a woman Brady directly supervised and with whom Brady was having a sexual relationship.

108. As Director of TIM Human Resources and an M.D. of TIM, Jones knowingly, willfully aided, abetted, and ratified Brady terminating and continuing to retaliate against Mr. Statczar for questioning (a) the existence, nature, and impact of Brady's sexual relationship with Carney, and (b) the overall climate and consistency in which TIM was applying its standards for supervisor/supervisee relationships.

109. And in turn, all Defendants knowingly, willfully caused and continue to cause Mr. Statczar damages including, but not limited to, lost income and employee benefits, emotional distress, and economic advantage, for which he now sues.

110. With respect to all claims under NMHRA, Mr. Statczar timely filed and exhausted his administrative remedies by submitting a Charge of Discrimination to the New Mexico Human Rights Division ("NMHRD") on August 23, 2019 and by receiving an Order of Non-Determination from NMHRD, from which Mr. Statczar hereby (within less than 90 days thereafter) files this Complaint with this District Court as a notice of appeal for trial *de novo* pursuant to NMSA § 28-1-3(A).

CAUSES OF ACTION

COUNT I NMHRA EMPLOYMENT DISCRIMINATION

111. Mr. Statczar incorporates each paragraph of this Complaint as if fully set forth

herein.

112. Each Defendant is a “person” within the meaning of New Mexico Statutes § 28-1-2(A).

113. Each Defendant is an “employer” within the meaning of New Mexico Statutes § 28-1-2(B).

114. Mr. Statczar is a “person” within the meaning of New Mexico Statutes § 28-1-2(A).

115. Mr. Statczar was and is otherwise qualified to perform the essential functions of Director of Fund Administration.

116. By the above conduct, Defendants:

- a. attempted to and did aid, abet, incite, compel or coerce the doing of an unlawful discriminatory practice, in violation of § 28-1-7(I)(1); and
- b. willfully obstructed or prevented persons, including but not limited to TIM from complying with the provisions of the NMHRA, in violation of § 28-1-7(I)(3).

117. Through the authorized and/or ratified conduct of Bhatt and Brady, and/or by negligently retaining Bhatt and Brady and ratifying their conduct, TIM:

- a. discriminated in matters of compensation, terms, conditions, or privileges of employment because of sex, age, and perceived disability in violation of New Mexico Statutes § 28-1-7(A);
- b. excluded, expelled, or otherwise discriminated against Mr. Statczar on the same bases in violation of New Mexico Statutes § 28-1-7(B); and

c. engaged in, aided, and abetted the same violations of New Mexico Statutes § 28-1-7(I)(1)-(3).

118. Defendants did not have a legitimate, non-discriminatory reason to write-up, to demote, or to terminate Mr. Statczar from employment.

119. The reasons Bhatt cited for demoting Mr. Statczar and reasons Brady cited for terminating Mr. Statczar were, in fact, a pretext for discrimination and retaliation, as evidenced by the following:

a. Bhatt never viewed or escalated any purported concerns with Mr. Statczar as matters warranting counseling until after Mr. Statczar in March 2019 questioned Carney's competence, advancement, and relationship with Brady;

b. Bhatt never viewed or escalated any purported concerns with Mr. Statczar as matters warranting discipline until soon after Mr. Statczar, on May 21, 2019, asked HR to address Bhatt's unprofessional and offensive remarks;

c. Thereafter, the June 7, 2019 Bhatt Memo falsely described and falsely accused Mr. Statczar of conduct;

d. Even if it were accurate, the conduct described in the Bhatt Memo did not amount to Mr. Statczar violating any Thornburg policy, let alone on harassment or discrimination;

e. Upon information and belief, contrary to the Bhatt Memo's insinuation, Lithiluxa never believed or accused Mr. Statczar was making unwelcome sexual advances toward her, let alone conditioning any opportunity or advancement upon the same;

f. Contradicting the image Bhatt tried to paint of Mr. Statczar in the Bhatt

Memo on June 7, 2019, most all peers praised Mr. Statczar on March 26, 2019 in Thornburg's 360° Feedback Report specifically for his clarity, dignity, respect, and appropriateness in dealing with others and his team;

g. In his Memo, Bhatt knowingly omitted context—including the fact that Mr. Statczar and Lithiluxa had also known each other 20 years—to cast Mr. Statczar in a false, negative light;

h. Defendants gave inconsistent, changing explanations for what their “discipline” would be and for why it was justified;

i. Defendants failed—and even at trial, will not be able—to articulate a single fixed, objective standard (i.e., any rule on what was being too “friendly” between supervisors and subordinates) under which they were judging Mr. Statczar;

j. However they may phrase the standard of conduct, under that standard, Defendants treated other employees (Lithulaxa and Carney) more favorably than Mr. Statczar;

k. The apparent reasons Defendants treated these employees more favorably are that they were women who had not complained to HR that Thornburg was inconsistently applying its purported standards of conduct;

l. Defendants exempted themselves from the standard of ‘workplace etiquette’ they claimed to enforce against Mr. Statczar: they allowed themselves in fact to carry on the type supervisor/subordinate relationship they baselessly suggested Mr. Statczar was pursuing;

m. Defendants violated their own HR policies, because Defendants:

i. did not investigate Mr. Statczar's complaints at all;

ii. did not receive, process, investigate, or resolve Mr. Statczar's complaint through neutral, unbiased, disinterested persons—even after Mr. Statczar, in writing, identified the conflicts of interest to HR and sought removal of conflicted decisionmakers from Thornburg's process;

iii. retaliated against Mr. Statczar for invoking Thornburg's complaint process; and/or

iv. attempted to intimidate Mr. Statczar from further complaints, by telling him he was suffering discipline specifically for following that process and going to Human Resources; and

n. Regardless whether it conformed to their own policies, Defendants' referenced conduct did not apply or comply with generally accepted human resources practices.

120. Under New Mexico Statutes § 28-1-13, Defendants are liable to Mr. Statczar for his resulting compensatory damages including but not limited to back pay, front pay, employee benefits, and emotional distress, and for reasonable attorney fees, and litigation costs including but not limited to expert fees.

COUNT II NMFRA RETALIATION

121. Mr. Statczar incorporates each paragraph of this Complaint as if fully set forth herein.

122. Defendants terminated Mr. Statczar in violation of New Mexico Statutes § 28-1-7 (I)(1) and (2), and engaged in, aided, abetted, incited, compelled and/or coerced forms of threats, reprisal or discrimination against Mr. Statczar for having “opposed [an] unlawful discriminatory

practice” with respect to his good-faith questions of potential discrimination on the basis of sex, age, and/or serious medical condition.

123. Defendants—through Bhatt, Brady, and Jones—admitted they carried out the original Bhatt Memo, as well as the ultimate termination by Brady, in retaliation for Mr. Statczar’s oral and written complaints to TIM Human Resources.

124. Under New Mexico Statutes § 28-1-13, Defendants are liable to Mr. Statczar for his resulting compensatory damages, including but not limited to back pay, front pay, employee benefits, and emotional distress, and for reasonable attorney fees, and litigation costs including but not limited to expert fees.

COUNT III
COMMON-LAW WRONGFUL DISCHARGE

125. Mr. Statczar incorporates each paragraph of this Complaint as if fully set forth herein.

126. Contravening a clear mandate of public policy set forth in NMHRA, Defendants terminated Mr. Statczar on the same, discriminatory and retaliatory bases.

127. In addition, the grounds for and process of TIM’s disciplinary process and termination of Mr. Statczar breached the implied contract it had entered with Mr. Statczar for his employment to be continued in good faith, for any investigation to be conducted in a good-faith and reasonable manner, and for him not to be terminated on the basis of bringing forward workplace concerns regarding perceived questionable, discriminatory, or retaliatory conduct by other TIM employees, including but not limited to that of CEO Brady or of CFO Bhatt.

128. Under the common law of wrongful and retaliatory discharge, Defendants are liable to Mr. Statczar for compensatory damages including but not limited to back pay, front pay,

emotional distress, punitive damages, and for litigation costs including but not limited to expert fees.

COUNT IV
FRAUD IN THE INDUCEMENT OF CONTRACT

129. Mr. Statczar incorporates each paragraph of this Complaint as if fully set forth herein.

130. Defendants induced Mr. Statczar to leave his employment with Henderson with representations that Mr. Statczar's employment with TIM would be continued in good faith, that any investigation would be conducted in a good-faith and reasonable manner, and that Mr. Statczar would not to be terminated on the basis of bringing forward workplace concerns regarding perceived questionable, discriminatory, or retaliatory conduct by other TIM employees, including but not limited to that of CEO Brady or of CFO Bhatt.

131. Mr. Statczar detrimentally relied on Defendants' representations and inducements by leaving his position with Henderson, by accepting employment with TIM, by foregoing and surrendering compensation and benefits with Henderson, including but not limited to deferred compensation, and by making good-faith reports of conduct of co-workers to Human Resources and to Managing Directors pursuant to TIM's Employee Handbook.

132. Under the common law of fraud in the inducement of contract, Defendants are liable to Mr. Statczar for compensatory damages including but not limited to back pay, front pay, emotional distress, foregone compensation and benefits at Henderson, punitive damages, and for litigation costs including but not limited to expert fees.

COUNT V
BREACH OF EXPRESS OR IMPLIED CONTRACT

133. Mr. Statczar incorporates each paragraph of this Complaint as if fully set forth

herein.

134. By the above representations in recruiting and hiring Mr. Statczar, TIM entered an express or implied contract with Mr. Statczar for his employment to be continued in good faith, for any investigation to be conducted in a good-faith and reasonable manner, and for him not to be terminated on the basis of bringing forward workplace concerns regarding perceived questionable, discriminatory, or retaliatory conduct by other TIM employees, including but not limited to that of CEO Brady or of CFO Bhatt.

135. Defendants breached their express and implied contract with Mr. Statczar by conducting a fundamentally unfair and inadequate “investigation” of both Mr. Statczar’s reports and of the supposed accusations by Bhatt and/or Lithiluxa against Mr. Statczar. Reasons the investigation was unfair and inadequate include that the investigators/decision makers operated under a conflict of interest; deliberately prevented Mr. Statczar from receiving adequate notice of the accusations against him; deliberately prevented Mr. Statczar from receiving adequate opportunity to defend his actions; deliberately reached their conclusions based on one-sided information; deliberately relied upon second-hand information; deliberately enacted tangible employment actions against Mr. Statczar before giving him any such notices or opportunities; and have continued—even after the termination—to change and shift the supposed grounds upon which they claim to justify the adverse employment actions.

136. Under the common law of breach of contract and implied contract, Defendants are liable to Mr. Statczar for compensatory damages including but not limited to back pay, front pay, emotional distress, punitive damages, and for litigation costs including but not limited to expert fees.

COUNT VI
BAD FAITH

137. Mr. Statczar incorporates each paragraph of this Complaint as if fully set forth herein.

138. Implied in TIM's employment contract with Mr. Statczar was a covenant of good faith and fair dealing, whereby TIM committed not to do anything that will injure the rights of Mr. Statczar to receive the benefit of their agreement.

139. By the above conduct, by and through its agents including but not limited to Brady and Bhatt, TIM breached the covenant.

140. Under the common law of bad faith, TIM is liable to Mr. Statczar for compensatory damages including but not limited to back pay, front pay, and emotional distress, and for reasonable attorney fees, and litigation costs including but not limited to expert fees.

COUNT VII
INTERFERENCE WITH CONTRACT AND PROSPECTIVE ECONOMIC ADVANTAGE

141. Mr. Statczar incorporates each paragraph of this Complaint as if fully set forth herein.

142. Defendants had knowledge of the contract and/or the prospective economic advantage between Mr. Statczar and TIM, as well as his need and prospects to secure alternative employment by comparable investment management institutions after his termination by TIM.

143. Defendants carried out the above acts purely for personal and improper, retaliatory motives with the intent to undermine Mr. Statczar's employment with TIM, to cause his termination, and to portray him as unfit to other potential employers after TIM terminated him.

144. Defendants also employed improper means to cause Mr. Statczar's termination

from employment by TIM and to undermine Mr. Statczar's other employment prospects.

145. Performance of the contract/continuation of employment was refused by TIM, and similarly other prospective employers since his termination by TIM have declined to hire Mr. Statczar as a direct result of Defendants' actions.

146. Defendants played an active and substantial part in causing Mr. Statczar to lose the benefits of the contract and prospective economic advantage in each instance.

147. Damages flowed from the breached contract and/or undermined prospective economic advantage, in each instance.

148. Defendants induced the breach without justification or privilege to do so in each instance.

149. Under New Mexico common law regarding interference with contract and prospective economic advantage, Defendants are liable to Mr. Statczar for compensatory damages including but not limited to back pay, front pay, emotional distress, punitive damages, and for litigation costs including but not limited to expert fees and attorney fees.

COUNT VIII CIVIL CONSPIRACY

150. Mr. Statczar incorporates each paragraph of this Complaint as if fully set forth herein.

151. A conspiracy among several or all Defendants existed to discriminate, to retaliate, and to harm Mr. Statczar in the above, unlawful respects.

152. Each Defendant carried out—and continues to carry out—the above-described specific wrongful acts pursuant to the conspiracy, which—upon information and belief—they are continuing to effect and protect, through a course of conduct including all Defendants being

jointly represented by a single attorney, despite their otherwise obvious conflicts of interest amongst each other on matters on than the conspiracy.

153. Such acts caused Mr. Statczar to sustain the damages described herein as a result.

154. Under New Mexico common law regarding civil conspiracy, Defendants are jointly and severally liable to Mr. Statczar for compensatory damages including but not limited to back pay, front pay, emotional distress, punitive damages, and for litigation costs including but not limited to expert fees and attorney fees.

PUNITIVE DAMAGES

155. Mr. Statczar incorporates each paragraph of this Complaint as if fully set forth herein.

156. Through one or more of the above Counts, Mr. Statczar can state a cause of action under which he would be entitled to compensatory or nominal damages against Defendants. *See Sanchez v. Clayton*, 117 N.M. 761, 877 P.2d 567, 573 (1994) (finding that plaintiff who thus states any such cause of action may pursue punitive damages based on an appropriately culpable mental state); *President and Fellows of Harvard College v. Elmore*, 222 F. Supp. 3d 1050, 1066 (D.N.M. 2016) (citing *Sanchez*).

157. While harassing, discriminating, and retaliating against Mr. Statczar, interfering with and terminating his TIM employment, and interfering with his existing contractual relations and prospective economic advantage with TIM, as well as with other potential employers, Defendants acted in bad faith, recklessly, dishonestly, maliciously, willfully, and/or wantonly.

158. Punitive damages are appropriate to punish Defendants and to deter others from the commission of like offenses.

PRAYER FOR RELIEF

159. WHEREFORE, Mr. Statczar respectfully demands:

A. Judgment in favor of himself and against Defendants, awarding him general and compensatory damages, including but not limited to his back pay, front pay, and emotional distress;

B. Judgment awarding punitive damages;

C. Judgment awarding the costs and reasonable attorney fees incurred in prosecuting this action; and

D. Any other relief to which he may be entitled.

JURY DEMAND

160. Plaintiff Troy Statczar hereby demands trial by jury on all issues so triable.

Respectfully Submitted,
-/s/ Trent A. Howell - Electronically signed-
Attorney Trent A. Howell
P.O. Box 2304
Santa Fe, New Mexico 87504
trent@trentahowell.com
(505) 919-9158

Counsel for Plaintiff Troy Statczar

Date: June 15, 2019
To: Dana Jones (Human Resources)
From: Troy Statczar
Re: Nimish Bhatt

As you know, Nimish Bhatt (“Nimish”), Thornburg Chief Financial Officer, recently issued a June 7, 2019 “Memo of Concern” accusing me of “intrusive behavior” with my recent Thornburg direct report, Ponn Lithiluxa (“Ponn”), with whom I have been acquainted for 20 years. In connection with that Memo, Nimish reduced my responsibility and number of direct reports at Thornburg.

I believe Nimish handled this matter in a way that was not only unfair, but inconsistent with Thornburg policies and state and federal laws on employment actions, investigations, and retaliation. In turn, I am asking Thornburg Human Resources and management to investigate and address the matter, to examine Nimish’s motives and actions, and to implement corrective action in my favor.

You already have the June 13, 2019 Memo I prepared responding to Nimish’s June 7, 2019 “Memo of concern.” Please review that response in regard to this matter, as well, and further address the following:

1. Over the past few months, Nimish has leveled a shifting set of complaints against me that—like this one—I sincerely do not understand. On March 6th, I had a short meeting with Nimish after work at Santa Fe Bar and Grill. We shared a brief firm update, team update, and my performance. I told him I had been offered (by a company I did not approach) an opportunity to interview for a job in Chicago. While assuring him all was well, I told him I would appreciate his perspective on my potential at Thornburg to help formulate my decision. Surprisingly, toward the end of the conversation, Nimish said he felt I have a “personal hygiene” problem, and he asked if I thought it was due to drinking at night. I was shocked and offended.

First, I do not drink to excess, am not and have never been an alcoholic, and yet my Nimish’s comments made it sound like he regarded me as struggling with or in recovery from alcoholism or some other health condition, which would violate the New Mexico Human Rights Act and/or Americans with Disabilities Act. Second, never in my personal or professional life has anyone ever said I have a person hygiene issue. Third, Nimish declined to provide specifics. Finally (of note for the discussion below), he did not tell me to keep the conversation between us, and he did not suggest that this complaint had originated with anyone other than himself.

2. On May 21st, while giving Human Resources an update on the team at the suggestion of the CEO, with whom I had lunched the week before, I mentioned Nimish’s personal-hygiene comment, asked you, Dana, if you had received any such feedback about me, and told you the comment was upsetting to me and felt like a personal attack.

3. On June 5th, after a team update, Nimish pulled me aside at 3:45 pm and told me that Thornburg was pulling the “UCITS Directorship” role from me because management was “re-thinking the board composite.” I was to take the place of Bettie Kroutil, another managing director at Thornburg, as she requested to be removed from the board at the end of 2018. Nimish

told me in that meeting that Bettie was aware of the decision and has agreed to stay on. However, when I sent a note to the legal team at Dechert to confirm the change, with a cc: to Nimish and Bettie, Bettie replied by asking me what was going on and—in the discussion that ensued—informed me she had no idea of the change.

In turn, I went back to Nimish and asked him if I had done anything to change his mind. He said, “No, not with the UCITS, but you did break the sacred cardinal rule.” I asked what that was, and he said, “I know of at least two people on this floor you told about the personal hygiene comment.” I replied that, because he had not provided specifics, I did inquire with HR and other team members to see if there truly was an issue and what I could do to change it. He told me the only reason he told me was that he was looking out for me and did not want others talking behind my back.

This exchange is troubling for so many reasons. First, the opposing accounts of Bettie and Nimish suggest Nimish initially gave me false reasons for the UCITS Directorship change. Second, Nimish’s subsequent remarks made clear he retaliated against me specifically for talking to Human Resources. Third, again, my remarks to Human Resources were made in an update I was providing you on my group, at the recommendation of the CEO of Thornburg. Fourth, Thornburg has a written policy *directing* me to report issues I may have with Nimish to Human Resources, rather than to Nimish. The Thornburg policy for “Reporting Complaints” instructs:

Any employee who believes he or she is being discriminated against or harassed based on any of the grounds stated above must report it immediately to his or her direct supervisor, any Managing Director, or Human Resources staff member, whomever the employee feels comfortable with, but not the person who is alleged to have discriminated against or harassed the employee.

Thornburg Employee Handbook (June 2018), p. 3. Fifth, Thornburg has a published policy against retaliation for reports to Human Resources. The Thornburg **Standards of Professional Conduct** provide:

Employees can raise concerns and make reports without fear of reprisal. Anyone found to be engaging in any type of harassment or of unlawful discrimination may be subject to disciplinary action, up to and including termination of employment.

Thornburg Employee Handbook (June 2018), p. 3. Similarly, the Thornburg **Anti-Retaliation Policy** reads:

Under no circumstances will an employee be penalized for reporting what the employee believes in good faith to be discrimination or harassment under this policy. If you believe that you are being retaliated against for bringing a complaint of harassment or discrimination, you should report such conduct immediately to your direct supervisor, any Managing Director or the Human Resources Department. Any supervisor or manager who retaliates against an employee for making a complaint may be subject to disciplinary action up to and including termination.

Thornburg Employee Handbook (June 2018), p. 4. Sixth, to date, I do not know the source of (or if there, in truth, was) the supposed personal-hygiene complaint by any person against me. Seventh, I believe my personal hygiene is and has been impeccable. I brush teeth at least twice daily, most days 3 times; floss in the morning and at night; make regular visits to the dentist; always shower with soap; use deodorant; and wear clean, pressed clothes. Finally, because Nimish declined to give any specifics on which I could act, I did ask team members in general, non-confrontational terms whether I needed to work on my appearance or hygiene. They all appeared shocked at the question and assured me I did not have any such issue.

4. During the same, June 5th meeting, Nimish made a vague comment about having heard I said something “offensive and cringe-worthy” in an operational meeting. However, he then quickly said he did not have any details. In turn, I have several issues with this statement, as well. First, I have never said anything I can imagine anyone took as “offensive and cringe-worthy” in any operational meeting, or anywhere around Thornburg. Second, if this was merely hearsay that Nimish had not even yet taken the time to source or obtain specifics of, why would he bring that up?

5. During the same discussion on June 5th, Nimish also said to me:

You know, Troy, you’re like a broken window. When I look up, I see cracks. And you know, broken windows cannot be repaired—only replaced.”

The remark that I was worn/“broken” felt like a veiled reference to either—again—my health or to my age (over 40). Either way, I naturally took the comment as a threat. The comment upset me a great deal for that reason, as well as because I and my team make Nimish look good on a daily basis, and the suggestion that he may casually wreck my career was shocking. I was concerned about my future with the company and lost a great deal of sleep from this day, through and continuing after the following.

6. As you now know, on June 7th, I was called to Human Resources at the end of the business day, a little after 4 p.m. Nimish presented me with his “Memo of concern.” I noted the Memo was not on company letterhead, not from HR, only from Nimish, and was unsigned. I sat in Human Resources with you, Dana, and Nimish and listened to him essentially read the Memo to me. You asked for me to sign the letter immediately, and I asked for the weekend to review and collect my thoughts on the Memo. After the meeting, Nimish left the office, but I went back down to discuss with you a few questions. I mentioned I was shocked to receive the Memo, shocked at the suggestion that Ponn or anyone was offended by anything that actually happened, and shocked that Thornburg had implemented an adverse employment action against me without so much as giving me an opportunity to tell address the allegations, to learn from whom they actually came, or to put any of the conduct, complainants, or situations in context.

7. Altogether, your and Nimish’s process seems at odds with (a) Thornburg’s clear written policies, above, including Thornburg’s commitment to “investigate” complaints and (b) the principles of *Kestenbaum v. Pennzoil Co.*, 108 N.M. 20, 27-28, 766 P.2d 280, 287-88 (1988).

8. Further, I asked you if Ponn had filed a formal complaint against me, and you replied, “No.” But then you added, “Well, we had a discussion with her.” So it is still not clear that Ponn supports any of the characterizations made by Nimish in his Memo.

9. Finally, I asked you what you thought the issue with my relationship with Nimish might be, and you said, **“I think Nimish is a private person and was expecting you to keep the personal hygiene comment to yourself.”** I am, frankly, astonished with this. You thus admitted, as well, that Nimish was retaliating against me for bringing the matter to you/Human Resources. Yet even as Thornburg’s Human Resources professional, you took no exception to Nimish doing so.

CONCLUSION

I feel threatened, targeted, and abused by Nimish’s passive-aggressive comments. There were signs of discrimination in Nimish’s hygiene and “broken window” remarks. Further, both he and you have acknowledged his recent adverse actions against me were in retaliation for my reporting the same to Human Resources. In turn, I request that Thornburg—through a neutral representative other than yourself—investigate the matter in good faith, remove and correct Nimish’s June 7, 2019 Memo of Concern from my personnel file, and take other corrective action to ensure neither Nimish nor you retaliate against me for my May 21st report to Human Resources, for my June 13th Memo defending myself against Nimish’s June 7, 2019 Memo of concern, or for the complaints I am now transmitting in this additional Memo. Finally, while in each of my referenced Memos, I have identified some of the apparent reasons for Nimish falsely attacking me in his Memo of concern, I respectfully request that Thornburg examine Nimish’s own conduct toward Ponn, to determine whether he, himself, is conforming to the standard of conduct upon which he has purported to discipline me.

Date: June 7, 2019
To: Troy Statczar
From: Nimish Bhatt
CC: HR
Re: Memo of concern

Troy,

The purpose of this memo is to share my concerns and review with you my expectations regarding appropriate boundaries in the work place.

I have had several conversations with you in the past regarding you being “friends” with your direct reports vs. being friendly colleagues in the workplace. It has again come to my attention that your behavior in this area has not improved.

Specific examples include:

- Asking Ponn multiple times to share an apartment with you after she declined the offer several times. Making jokes with staff that you were going to be room-mates.
- Continuously asking Ponn to go to lunch even after she declines due her busy schedule. She feels obligated to go to lunch with you since you are her supervisor.
- Sending multiple texts to her outside of business hours on weekdays and weekends for matters with no apparent urgency.
- Constantly asking her what she does on weekends, what she had for dinner, etc.
- Suggesting to Ponn that she should take weed for her back ache and offering to provide a her a checkup while she was asking around for a doctor recommendation.
- Repeatedly asking colleagues where Ponn is if she is not in her office and then asking Ponn who she was talking to and what was she talking about when she returns to her desk.

I have previously discussed my concerns with you about several of the above topics. At each of our discussions regarding appropriate workplace boundaries, you have affirmed and committed to meeting the expectations discussed. I have continued providing feedback and coaching you to this end. Nevertheless, I continue to have serious concerns regarding you being “friends” with your direct reports and crossing the line of acceptable workplace behavior.

As a result, effective immediately, Ponn Lithiluxa, will report directly to me. You are not to ask her about anything we’ve discussed today, and this matter is to remain strictly confidential. You are not to share any details about this with any current or former Thornburg employees. Retaliation against anyone involved is prohibited and failing to comply with these requests may result in further disciplinary action, up to and including termination. In addition, after you return from PTO on June 24th, you will be asked to move your office to where Kilby Han is currently sitting and he will take your vacant office.

Specific expectations include:

- I expect you to have the professional maturity and presence of mind to keep your work relationships professional and keep the lines clear between boss and buddy. It is more important to be a boss than to be a friend because being too friendly can jeopardize your authority.

Date: June 13, 2019
To: Dana Jones (Human Resources); Nimish Bhatt
From: Troy Statczar
Re: June 7, 2019 “Memo of concern”

In the “Memo of Concern” (“Memo”), Nimish Bhatt (“Nimish”) accuses me of not meeting expectations “regarding appropriate boundaries in the workplace,” *Memo*, p. 1, ¶1; “being ‘friends’ with [my] direct reports vs. being friendly colleagues in the workplace,” *Memo*, p. 1, ¶2; and “intrusive behavior,” *Memo*, p. 2, ¶3. I understand and agree with the importance of professional relationships. I do, in fact, maintain professional relationships and boundaries, will continue to do so, and would have done so regardless whether the Memo was ever issued.

Having said that, I resent the Memo’s accusations, suggestion I have been unprofessional with multiple “direct reports,” and use of Ponn Lithiluxa (“Ponn”) as an illustration. The Memo is false and needs to be removed from and/or corrected in my personnel file, for several reasons.

1. While accusing me of a pattern with “direct reports,” the Memo only cites events with Ponn. If there are other persons, why are they not identified and the events specified, so I can address any other allegations in context? If there are no other persons involved but Ponn, why does the Memo characterize this as an issue with my “direct reports”? Finally, whether this focuses on others or only on Ponn, I must insist that Thornburg correct the false insinuations that Nimish, through his Memo, has now created in my Thornburg personnel file as to Ponn.

2. The Memo falsely insinuates (a) Ponn and I only met at Thornburg, and (b) I leveraged my supervisor status to force a “friendship” with her. Ponn and I were friends 18 years, during which we also worked together, *before* either of us came to Thornburg. We both joined Thornburg in mid-2017 (myself in April and her in June) through recruitment by Nimish, my current boss, the CFO of Thornburg. Nimish and I have also known each other personally and professionally over 20 years. He was aware of my long-term acquaintance with Ponn before he recruited us to Thornburg, assigned me to supervise Ponn, and wrote the Memo.

For 20 years, Ponn and I have always had a great personal and professional relationship. Ponn has never expressed anything otherwise to me. Given our long acquaintance and familiarity, it was and is fair for me to assume Ponn would tell me directly if she felt I overstepped any boundary.

At the time of her recruitment to Thornburg, I actually met with Ponn in Columbus to discuss the role, working for me, etc. before she agreed to take the role. In other words—after already having known me 18 years—she knew coming to Thornburg would involve continuing to work with me, and she never expressed any reservation about it.

Ponn and I have remained good friends since coming to Thornburg. She has never in any way suggested she wanted less or a different kind of workplace contact than we had. I tried to support her as much as possible at Thornburg. In that context, she has both initiated and shared in talks about missing our respective families—both of which are in the Midwest. I have supported flexible working arrangements for her, encouraging her to try to spend as much time

with her family as possible and also listening to her when she is upset, emotional, and even at times breaking down to cry.

3. If Thornburg/Nimish thought it was a problem for me to supervise someone with whom I was “friends,” why did Thornburg/Nimish assign me to supervise Ponn in the first place? This is perhaps my biggest issue with the Memo, overall, as well as the fact that Nimish, himself, wrote it.

4. Despite my pre-Thornburg and ongoing familiarity with Ponn, I have kept our relationship professional and with appropriate boundaries. Ponn and I have also enjoyed joking around from time to time and breaking the monotony of accounting and tax work. While the tone of our joking—as friends of 20 years—has been more familiar, perhaps, than if we had only known each other a few months, I have always attempted and believed I did keep our interactions professional.

Ponn is in no way intimidated by me. In fact, various times when I have asked her to do something, she has jokingly replied, “You’ll get it when you get it,” or “Go away.” I note this to illustrate both that she knows how to speak up for herself and that she has instigated, participated in, and expressed no objection or offense at what level of familiarity and/or informality there has ever been to our communications.

I work hard to maintain my professional working relations not only with Ponn, but with everyone else. Ponn also created nick names for at least four members of the portfolio management team:

Ben Kirby = “Home Alone,” because according to Ponn, he looks like a little kid.
Matt Burdett = “Side Kick,” because he just goes along with Ben Kirby as his side kick.
Jefferey Kingerhoffer = “Cliffhanger,” for reasons unknown.
David Musolf = “Musinex,” the nasal medicine.

All these nicknames can be confirmed by multiple team members. When I found out about these nicknames, I instructed her to stop using them immediately. As a manager I dealt with the issue, without reporting Ponn to Nimish or HR, for two reasons: because I am confident in my ability as a manager to handle the communication, and because I have an excellent relationship with Ponn and knew we could resolve the matter and get her performance on track without being disruptive.

5. The Memo falsely characterizes my interactions, and I believe Ponn would confirm this. When it purports to specify my allegedly “intrusive” conduct, the Memo is utterly false. For direct response to each of the allegations in the Memo’s bulleted points:

a. I did not “as[k] Ponn multiple times to share an apartment ... after she declined the offer several times.” At one point **over a year ago**, Ponn initiated a discussion of the strain and expense of maintaining a temporary Santa Fe residence in addition to her permanent home (with her husband and two children) in Columbus, Ohio. She discussed it with me because of our long-term acquaintance, as well as because she knew I was in the same situation, maintaining a temporary Santa Fe residence in addition to my permanent home (with my wife of 21 years and three children) in Culver, Indiana.

In that context alone, after discussing it with my wife and getting her approval, I told Ponn that I had spare rooms in my Santa Fe residence, and if we could help by offering one to her, both my wife and I would be happy to do so. At the time, she only expressed appreciation for the offer. She never expressed discomfort or offense at the offer. She also never “declined” that offer—once, let alone “several times.” But nonetheless, I did not bring the offer up on other occasions. (In addition, Nimish asked about this incident over a year ago; I provided him the same context; he accepted the explanation; and it has never come up again until this Memo.)

b. I did not “make jokes with staff that [we] were going to be room-mates [sic].” First of all, I never told any staff of the fact that my wife and I had offered Ponn a spare room. I never started any rumor to that effect at Thornburg. At some point, I became aware others were rumor-mongering to that effect. But to this day, I have no idea how that rumor reached the workplace. Second, it was Nimish, himself, who brought the rumor to my attention. Third, he did so approximately a year ago, so I do not understand why the matter is being brought up at this time. Finally, if Thornburg has a policy against rumor-mongering in the workplace, I understand and support such policies, and I assume Nimish, as CFO, took appropriate action to put a stop to any other Thornburg employees perpetuating the rumor at that time.

c. I did not “[c]ontinuously as[k] Ponn to go to lunch even after, she decline[d] due her busy schedule.” First, I did not—in any context—“continuously” ask Ponn to lunch. Granted, when we first joined Thornburg, we lunched together more often, simply because neither of us were as well acquainted with other Thornburg staff or the area. However, that has naturally declined over time, as we developed other acquaintances within our group. And for the last several months, I doubt we lunched together more than once a week. Second, on many of these occasions, it was Ponn who invited me to lunch. Third, at times when either of us asked, one of us was busy and declined; but in none of those situations did I ever continue asking or apply any pressure. Fourth, taking coworkers and staff to lunch on occasion is (1) something I do at times with all staff, and (2) something other Thornburg managers do with their own staff, as well. Fifth, if Thornburg is sincerely auditing company managers taking staff to lunch, I have and will provide the receipts for times I have taken all my team members—not just Ponn—to lunch. And I will gladly comply with whatever practices and recommendations the audit yields.

d. I do not believe Ponn “feels obligated to go to lunch with [me] since [I am] her supervisor.” First, as noted above, I have known Ponn for over 20 years, know her to be quite capable of declining things she does not wish to do, and have never received the slightest indication from her that she went to lunch out of any sense of obligation. Second, in the eighteen years before we came to Thornburg, Ponn and I had other social interactions, without any supervisor-subordinate relationship in issue. Third, as mentioned, she has invited me to lunches on various occasions. And fourth, as mentioned, she has at times declined lunch for different reasons, as have I, and neither of us has ever taken offense or held it against the other in any way.

e. **I have not “[sent] multiple texts to her outside of business hours on weekdays and weekends for matters with no apparent urgency.”** To the extent any of my texts to Ponn have not been directly work-related, they have all been work-relevant or work-adjacent. For example, Ponn has at some times shared personal situations as the reasons for a work-related request, as have I. If you want to be more specific about particular texts or items of concern, I am certainly willing and able to discuss them in context, give you a better understanding, and also listen to any reasonable suggestion for modifications.

f. **I am not “[c]onstantly asking her what she does on weekends, what she had for dinner, etc.”** I do not ask Ponn those type questions any more than I hear other Thornburg staff and managers inquiring generally about each other’s work-life balance, any more than I ask employees other than Ponn, or any more than I feel Ponn makes similar inquiries of myself or others.

g. **The only incident that, in truth, was near what the Memo describes, which I also admit may have been too informal, relates to my reply when Ponn complained of a back ache.** In that context, I did in jest tell her I could check her back for her, and that smoking “pot” might fix it. While I did not in any way mean that in a serious way, and Ponn obviously did not take it as serious (because she immediately laughed), I regret saying it, in general, and can understand if others felt it was inappropriate. I apologize for that and assure Nimish and Thornburg I will not again speak to Ponn or others in the workplace in such manner. However, if the insinuation now is that this had a sexual connotation to it, or that I was actually promoting illegal drug use, that is absurd. It was not my intention, and it is not a reasonable interpretation of the discussion by anyone who actually observed it or who knows how long and well Ponn and I have been acquainted.

h. **I am not “[r]epeatedly asking colleagues where Ponn is if she is not in her office and then asking Ponn who she was talking to and what was she talking about when she returns to her desk.”** I have certainly asked where Ponn is at times when I had a legitimate business need for discussion or assistance, just as I have attempted to locate other staff when I had business need, and just as Ponn has asked others how to locate or reach me when she had business need. Further, over the last five months, Ponn has also been working independently on Spanish and French tax reclaims, and I have asked her for periodic updates as the issue impact the funds for which I am responsible. Even with—as well as apart from—these circumstances, I have not done so excessively or without specific work purpose. I have not asked her who she was talking to or what it was about—again—unless it was specifically work-related.

6. My conduct complies with Thornburg policy and practice as much as that of Ponn and Nimish. I am mindful of workplace cultures. I watch the “flow of traffic” around me, make a point not to fall behind or below the workplace standard of how to behave, and in all work environments, focus on performing more professionally than workplace “average” appears to be. Related to this, I have never thought it was inappropriate that Nimish and Ponn often ride-share at the beginning and end of each workday. I would not think it inappropriate, in general. But I also understand it (and feel sure Nimish does, as well) in the very same context I have

described as applying to my own long-term acquaintance with Ponn. Ponn and Nimish have known each other approximately as long as I have known Nimish, and as long as I have known Ponn. So it puzzles me even more that—while, himself, having that sort of “friendly” interaction with Ponn—Nimish would write the Memo in the terms he has, dramatizing my normal, long-term acquaintance with Ponn as “intrusive,” and acting unaware Ponn and I were friends before and apart from any time we have been at Thornburg, for just as long as he and Ponn have been.

Similarly, just last August, Ponn, personally, gave me a birthday gift. Is that inappropriate? Is that “being friends vs. friendly colleagues in the workplace”?

I am open to dialogue and guidance on these matters. I sincerely am. However, it is also very important to say, if the actual point and impetus of the Memo was Nimish and/or Thornburg wishing to adjust workplace culture and expectations, that point could have been made in more respectful, less dramatic, less accusing, and more accurate terms, while also recognizing—and not acting unaware of, let alone denying—the context among three friends of 20 years.

7. I am a peak performer whose work has benefited Thornburg and Nimish, himself. I have been in the same industry for 26 years, working in various roles but specializing in fund administration pertaining to investment managers and investment products. (During that time, I have never been written up or disciplined.) Through my career, I have worked tirelessly to improve organizations, teams, and processes, and have constantly thought strategically to put the organization in the best possible situation, efficient, controlled, and scalable. Most of my success has been the result of building excellent teams, as a manager of people I know I am only as good as my weakest team member.

Likewise, my reviews and evaluations at Thornburg have been positive and praising. And coincidentally, many of my Thornburg successes have been in close cooperation with Ponn in our short period of time here:

- We eliminated a complex un-necessary income reserve accrual account that was difficult to track, loaded with risk and time consuming.
- We instructed our accounting team to records paydown gain loss on a tax basis vs. GAAP to compliment the removal of the income reserve account above.
- We changed the frequency of income distributions for our equity fund line up to conform with industry best practices and reduce risk.
- We streamlined to month income distribution estimates for all income-sensitive products, increasing efficiency, reducing risk, enhancing controls, and providing a solid for product that led to restoring confidence with our front-office teams.
- We redesigned the annual distribution calendar as the legacy calendar was extremely confusion and at times caused processing errors.

Having said that, I understand organizations sometimes reassign strong performers and break up functioning teams. That is fine. What is not fine is pointlessly and inaccurately scandalizing team members while doing so.

As noted above, Nimish's accusations are entirely unfair. In addition, I manage a team of 8 people. But on June 10th, Nimish announced in a team meeting that he was changing the reporting lines for Ponn and Claudia (who has reported to Ponn as a junior tax associate). Ponn now reports to Nimish. (So does this mean he should stop ride-sharing with Ponn?) Nimish also announced that my office (currently next to Ponn's) will be moved to the other corner of our floor's section. He specifically mentioned my new office would be moved to the former office of Kilby (the current controller) so Kilby can learn more about Fund Administration, but did not mention that I may have additional opportunity to learn the corporate finance role.

The meeting was a group setting and extremely embarrassing for me. I took it as well as I could. However, I feel like the overall handling was unnecessary, unfair, and defamatory. I am sure my team interpreted as a very harsh judgment and censure against me, as well. Nimish did all these things abruptly, without even hearing my side of the story.

CONCLUSION

For the reasons set forth above, I respectfully request that the June 7, 2019 "Memo of Concern" be removed from my personnel file. Regardless of what Thornburg's unpublished expectations for workplace etiquette may have been or may now be, the characterizations of my behavior in the Memo are false and defamatory. In addition, if Thornburg is implementing a policy of not having people that are long-term friends report to each other, I respect and will comply with that policy. If Thornburg is implementing new policies on the other topics Nimish mentions in the "Memo of Concern" (e.g., coworker lunches, coworker texts and e-mails after 5:00 p.m., etc.), I respect and will comply with those, as well. I only request that any such policy be clearly communicated and equally applied to all Thornburg employees, and that—in that process—I not be unfairly scandalized or prejudiced.