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

<p>MATTHEW WINNICK,</p> <p>Plaintiff,</p> <p>vs.</p> <p>HILLCREST COUNTRY CLUB; MICHAEL FLESCHE; JASON KAPLAN; BRAD FULLER; and Roes 1-40, inclusive,</p> <p>Defendants.</p>	<p>Case No.: 24STCV06058</p> <p>COMPLAINT FOR:</p> <ol style="list-style-type: none"> 1. Discrimination in Violation of Los Angeles Municipal Code, Article 5.9 2. Discrimination in Violation of the California Unruh Act, Cal. Civ. Code § 51, et. seq. 3. Retaliation in Violation of the California Unruh Act, Cal. Civ. Code § 51, et. seq. 4. Breach of Contract 5. Breach of Implied Duty of Good Faith and Fair Dealing 6. Promissory Estoppel 7. Intentional Interference with Contractual Relations 8. Intentional Interference with Prospective Business Advantage 9. Breach of Fiduciary Duty 10. Violation of Cal. Corp. § 7231 11. Constructive Fraud 12. Negligent Misrepresentation 13. Violation of California Business & Professions Code section 17200, et. seq.
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1 ***In times like this, silence is complicity***

2 -- Kamala Harris,
3 Vice President of the United States

4 **INTRODUCTION**

5 Perhaps no institution embodies the racial disparities and resistance to change
6 more starkly than the infamous Hillcrest Country Club. While every-day Angelenos have
7 advocated for progress and equality, Hillcrest has itself maintained its core principle of
8 exclusion, under the pretext of exclusivity. Symbolizing a 150-acre plantation in the heart
9 of Los Angeles, Hillcrest's 585 members are shielded from the true racial makeup of the
10 City through its racist policies enforced by its bigoted and selfish leadership. The
11 prejudicial impact of Hillcrest's makeup on the business, professional and employment
opportunities of minorities cannot be ignored or minimized.

12 Hillcrest claims to be founded on the principles of diversity and generosity. It boasts
13 to the world that it upholds the highest principles of inclusivity, that the Club is intent on
14 *giving back* to its community. In reality, Hillcrest is overwhelmingly white, pays an
15 embarrassingly low property tax (approximately \$250,000 annually), and has no desire or
16 incentive to change. Hillcrest is a racist aristocracy, subsidized by the City to the tune of
17 nearly seventy (70) million dollars per year. It scoffs not only at laws barring discrimination;
18 it also disregards reports of sexual assault and drug abuse. In fact, Hillcrest promotes
19 such unworthy (but racially acceptable) people who so engage and punishes those who
complain.

20 Hillcrest's leadership reflects the Club's depraved standards. Its President, Jason
21 Kaplan, has been accused of sexual assault and making racist remarks in incidents that
22 the Club has refused to investigate. The Chair of its Membership Committee, Brad Fuller,
23 has built his career on creating pornographic and violent films that glorify murder and
24 reinforce harmful stereotypes. The Club's former President, Michael Flesch, himself a
25 beneficiary of nepotism, has used his position to secure admission for his son, Warren

1 Flesch, an addict who, by his own words, nearly murdered a homeless man during a
2 cocaine and heroin infused psychotic meltdown. Other Hillcrest leaders, including Dan
3 Clivner, Alan Rothenberg, Edward Weiss, Bonnie Fein, Anita Dann Friedman, and Les
4 Bider, have enabled this decadence to continue unimpeded.

5 Hillcrest has always been a discriminatory club, and will continue to be a
6 discriminatory club so long as it continues to indulge its leadership's racial tendencies. Its
7 leaders have and will continue to promote their own undeserving children for membership
8 at the expense of racially-mixed families and the ideals of diversity, equity and inclusion.
9 This Complaint is not merely a legal action; it is a moral reckoning. It demands a
10 transformative response, challenging the Club to face its discriminatory practices head-
11 on.

12 **PARTIES**

13 1. Plaintiff MATTHEW WINNICK ("Plaintiff") is, and at the relevant times
14 alleged herein, an individual residing in the County of Los Angeles, State of California.
15 Plaintiff is 42 years old, Jewish; and is party to a biracial marriage, where Plaintiff's wife
16 and children have Hispanic heritage.

17 2. Plaintiff is informed and believes, and thereon alleges that Defendant
18 HILLCREST COUNTRY CLUB ("Hillcrest" or "Club") is a California Nonprofit Mutual
19 Benefit Corporation doing business in the County of Los Angeles, California. Hillcrest is
20 governed by its bylaws, and makes repeated pronouncements to applicants and members
21 throughout the years regarding its policies and procedures.

22 3. Plaintiff is informed and believes, and thereon alleges that Defendant
23 MICHAEL FLESCH ("Michael Flesch") is an individual residing in the County of Los
24 Angeles, State of California. At all relevant times, Michael Flesch was the President of
25 Hillcrest and a Board Member since 2018. Michael Flesch served on the Hillcrest
Admissions Committee and the Hillcrest Membership Committee. On information and

1 belief, Michael Flesch used his position as President of Board of Directors and as a
2 member of the Admission and Membership Committees to protect the racial makeup of
3 the Club, to retaliate against those who complain about discrimination, to exact personal
4 vendettas, to serve his own selfish purposes, including, but not limited to, ensuring
5 membership for his own son, Warren Flesch, despite Warren Flesch's failure to meet
6 Hillcrest's requirements for membership.

7 4. Plaintiff is informed and believes, and thereon alleges that Defendant
8 JASON KAPLAN ("Jason Kaplan") is an individual residing in the County of Los Angeles,
9 State of California. At all relevant times, Jason Kaplan was the Vice-President of Hillcrest,
10 Chair of the Admission Committee, and a Board Member since 2019. On or about June
11 2023, Jason Kaplan was appointed President of Hillcrest. On information and belief, Jason
12 Kaplan used his leadership position at the Club to protect the racial makeup of the Club,
13 to retaliate against those who complain about discrimination, to exact personal vendettas,
14 and for his own selfish purposes. On information and belief, Jason Kaplan fails to satisfy
15 Hillcrest's requirements for membership, specifically, the requirement that he be *socially*
16 *acceptable*, because Jason Kaplan, on at least one occasion, is alleged to have sexually
17 assaulted a woman.

18 5. Plaintiff is informed and believes, and thereon alleges that Defendant BRAD
19 FULLER ("Brad Fuller") is an individual residing in the County of Los Angeles, State of
20 California. At all relevant times, Brad Fuller was Chair of the Membership Committee, Vice
21 Chair of the Admissions Committee, and a Board Member since 2019. On information
22 and belief, Brad Fuller used his position as Chair of the Membership Committee, Vice
23 Chair of the Admissions Committee, and as a member of the Board of Directors to protect
24 the racial makeup of the Club, to retaliate against those who complain about
25 discrimination, and to serve his own selfish purposes, such as maintaining openings for
membership for his own children, such as Cameron and Paxton Fuller, whether or not they

1 are deserving of membership. Brad Fuller's business history with pornography¹ and horror
2 films does not comply with Hillcrest's requirements for membership.

3 6. Plaintiff is unaware of the true names and capacities, whether individual,
4 corporate, associate, or otherwise, of Defendants ROES 1-40, inclusive, and therefore
5 sues ROES by such fictitious names. Plaintiff will seek leave of Court to amend this
6 Complaint to show the true names and capacities of such ROES when the same has been
7 ascertained. Plaintiff is informed, believes, and thereupon alleges that each of the
8 fictitiously named Defendants are responsible for Plaintiff's injuries suffered and alleged
9 herein, and are subject to the jurisdiction of the Court as a necessary party for the relief
10 herein requested.

11 7. Plaintiff is informed and believes, and based thereon alleges, that each of
12 the Defendants named herein acted as the employee, agent, partner, alter-ego, joint-
13 venturer, and/or joint-employer of each of the other Defendant named herein and, in doing
14 the acts and in carrying out the wrongful conduct alleged herein, each of the Defendants
15 acted within the scope of their relationship with the permission, consent, and ratification of
16 each of the other Defendants named herein.

17 8. Plaintiff is informed and believes, and thereon alleges that each ROE is now,
18 and was at all times mentioned herein, the agent, principal, joint venture, employee,
19 employer, or alter ego of the remaining Defendants, as follows, and that all of the acts and
20 conduct alleged herein were performed within the course and scope and in furtherance of
21 such agency, partnership, joint venture, employment or alter ego relationship.

22 **JURISTITION AND VENUE**

23 9. Defendants, and each of them, are subject to the jurisdiction of Los Angeles
24 County Superior Court of the State of California by virtue of their business dealings and
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¹ "Pornography" is defined as the depiction of erotic behavior (as in pictures or writing) intended to cause sexual excitement; according to Merriam Websters dictionary. Brad Fuller's history in film includes at least two pornographic films.

1 transactions in California, and by causing injurious effects in California by their acts and/or
2 omissions.

3 10. Venue is proper in this Court because the transactions at issue occurred in
4 Los Angeles County.

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6 **FACTS**

7 **A. Hillcrest's Enduring History of Discrimination**

8 11. Hillcrest Country Club opened in 1920 originally as a country club "for the
9 Jewish community" due to exclusion of Jewish people by other clubs in the Los Angeles
10 area. Exclusion, however, was central to Hillcrest's mission and operation. For instance,
11 for 67 years, Hillcrest refused admission to women and severely limited admission to non-
12 Jewish members. In 1987, Hillcrest began admitting women and non-Jews, with its then-
13 president boasting that the Club had "two dozen non-Jewish members," which represents
14 about 4% of the Club's total membership. On information and belief, the ratio has not
15 improved over the last 36 years.

16 12. Hillcrest's changes in 1987 were by no means altruistic. In actuality, Hillcrest
17 was attempting to adopt to a new law being passed in the City of Los Angeles addressing
18 discrimination by country clubs, in order to maintain tax deductions that the state Board of
19 Equalization sought to revoke from discriminatory clubs such as Hillcrest.

20 13. In the summer of 1987, the City Council of Los Angeles adopted Article 5.9
21 of the Municipal Code, finding that "a significant barrier to the advancement of women and
22 minorities in the business and professional life of the City exists by virtue of the
23 discriminatory practices of certain clubs or organizations which are not distinctly private
24 and where business is frequently conducted." The City Council determined that:

25 [T]he City of Los Angeles has a compelling interest in eradicating
discrimination based on sex, race, color, religion, ancestry, national origin,

1 sexual orientation, or disability in order to assure all of its citizens a fair and
2 equal opportunity to participate in the business and professional life of the
3 City. Conduct and practices which exclude persons from entry or
4 consideration for membership in or the full advantages and privileges of
5 such membership on these bases are discriminatory and unacceptable,
6 are injurious to the body politic and to the business community and the City
7 of Los Angeles. Accordingly, the City's interest in eliminating such
8 practices in clubs or organizations covered by this article outweighs the
9 interest of their members in private association.

6 Los Angeles Municipal Code (Article 5.9) § 45.95.00

7 14. Now 103 years after its foundation and 36 years after it claimed to have
8 opened its doors to women and non-Jewish members, Hillcrest is still predominately white,
9 male, Jewish and exclusionary. In contrast, Hillcrest's employment staff is made up mostly
10 of people of Hispanic descent. Hillcrest has in large part maintained a plantation-like
11 essence that appears eerily similar to the old photos of its history adorning its hallways.
12 Modern day photos from Hillcrest sets a similar tone.

13 15. Hillcrest's secrecy and misrepresentations regarding its exclusionary
14 policies affords the Club benefits such as its ability to host a U.S. Open Final Qualifying
15 competition at the Club, in violation of its own policies. According to the Southern
16 California Golf Association ("SCGA"), which conducts the annual competition, its mission
17 is to make golf "more accessible, affordable and welcoming to women, men and young
18 people of all racial, ethnic and religious backgrounds." The SCGA "resoundingly reject[s]
19 bigotry, intolerance and racial animus," and states that "[t]here's no place for those social
20 perspectives in golf or anywhere else in civil society." By refusing to reveal its exclusionary
21 policies and procedures, Hillcrest has dishonestly achieved prominence (and thereby
22 justification to increase its fees) by associating with other organizations such as the SCGA.

23 16. Hillcrest claims that it "was founded as a safe haven from discrimination and
24 upholds the highest principles of inclusivity and acceptance." This is a lie. Hillcrest is not
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1 the time-honored club it purports to be. It indulges discrimination, elitism, and nepotism.
2 Its mission is a fraud. Hillcrest is led by ruthless, self-serving people who care nothing for
3 the Club's integrity and instead only for what the Club can do for them, what status they
4 think it brings them, and how the Club should serve their own selfish needs, rather than
5 the needs of its members or the community at large. Like a confederate statue, Hillcrest
6 is a symbol of bygone era, the remnants of which survive behind its gaudy brick barriers.
7 Hillcrest continues to shut out the City's minority population; it continues to punish those
8 who challenge its discriminatory practices; it continues to foster white nepotism.

9 17. Famed social scientist and author Malcolm Gladwell recently examined the
10 implications of country clubs in Los Angeles on his podcast, Revisionist History.² He
11 acknowledged that Los Angeles ranks near the bottom of all major metropolitan areas in
12 the United States in terms of public parks. In his analysis, he describes how country clubs
13 have received "three gifts from G-D" in the forms of tax breaks, which have allowed country
14 clubs in the City to avoid paying their fair and rightful taxes to the city. For instance, on
15 information and belief, Hillcrest sits on approximately 150 acres of land, valued at more
16 than \$7 billion. Instead of paying a tax rate of 1% of the value of its land, or \$70 million,
17 Hillcrest pays approximately \$250,000 in property taxes annually. As a result, according
18 to Mr. Gladwell's analysis, the citizens of Los Angeles are subsidizing Hillcrest
19 approximately \$68,750,000 each year. To add insult to injury, these citizens have little
20 chance to obtain membership at the Club, unless they satisfy Hillcrest's racial and religious
21 requirements, or are fortunate enough to be related to a member of the Board. As Mr.
22 Gladwell concludes, golf clubs are essentially aristocratic institutions, perpetuating
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25 ² See, <https://www.youtube.com/watch?v=ZNhIAcTaVFE>

1 inequality and injustice. Without change, the citizens of Los Angeles will continue bear
2 the burden of subsidizing an institution of discrimination, in perpetuity, at the expense of
3 the City's myriad of other, more critical, requirements.

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5 **B. Hillcrest Membership Requirements Are A Sham**

6 18. Despite its history of discrimination, Hillcrest boasts of its “honored tradition
7 of philanthropy and community service.” In support of this ruse, Hillcrest states that it
8 requires that applicants (and their spouses) for membership satisfy “three pillars” for
9 membership at the Club: (a) Community Service; (b) Charitable Donations; and (c) *Social*
10 *Acceptability*. Hillcrest attempts to define these “pillars” through its numerous
11 correspondences to applicants and members.

12 i. Community Service

13 Hillcrest states that it requires applicants (and their spouses) to complete
14 100 hours “per year of time given to organizations of your choice.” In actuality,
15 Hillcrest privately tells applicants that in order to be considered, hours must be
16 spent simply being on a committee- promoting appearance over substance.
17 Hillcrest further encourages its applicants to direct efforts to Jewish charities.
18 After an applicant has submitted proof of their community service, for only certain
19 applicants, Hillcrest staff members, at the direction of the Leadership, will call
20 each charitable organization to confirm that the applicant has truthfully performed
21 the service in satisfaction of the Club’s requirements. Other applicants, at the
22 Leadership’s sole discretion, avoid the embarrassing effects of the club’s
“thoroughness.”

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1 ii. Charitable Donations

2 Hillcrest claims it requires applicants (and their spouses) to contribute at
3 least 5% of its available cash flow each year to charitable organizations “in order
4 to confirm that our members are charitable.” Hillcrest states that there “is no
5 requirement that one’s charitable activities be to Jewish agencies,” yet it is known
6 that special preference is given to people who provide donations to organizations
7 associated with members of the Board of Directors and committee leadership.
8 Like with community service, Hillcrest staff members contact each charitable
9 recipient to confirm the truthfulness of the applicant’s disclosure, but only for
10 some applicants, and not others.

11 iii. Social Acceptability

12 Hillcrest requires that applicants meet its standards of *social acceptability*.
13 Unlike community service hours and charitable donations, *social acceptability* is
14 non-quantifiable and inherently subjective, yet Hillcrest defines it in-part as an
15 objective test. Hillcrest has on multiple occasions attempted to define the
16 meaning of *social acceptability* for the purposes of membership, stating: “Candor,
17 honesty and personal integrity are an integral part of social acceptability.”
18 Hillcrest further explains that its test for *social acceptability* “addresses one’s
19 stature in the community, agreeability, reputation for ethics and responsible
20 business dealings and measured temper.”

21 19. In reality, Hillcrest’s three pillars are not the true system of measurement for
22 membership. Applicants such as Plaintiff have satisfied Hillcrest’s requirements, however,
23 ultimately, it is the Leadership of Hillcrest who approves applications, and the Hillcrest
24 Leadership does not follow the Club’s stated guidelines. Even if an applicant performs the
25 required community service hours, meets the charitable giving threshold, and achieves

1 *social acceptability*, the only true metric for membership is the approval of Michael Flesch,
2 Jason Kaplan, and Brad Fuller. In wielding this power, the Hillcrest Leadership act in their
3 own self-interests, maintaining Hillcrest's continued path of exclusion of minorities,
4 exacting personal grudges unrelated to Hillcrest, and/or promoting their own friends and
5 family members, no matter how undeserving they are. They act in bad faith and in the
6 best interests of themselves, and not Hillcrest, in violation of state and city discrimination
7 laws, their legal duties as directors, and their promises to applicants such as Plaintiff.
8 Ironically, Michael Flesch, Jason Kaplan, and Brad Fuller themselves fail to meet the
9 requirements for *social acceptability*, as described below.

11 **C. Hillcrest's Leadership Is Itself Unworthy Of Membership**

12 20. Hillcrest claims that it is dedicated to preserving its honored traditions, yet
13 the Club appoints people to leadership positions who are unworthy of its own membership
14 requirements. Michael Flesch, Jason Kaplan, and Brad Fuller are not *socially acceptable*
15 by any objective or subjective standard that Hillcrest purports to promote. They do not
16 possess the candor, honesty, personal integrity, responsible business dealings, stature in
17 the community, or measured temper that the Club requires. Yet these people are granted
18 membership, leadership roles, and the ultimate power to decide who may join, which they
19 do without regard for the rules and law.

20 21. **Michael Flesch**: As President of the Board of Directors, Michael Flesch is
21 the ultimate decision maker at Hillcrest. Seeming to believe himself to be a great success,
22 in actuality, Michael Flesch earned his fortune through an inheritance from his father. His
23 own personal achievements in business and in life are considered by many to be feeble
24 and uninspiring. His personal and professional history is marked by themes of
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1 discrimination. He settled at least one lawsuit filed against him for gender discrimination
2 and work environment harassment. He supported political candidates such as Steve
3 Knight, who fought for the sale of Confederate flags in state museums, and Young Kim, a
4 staunch opponent of same-sex marriage. With regard to his personality, Michael Flesch
5 does not have a measured temper, as experienced by Plaintiff, as well as others. He is
6 devious and unmannerly. Michael Flesch's candor, honesty and personal integrity are
7 lacking, as is clear from his dealings with Plaintiff and others. For instance, he acted
8 uncouth towards Plaintiff's Hispanic attorney who merely requested to observe Plaintiff's
9 disciplinary hearing. Michael Flesch has conducted himself with extreme arrogance and
10 disrespect towards other members and applicants. On information and belief, when a Club
11 member expressed concern about the use of a dangerous chemical at the Club in an area
12 frequented by children, Michael Flesch rudely rejected the member's concern and told him
13 to quit if he had a problem. On another occasion, Michael Flesch squashed an applicant's
14 chance at membership due to a petty personal dispute with the applicant's association to
15 a third party that Michael Flesch does not like. He did not comply with the Club's rules,
16 policies and procedures. He has interfered with Club affairs without approval or knowledge
17 of the Board. He secured membership for his own son, Warren Flesch, despite Warren
18 Flesch's history of drug abuse and tales of depravity. Michael Flesch did not perform his
19 duties in good faith and in a manner he believes to be in the best interests of the Club, in
20 violation of the bylaws. Instead, Michael Flesch used his position at Hillcrest to serve
21 himself and his own family, and to protect Hillcrest's lack of diversity, at the expense of
22 worthy applicants such as Plaintiff.



Michael Flesch

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7 22. **Jason Kaplan**: Jason Kaplan is an odd choice to serve as Hillcrest’s Vice-
8 President of the Board of Directors and Chair of the Admissions Committee, given that on
9 at least one occasion he has been accused of a sexual battery, a fact known to the Hillcrest
10 Leadership, but ultimately ignored. Although he currently serves as the managing partner
11 at Howard Capital Management Group, Jason Kaplan severely lacks in personal integrity.
12 Jason Kaplan sexually assaulted a random woman inside a popular restaurant- a woman
13 he did not know but who had the grave misfortune of being within reach of his groping
14 hands. Unprovoked, Jason Kaplan next tried to pick a fight with the woman’s husband,
15 screaming profanities on the sidewalk, in front of a crowd of people, including paparazzies.
16 On another occasion, Jason Kaplan crudely yelled across a table during a dinner party at
17 Plaintiff, also unprovoked, shocking multiple witnesses by his vulgarity. Jason Kaplan
18 does not appear to respect interracial marriage, as evidenced by his attack on Plaintiff and
19 conduct in interfering with Plaintiff’s application. While Hillcrest has banned others for
20 lesser allegations of improper conduct and crudeness, Jason Kaplan was spared, and
21 instead was promoted to the Club’s President, replacing Michael Flesch.
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Jason Kaplan

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8 23. **Brad Fuller:** As Chair of the Membership Committee, Brad Fuller is the first
9 line of approval for applicants such as Plaintiff. Brad Fuller is a film producer, who, on
10 information and belief, parlayed his childhood friendship with legendary director Michael
11 Bay into his career in film. According to his IMDB page, Brad Fuller produced movies such
12 as *Virtual Girl* and *Virtual Girl 2: Virtual Vegas*. *Virtual Girl* and *Virtual Girl 2* can best be
13 described as “soft-core porn” films, featuring gratuitously nude women performing sex
14 acts. These films are arguably devoid of plot. The synopsis for *Virtual Girl* states: “A
15 computer-generated cyber-seductress snares a hapless programmer in her sexy web,
16 causing mayhem.” Shockingly, Brad Fuller cast and credited his own infant child in his
17 porn film. On information and belief, Brad Fuller is one of the only porn producers, if not
18 the only porn producer, who was granted membership at Hillcrest. Following his work with
19 smut, Brad Fuller transitioned to “murder porn,” producing gory and sadistic movies that
20 depict violence against women and negatively portrays minorities as psychopathic killers.
21 His film series, *The Purge* has been described as a “witless presentation of guns and
22 violence” and “complicit in toxic American fantasies of harming others.”³ Brad Fuller’s
23 business career promoting themes of violence and sex does not comport with the required

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25 ³ <https://www.rogerebert.com/features/violent-worship-the-hypocrisy-of-the-purge-films>

1 “participation in the community” and “responsible business dealings” that satisfy *social*
2 *acceptability*, as defined by Hillcrest. Despite a career making exploitative films, Brad
3 Fuller was granted a prominent leadership position at the Club. In his role as Membership
4 Committee Chair, Brad Fuller himself would determine a candidate’s *social acceptability*
5 by interviewing applicants and their spouses at their homes, where his vibe has been
6 described as “creepy,” not unlike his films. Currently, Brad Fuller’s sons, Cameron and
7 Paxton Fuller, are on track to receive their own membership at the Club. Cameron Fuller
8 is an actor who has appeared in minor roles in projects such as Barely Lethal and
9 Foursome, while hosting a podcast with a much more famous actor, where they discuss
10 issues such as sex.



Brad Fuller

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19 **D. Hillcrest’s Leadership Abuses its Powers to Promote Themselves and**
20 **Maintain a Plantation-Like Atmosphere**

21 24. Hillcrest declares that it “prides itself in its diversity,” however the Hillcrest
22 Leadership has effectively maintained a culture of segregation and exclusion. On
23 information and belief, very few minorities, especially those of Hispanic descent, make up
24 the members and their families with access to Hillcrest. Instead, most of the members are
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1 white and male. On the other hand, the staff at Hillcrest is overwhelmingly Hispanic, where
2 they primarily work as waiters, bussers, valets, gardeners, cooks, and custodians. The
3 racial makeup of the members and staff creates a plantation-like atmosphere at the Club,
4 where members have been said to treat staff members as second-class citizens, without
5 repercussion. On information and belief, the Hillcrest Leadership under Michael Flesch,
6 Jason Kaplan, and Brad Fuller have worked to preserve the status quo by admitting
7 minorities on a slower, more structured basis, compared to its admission policies for white
8 people.

9 25. Hillcrest’s exclusionary history has discouraged minorities from applying. On
10 information and belief, a vast majority of Hillcrest applicants are white. Hillcrest makes
11 little-to-no effort to encourage minority applicants, advertise or promote the club to minority
12 communities, or take any action to increase the diversity at the Club. On information and
13 belief, none of Hillcrest’s application criteria promotes diversity or equality.

14 26. Hillcrest claims it has many minority members and that it promotes diversity,
15 however, these statements are not true. On information and belief, of the 585-person
16 membership roster, Hillcrest has less than 25 (< 5%) members who are African American,
17 Hispanic, or Asian.

18 27. Hillcrest further limits minority presence at the Club through its guest policies.
19 For those members who are friends with minorities, they face hurdles in bringing these
20 guests to the Club. For instance, Hillcrest limits some events to “immediate family” only,
21 thereby ensuring that guests share the same racial makeup as the members, and thus
22 maintaining the desired racial atmosphere.

23 28. Hillcrest frequently invites guest speakers to the Club to speak about
24 different topics, yet, on information and belief, Hillcrest predominantly invites white
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1 lecturers, and the topics rarely, if ever, relate to diversity or equality. Whereas corporations
2 and schools throughout the City have incorporated Diversity, Equity & Inclusion Programs
3 (“DEI”) to promote fairness and to make people of various backgrounds feel welcome and
4 supported, Hillcrest has failed to take similar steps to do so. Hillcrest has created
5 numerous committees at the Club, for topics such golf, food, wine, and oil, yet it has failed
6 to create one focused on any DEI related issues.

7 29. The Hillcrest Leadership also use their positions at the Club for their own
8 personal gains and to exact personal grudges by refusing and/or terminating membership
9 to worthy individuals who meet all of Hillcrest’s requirements.

10 30. The Hillcrest Leadership ignores the Club’s requirements for *social*
11 *acceptability* by affording membership to accused and/or known adulterers, drug addicts,
12 slumlords, and bigots, provided they remain loyal to the Hillcrest Leadership. The Hillcrest
13 Leadership puts their own interests ahead of the interests of the Club. They privately work
14 to help their friends join, while telling people they personally dislike to not bother applying.
15 They use the Club to promote themselves amongst their peers, to the detriment of the
16 Club, and to the other applicants, such as Plaintiff.

17 31. One example of how the Hillcrest Leadership engages in bad-faith conduct
18 is that of recently approved Hillcrest member Warren Flesch, an admitted drug abuser,
19 who was granted membership because he is the son of President Michael Flesch. In one
20 *YouTube* video, for instance, Warren Flesch discusses his drug use:

21 *“I was in a cocaine psychosis, all the time. Um, I remember like people*
22 *would like overdose in my bathroom all the time, um. One time I remember*
23 *I was like hanging out with this homeless guy or whatever and we were*
24 *shooting a bunch of coke and heroin and just like losing our minds and I*
25 *had this giant hedge-clipper, like this hedge-trimmer, probably the biggest*

1 one you could possibly find and he was like driving me crazy and like I
2 thought he was trying to like steal from me or like I had some weird
3 paranoid thought. This was like this homeless guy. And so I had his head
4 in this hedge-clipper and I was like literally thinking in my mind that I'm
5 going to chop this guy's head off, and like how am I going to dispose of the
6 body, what's going to like, like how am I going to like deal with the aftermath
7 of this, there is going be like a ton of blood and like, you know, and like
8 thank G-D I had some moment of clarity not to do that, but uh, I was in my
9 bathrobe all day, and typically my day would consist of watching reruns of
10 *Keeping Up With The Kardashians* or like *Gossip Girl*, in my bed, in a
11 bathrobe, the bathrobe is like covered in blood. I never even left my
12 apartment. This was like, like end stage. I was going to die. For sure,
13 going to die. And I didn't really care.”⁴

14 32. Warren Flesch's history of drug use and lethargy, including his self-
15 proclaimed *almost-murder* of a homeless man, does not comport with Hillcrest's
16 requirement for *social acceptability*. Neither does his current Instagram account, where
17 he posts videos of himself protesting candy stores and promoting his drinking breast milk
18 directly from his partner's body. Despite the publicly available visual documentation, the
19 Hillcrest Leadership still granted Warren Flesch full membership to the Club, strictly
20 because he is Michael Flesch's son. Worthy members who had met all of Hillcrest's
21 requirements, such as Plaintiff, were nevertheless denied or had their membership
22 terminated.

23 33. On information and belief, numerous children of Hillcrest Leadership,

24 ⁴ A video of Warren Flesch's statements could be found at:
25 <https://www.youtube.com/watch?v=iQ2WbBAQ5dM>, at 48:00 to 49:25 following a simple
 google search of his name. However, following Hillcrest's receipt of a draft of this
 Complaint, the video was abruptly removed. Nevertheless, Plaintiff has maintained a copy
 of Warren Flesch's statements to present as evidence.

1 including those of Brad Fuller, Les Bider, and Anita Dann Friedman have either been
2 granted new membership or are currently on their path to being members, without the
3 scrutiny given to the applications of others. By promoting their own children's applications,
4 the Hillcrest Leadership protects the racial makeup of the Club and promotes themselves,
5 filling the Club with their own allies to maintain their control as well as the Club's present
6 racial makeup.

7
8 **E. Plaintiff's Application For Membership Satisfied All Of Hillcrest's**
9 **Requirements**

10 34. Like nearly every other member of Hillcrest, Plaintiff is a white, Jewish male.
11 However, unlike nearly every other member of Hillcrest, Plaintiff is in a multiracial family.
12 This fact was well known to Hillcrest's Leadership.

13 35. Plaintiff was given the title of "intermediate member," being granted access
14 to the Club, which readily accepted his money, both in fees and expenditures. In actuality,
15 Plaintiff was a "member" in name only. According to the Club's bylaws and statements
16 made by Hillcrest's Leadership, Plaintiff had no rights whatsoever at the Club and no
17 membership interest. However, at times, Hillcrest claimed he was a member- and
18 therefore was subject to its rules, while at other times, Hillcrest claimed he was not a
19 member and therefore had no rights. As a result, Plaintiff pleads his causes of action in
20 the alternative, either as a non-member with access to the non-exclusive Club, or as a
21 member who is owed a fiduciary duty by the Club's Leadership.

22 36. On information and belief, the Club grants family members of members
23 access to the Club, beginning at the age of 18, if such family members pay continual fees
24 to the Club. By paying fees to the Club, in accordance with the bylaws, Plaintiff was to be
25

1 granted priority over unrelated applicants when applying for membership to the Club.

2 37. According to the Club's rules, a family-member applicant is reviewed for
3 membership at ages of 25, 31, 36, 39, 42 and 45 years of age. At the age of 45, an
4 applicant or "intermediate member" must become a full member, however, an applicant
5 can obtain membership prior to becoming 45. Plaintiff's Application was approved at age
6 25, 31, 36, and 39. However, once Michael Flesch, Jason Kaplan, and Brad Fuller
7 assumed leadership roles at the Club, Plaintiff was no longer acceptable.

8 38. On or about February 2, 2023, Plaintiff submitted his age-42 Application. On
9 his Application, Plaintiff affirmed that he completed more than the required 100 hours of
10 community service and that he had contributed 5% of his available cash flow to charity.
11 Plaintiff provided evidence and contact information to prove his fulfillment of the
12 requirements. Furthermore, Plaintiff satisfied Hillcrest's stated requirements for *social*
13 *acceptability*- as defined by Hillcrest. Plaintiff's age-42 Application was never questioned
14 or challenged by Hillcrest. Based on Hillcrest's actions, or lack thereof, following Plaintiff
15 submission, it was clear that Hillcrest had accepted Plaintiff's Application as truthful and
16 sufficient.

17 39. There was never any question about Plaintiff's satisfaction of Hillcrest's
18 requirement for *social acceptability*. Unlike Michael Flesch, Plaintiff is independently
19 successful, having co-founded an apparel company with operations in 190 countries.
20 Unlike Warren Flesch, Plaintiff does not have a history of drug abuse. Unlike Brad Fuller,
21 Plaintiff was not involved with pornographic films and isn't known for piggybacking off the
22 career of a famous friend. Unlike Jason Kaplan, Plaintiff has not committed a sexual
23 assault. According to the standards laid out by Hillcrest, Plaintiff was, by all accounts,
24 *socially acceptable*.

1 40. Given that Plaintiff had satisfied the three pillars for membership, and that
2 Hillcrest never complained or questioned his application, Plaintiff’s application should have
3 and would have been approved. However, because of Hillcrest’s policy of racial
4 discrimination and/or the Hillcrest Leadership’s breaches, Plaintiff’s application was
5 rejected and his privileges were terminated. To date, Hillcrest has refused to provide any
6 reason why Plaintiff’s application was denied, instead telling him they will not reveal the
7 reason because they do not want to be “pigeon-holed.” Instead, Hillcrest seeks to
8 preserve its pretextual reason for terminating Plaintiff’s Application, once its panel of
9 attorneys can drum up a faux legitimate and legal basis, when in reality its true reasons
10 for terminating Plaintiff’s application was without merit and illegal.

11
12 **F. Plaintiff Complains About Discrimination & Bad-Faith Conduct**

13 41. On or about March 9, 2023, Plaintiff was at Hillcrest attending a birthday
14 party for a friend. Jason Kaplan was also present at the party. On information and belief,
15 Jason Kaplan joined Plaintiff’s table so that Jason Kaplan was sitting directly across the
16 table from Plaintiff, even though Jason Kaplan had been assigned to a different table.

17 42. During the party, while nearly everyone was engaged in conversations,
18 Jason Kaplan, singling Plaintiff out, yelled “*CALLATE*” across the table at Plaintiff.⁵
19 Plaintiff was alarmed, confused, embarrassed, and hurt by Jason Kaplan’s rude
20 interruption. Others present were also shocked by Jason Kaplan’s outburst. Plaintiff did
21 not immediately respond so as to not antagonize Jason Kaplan. Plaintiff was later
22 approached by Jason Kaplan, whereby Plaintiff expressed that he was offended by Jason
23

24 ⁵ “*Callate*” is Spanish for “Shut Up.”

1 Kaplan's conduct, seeking to understand why he spoke to him the way he did. Jason
2 Kaplan was displeased with Plaintiff questioning him, telling him: "You want to mess with
3 me?"

4 43. In April 2023, Plaintiff sent a letter to the Giorgi Georgev, the Hillcrest
5 Membership Director, detailing his concerns about racial discrimination at the Club and
6 the interference with his application for membership by Michael Flesch and Jason Kaplan.
7 Plaintiff expressed that he believed his Hillcrest experience had been different than other
8 members who were not married to someone of Hispanic descent. Plaintiff cited Jason
9 Kaplan's rude, racially motivated conduct at the birthday party, as well as Michael Flesch
10 improper interference with Plaintiff's invitation to a Club subcommittee. Plaintiff requested
11 that Hillcrest conduct an investigation into his complaints. However, no investigation was
12 conducted following Plaintiff's request; instead, Plaintiff's membership was immediately
13 terminated.

14
15 **G. Plaintiff's Application Is Terminated Without Explanation**

16 44. On May 1, 2023, after receiving Plaintiff's April 2023 letter, Hillcrest
17 terminated Plaintiff's application for membership, providing no details other than that
18 Board of Directors "accepted the recommendation of the Membership Committee [led by
19 Brad Fuller] and concluded that you have not satisfied your Interim Review at age 42."
20 Despite having submitted his application nearly 3 months earlier, Hillcrest's conclusion
21 was the first time it claimed Plaintiff had not satisfied his requirements. Hillcrest failed to
22 provide any details or explanations for how they came to this decision, in violation of its
23 own bylaws, claiming its discussions and deliberations are confidential.

24 45. Hillcrest further refused to give Plaintiff an opportunity to cure any defects or
25

1 issues- as it had systematically done with those favored by the Hillcrest Leadership.
2 Acknowledging the reputational harm of its actions and to avoid challenges, Hillcrest's
3 Leadership threatened Plaintiff, writing: "If you wish to avoid the potential of termination,
4 you should consider resigning..."

5 46. On May 2, 2023, Plaintiff responded to Hillcrest's letter, replying that he had
6 satisfied all of the Club's express requirements and standards as they had been explained
7 to him. Plaintiff requested a statement of charges and reasons for his discipline, as well
8 as a hearing, in accordance with Hillcrest's bylaws. Plaintiff also requested the minutes
9 from Hillcrest's hearings regarding his termination.

10 47. On May 8, 2023, in response to Plaintiff's letter, Hillcrest claimed that Plaintiff
11 was not entitled to a hearing and refused to provide a reason for his termination, claiming
12 he was not a member, and had "no equity, proprietary rights or interest in the Club, among
13 other things." Hillcrest further refused to conduct any investigation, including, but not
14 limited to, interviewing Michael Flesch or Jason Kaplan regarding Plaintiff's assertions.
15 Hillcrest agreed to provide Plaintiff with a hearing only (sans explanation), for the purpose
16 of pressuring Plaintiff to resign.

17 48. On May 24, 2023, Hillcrest conducted its hearing regarding Plaintiff's
18 termination. Plaintiff arrived for the hearing with his attorney, who is Hispanic. Upon
19 seeing Plaintiff's Hispanic attorney, Michael Flesch refused to allow the attorney to attend.
20 Hillcrest itself had at least six attorneys present at the hearing, with a combined 211 years
21 of legal experience amongst them. Plaintiff invited his attorney because Hillcrest has no
22 rule stating that a person may not have an attorney present at a disciplinary or appellate
23 hearing in its bylaws or in any other correspondence, and certainly never informed Plaintiff
24 he may not have an attorney present. On information and belief, Plaintiff's attorney was
25

1 denied the right to attend the hearing by Michael Flesch because he is Hispanic.

2 49. Plaintiff's hearing was conducted by Michael Flesch, Jason Kaplan, Brad
3 Fuller, as well as famed attorney Alan Rothenberg, former attorney to Donald Sterling,
4 Edward Weiss, a highly-priced arbitrator who served as a former US Attorney and Chief
5 Counsel of Ticketmaster, and Dan Clivner, a managing partner of the law firm, Sidley
6 Austin. Plaintiff, on the other hand, was required to attend without representation, and sat
7 alone. The scene reflected that of a Congressional hearing.

8 50. Despite the hearing's purpose- Plaintiff's application and termination-
9 Michael Flesch confirmed that Plaintiff's termination was related to his complaints about
10 discrimination by making the subject of the hearing strictly about Plaintiff's complaint of
11 discrimination. Michael Flesch feigned shock that *he* could be accused of discrimination,
12 despite his having recently settled a discrimination complaint against him. Michael Flesch
13 refused to answer any of Plaintiff's questions, stating that "We are not here to be
14 interrogated by you. We are going to interrogate you."

15 51. Michael Flesch made numerous admissions during the hearing. He admitted
16 that he did indeed interfere with Plaintiff's invitation to a Club subcommittee, but refused
17 to state why. Additionally, he admitted that there is video evidence of the incident where
18 Jason Kaplan yelled "CALLATE," but refused to produce it. Michael Flesch also made
19 numerous misrepresentations. In continuing with the false narrative that Hillcrest is a
20 diverse place, Michael Flesch told Plaintiff that Hillcrest has "many" members of Latin
21 descent. Michael Flesch stated that Plaintiff's application "fell short of the three pillars,"
22 (refusing to identify which pillar), even though Plaintiff had satisfied every requirement.
23 When Plaintiff asked why he had been terminated, Michael Flesch responded: "We are
24 not here to be pigeonholed." To date, Hillcrest has still refused to provide any basis for
25

1 Plaintiff's termination.

2 52. Jason Kaplan was present at the hearing, but remained completely silent.
3 He made no attempt to dispute Plaintiff's recital of the events of March 9, 2023, and instead
4 blankly stared at Plaintiff, smirking as he appeared to enjoy watching Plaintiff being
5 interrogated. Brad Fuller, who was identified as the initial decisionmaker regarding
6 Plaintiff's termination, refused to speak, despite his obvious role. Ed Weiss, serving as
7 Secretary, acknowledged that he recommended Plaintiff resign to avoid the
8 embarrassment of being terminated by the elitist Club, and refused to acknowledge
9 Plaintiff has any rights under the bylaws, despite the Club's insistence that Plaintiff is
10 subject to them. Together, Hillcrest's Leadership continued in its refusal to conduct an
11 investigation into Plaintiff's claims, Jason Kaplan's conduct, or Michael Flesch's
12 interference. In sum, Plaintiff's hearing was a sham.

13
14 **H. Aftermath**

15 53. Plaintiff has paid a significant amount of money to Hillcrest for twenty-four
16 years just to have the opportunity to apply and become a member of the Club, believing
17 that if he did so, he would be given a fair opportunity for membership. He has devoted an
18 inordinate amount of time and money for the privilege, satisfied all of the stated
19 requirements, yet was denied because of his interracial marriage, the bad faith of
20 Hillcrest's leadership, and/or because of complaints about racial discrimination and
21 improper interference with his application/membership. Even after he was terminated,
22 Hillcrest still attempted to charge Plaintiff additional fees.

23 54. As of the date of this Complaint, Plaintiff's membership is still terminated.
24 Hillcrest has refused to provide any reason for Plaintiff's termination. At the urging of
25

1 Hillcrest’s counsel, Hillcrest hired attorney Terry Bird to investigate only the limited issue
2 of Jason Kaplan’s conduct on March 9, 2023, and not Hillcrest’s discriminatory policies,
3 the Leadership’s bad-faith conduct, Plaintiff’s termination, or the Club’s refusal to conduct
4 an investigation when one was requested. Moreover, on information and belief, Terry Bird
5 is anything but independent, a fact that he has continued to conceal from Plaintiff.

6 55. On June 21, 2023, Michael Flesch stepped down as President of Hillcrest,
7 and Jason Kaplan assumed the role. Michael Flesch claimed in his farewell speech that
8 he “leaves the club in better shape than it has been in.” Jason Kaplan remarked that
9 “Hillcrest has become the best family club in Los Angeles.” In reality, Michael Flesch left
10 the club in the same shape- white- just with more Flesches. [Aside from Warren, Michael
11 Flesch’s son Benjamin Flesch is purportedly himself easing through the application
12 process⁶]. With Jason Kaplan now at the helm, Hillcrest, its members, and those seeking
13 to join, such as Plaintiff, will continue to suffer. Under Jason Kaplan’s regime, there is little
14 doubt Hillcrest will remain the “best family club in Los Angeles” for only certain types of
15 families.

16
17 **FIRST CAUSE OF ACTION**

18 **Violation of Los Angeles Municipal Code, Article 5.9**

19 **(Against All Defendants)**

20 56. Plaintiff restates and incorporates herein as though fully set forth in the
21 preceding paragraphs.

22 57. The city of Los Angeles (the “City”) has a compelling interest in eradicating
23 discrimination in order to assure all of its citizens a fair and equal opportunity to participate

24 ⁶ Benjamin Flesch does not appear to have a business career or social impact which
25 comports with Hillcrest’s requirements for membership. On information and belief,
Benjamin Flesch is a member of an indie rock band that has not performed in years.

1 in the business and professional life of the City. Conduct and practices which exclude
2 persons from entry or consideration for membership in or the full advantages and
3 privileges of such membership on these bases are discriminatory and unacceptable, are
4 injurious to the body politic and to the business community and the City of Los Angeles.
5 Accordingly, the City's interest in eliminating such practices in clubs or organizations
6 outweighs the interest of their members in private association. Los Angeles Municipal
Code, Article 5.9, section 45.95.00.

7 58. The City recognizes a "significant barrier to the advancement of women and
8 minorities in the business and professional life of the City exists by virtue of the
9 discriminatory practices of certain clubs or organizations which are not distinctly private
10 and where business is frequently conducted."

11 59. Los Angeles Municipal Code, Article 5.9, section 45.95.00 states "business
12 activity most frequently occurs in clubs or organizations having more than four hundred
13 members which provide regular meal services which facilitates conducting such business."
14 On information and belief, Hillcrest has more than four hundred members and regularly
provides meal services.

15 60. Los Angeles Municipal Code, Article 5.9, section 45.95.01 states that a club
16 is not distinctly private when it has a membership of 400 or more, provides regular meal
17 service, and regularly accepts payments from non-members for expenses incurred at the
18 club.

19 61. Accordingly, the City established that it is unlawful for a club which is not
20 distinctly private to deny any person membership or the full enjoyment of the club on the
21 basis of sex, race, color, religion, ancestry, national origin, sexual orientation, or disability.
22 Los Angeles Municipal Code, Article 5.9, section 45.95.02. Any person may enforce the
23 provisions of Article 5.9 by means of a civil action. Los Angeles Municipal Code, Article
5.9, section 45.95.03.

24 62. Any person who violates or aids or incites another to violate Article 5.9 of the
25

1 Los Angeles Municipal Code is liable for each and every such offense for the actual
2 damages up to a maximum of three times the amount of actual damage but in no case
3 less than \$250, in addition to attorney's fees and court costs. A court may further award
4 punitive damages. An aggrieved person may also bring an action for injunctive relief. Los
5 Angeles Municipal Code, Article 5.9, section 45.95.03(B)(C).

6 63. On information and belief, Hillcrest is not a distinctly private club. Hillcrest
7 has more than four hundred members and regularly provides meal services. Furthermore,
8 Hillcrest regularly accepts payments from non-members for expenses incurred at the club,
9 including, but not limited to, from applicants/candidates for membership, such as Plaintiff,
10 as well as guests, members of other country clubs, and the general public. For instance,
11 Hillcrest regularly hosts a U.S. Open Qualifier event, which is open to the public and from
whom Hillcrest accepts payments.

12 64. As described above, Defendants discriminated against Plaintiff, and such
13 discrimination was based on race, ancestry, and/or national origin. Defendants further
14 denied Plaintiff membership because of Plaintiff's complaints about discriminatory conduct
15 by Michael Flesch and Jason Kaplan. Defendants' conduct violated Article 5.9 of the Los
Angeles Municipal Code.

16 65. As a direct, foreseeable, and legal result of Defendants' actions, and each
17 of them, Plaintiffs suffered injuries and damages in an amount to be proven at the time of
18 trial, as provided by Los Angeles Municipal Code, Article 5.9, section 45.95.03(C).

19 66. As a direct, foreseeable and legal result of Defendants' actions, Plaintiff has
20 suffered and continues to suffer substantial embarrassment, extreme and severe
21 humiliation, mental anguish, and emotional distress, pain and suffering, all to Plaintiff's
damage in an amount according to proof.

22 67. Defendants committed the acts alleged herein maliciously, fraudulently, and
23 oppressively with the wrongful intention of injuring Plaintiff and in conscious disregard of
24 Plaintiffs rights. Defendants condoned and ratified the unlawful conduct of the other
25

1 Defendants named in this action.

2 68. At all times herein, the aforementioned acts of oppression, fraud or malice
3 were authorized and/or ratified, with advance knowledge and conscious disregard, by
4 Defendants. Plaintiff is thus entitled to recover punitive damages from Defendants in an
5 amount according to proof, as provided by Los Angeles Municipal Code, Article 5.9,
6 section 45.95.03(C).

7 69. As a result of Defendants' acts as alleged herein, Plaintiff is entitled to
8 attorneys' fees and costs, as provided by Los Angeles Municipal Code, Article 5.9, section
9 45.95.03(C).

10 70. Plaintiff further requests injunctive relief, pursuant to Los Angeles Municipal
11 Code, Article 5.9, section 45.95.03(B), seeking to enjoin Hillcrest from denying
12 membership or otherwise discriminating against any person based on race, ancestry,
13 national origin, or based on any complaints made to Hillcrest regarding same.

14 **SECOND CAUSE OF ACTION**

15 **Violation of the California Unruh Act**

16 **Cal. Civil Code § 51, et. seq.**

17 **(Against All Defendants)**

18 71. Plaintiff restates and incorporates herein as though fully set forth in the
19 preceding paragraphs.

20 72. California Civil Code section 51, known as the Unruh Civil Rights Act,
21 provides "all persons within the jurisdiction of this state are free and equal, and no matter
22 what their sex, race, color, religion, ancestry, national origin, disability, medical condition,
23 genetic information, marital status, sexual orientation, citizenship, primary language, or
24 immigration status are entitled to the full and equal accommodations, advantages,
25 facilities, privileges, or services in all business establishments of every kind whatsoever."

73. California Civil Code section 51.5 states that no business establishment of

1 any kind whatsoever shall discriminate against, boycott or blacklist any person on account
2 of their race, ancestry, national origin, or because the person is associated with a person
3 who has, or is perceived to have, any of those characteristics.

4 74. Courts interpret the term "business establishment," as used in California's
5 Unruh Civil Rights Act, in the "broadest sense reasonably possible." *Johnson v. Riverside*
6 *Healthcare Sys., LP* (9th Cir. 2008) 534 F.3d 1116, 1124. At all relevant times, Hillcrest
7 was a business establishment.

8 75. California Civil Code section 52 states that whoever denies, aids or incites a
9 denial, or makes any discrimination or distinction contrary to Civil Code sections 51 and
10 51.5, is liable for each and every offense for the actual damages, up to a maximum of
11 three times the amount of actual damage but in no case less than four thousand dollars
12 (\$4,000), and any attorney's fees that may be determined by the court, suffered by any
13 person denied the rights provided in sections 51 and 51.5.

14 76. As described above, Defendants discriminated against Plaintiff, and such
15 discrimination was based on race, ancestry, and national origin. Defendants denied, aided
16 and incited the denial of Plaintiff's membership based on protected characteristics.
17 Defendants' conduct violated the Unruh Civil Rights Act.

18 77. As a direct, foreseeable and legal result of Defendants' actions, Plaintiff was
19 deprived his right of membership with Hillcrest, which holds a significant monetary value,
20 in an amount to be proven at trial.

21 78. As a direct, foreseeable and legal result of Defendants' actions, Plaintiff has
22 suffered and continues to suffer substantial embarrassment, extreme and severe
23 humiliation, mental anguish, and emotional distress, pain and suffering, all to Plaintiff's
24 damage in an amount according to proof.

25 79. Defendants committed the acts alleged herein maliciously, fraudulently, and
oppressively with the wrongful intention of injuring Plaintiff and in conscious disregard of
Plaintiff's rights and for the deleterious consequences of the Defendants' actions.

1 Defendants, through their officers, managing agents and/or supervisors, authorized,
2 condoned and ratified the unlawful conduct of all of the other Defendants named in this
3 action.

4 80. At all times herein, the aforementioned acts of oppression, fraud or malice
5 were authorized and/or ratified, with advance knowledge and conscious disregard, by
6 Defendants. Plaintiff is thus entitled to recover punitive damages from Defendants in an
7 amount according to proof.

8 81. As a result of Defendants' acts as alleged herein, Plaintiff is entitled to civil
9 penalties as provided by Civil Code § 52(b).

10 82. As a result of Defendants' acts as alleged herein, Plaintiff is entitled to
11 reasonable attorneys' fees and costs of suit as provided by Civil Code § 52(b).

12 **THIRD CAUSE OF ACTION**

13 **Retaliation in Violation of the California Unruh Act**

14 **Cal. Civ. Code § 51, et. seq.**

15 **(Against Hillcrest and Roes 1-40)**

16 83. Plaintiff restates and incorporates herein as though fully set forth in the
17 preceding paragraphs.

18 84. The California Supreme Court has stated that the conduct that is enumerated
19 in the Unruh Act is illustrative rather than restrictive, and that the Unruh act is designed to
20 "interdict all arbitrary discrimination by a business enterprise." *In re Cox* (1970) 3 Cal.3d
21 205, 212.

22 85. The Unruh Act encompasses retaliation for complaining about discriminatory
23 conduct. *Leach v. Drummond Medical Group, Inc.* (1983) 144 Cal.App.3d 362, 370-372;
24 *Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 96.

25 86. As described above, Defendants retaliated against Plaintiff, and such
retaliation was based on his complaints about race, ancestry, and national origin

1 discrimination, and/or Plaintiff's complaints about bad-faith conduct by members of the
2 Board of Directors. Defendants denied, aided, and incited the termination of Plaintiff's
3 application for membership because of Plaintiff's complaints about discriminatory conduct
4 and bad-faith conduct by Michael Flesch and Jason Kaplan, and/or because of Plaintiff's
5 request for an investigation into discriminatory conduct and bad-faith conduct at Hillcrest.

6 87. Defendants' retaliation against Plaintiff for exercising his right to complain
7 about discrimination and/or bad-faith conduct and/or his request for an investigation is
8 contrary to public policy. "The public has a strong interest in preventing business
9 establishments from engaging in discriminatory practices for arbitrary reasons. When a
10 person challenges such practices in a suit filed pursuant to the Unruh Civil Rights Act, the
11 public has an interest in protecting that person from retaliatory conduct by the offending
12 party." *Vaughn v. Hugo Neu Proler International* (1990) 223 Cal.App.3d 1612, 1620.

13 88. Defendants' policy of excluding Plaintiff for complaining about discrimination
14 and bad-faith conduct and/or requesting an investigation is not rationally related to the
15 services performed and facilities provided by Hillcrest and does not serve a legitimate
16 business interest.

17 89. As a direct, foreseeable and legal result of Defendants' actions, Plaintiff was
18 deprived his right of membership with Hillcrest, which holds a significant monetary value,
19 in an amount to be proven at trial.

20 90. Defendants committed the acts alleged herein maliciously, fraudulently, and
21 oppressively with the wrongful intention of injuring Plaintiff and in conscious disregard of
22 Plaintiffs rights and for the deleterious consequences of the Defendants' actions.
23 Defendants, through their officers, managing agents and/or supervisors, authorized,
24 condoned and ratified the unlawful conduct of all of the other Defendants named in this
25 action.

91. At all times herein, the aforementioned acts of oppression, fraud or malice
were authorized and/or ratified, with advance knowledge and conscious disregard, by

1 Defendants. Plaintiff is thus entitled to recover punitive damages from Defendants in an
2 amount according to proof.

3 92. As a result of Defendants' acts as alleged herein, Plaintiff is entitled to civil
4 penalties as provided by Civil Code § 52(b).

5 93. As a result of Defendants' acts as alleged herein, Plaintiff is entitled to
6 reasonable attorneys' fees and costs of suit as provided by Civil Code § 52(b).

7 **FOURTH CAUSE OF ACTION**

8 **Breach of Oral Contract**

9 **(Against Hillcrest and Roes 1-40)**

10 94. Plaintiff restates and incorporates by reference as if fully set forth in the
11 preceding paragraphs of this complaint.

12 95. A contract between Plaintiff and Hillcrest came into being when Hillcrest
13 offered to Plaintiff the right to apply for and be fairly considered for membership if Plaintiff
14 satisfied Hillcrest's three pillars for membership: charitable giving, charitable time, and
15 *social acceptability*. *Social acceptability* included Plaintiff's use of the Club, which required
16 Plaintiff to regularly pay money to Hillcrest. Hillcrest further promised Plaintiff priority in
17 his candidacy for membership because Plaintiff is the child of an existing member. Plaintiff
18 accepted Hillcrest's offer.

19 96. Plaintiff performed all, or substantially all, obligations required of him under
20 the parties' contract. To the extent Plaintiff was unable to perform, such non-performance
21 was the direct result of Hillcrest's actions and omissions. Plaintiff satisfied Hillcrest's
22 requirements for charitable giving and charitable time, and Plaintiff satisfied Hillcrest's
23 stated requirement for *social acceptability*, including, but not limited to, Plaintiff's prompt
24 payments to Hillcrest and Plaintiff's use of the Club. Plaintiff's payments to Hillcrest were
25 not solely limited to his use of the Club, but also were necessary for Plaintiff to satisfy his
application requirements.

1 97. Hillcrest breached the parties' agreement by terminating Plaintiff's
2 application without basis, despite Plaintiff's performance and payments made to Hillcrest.

3 98. As a direct and proximate result of Hillcrest's breaches, Plaintiff has been
4 damaged in an amount that will be established according to proof at trial.

5
6 **FIFTH CAUSE OF ACTION**

7 **Breach of Implied Duty of Good Faith and Fair Dealing**

8 **(Against Hillcrest and Roes 1-40)**

9 99. Plaintiff restates and incorporates by this reference as if fully set forth herein
10 the preceding paragraphs of this complaint.

11 100. A covenant of good faith and fair dealing is implied in every contract or
12 agreement in California.

13 101. Plaintiff performed all, or substantially all of the obligations required by the
14 parties' contracts, as described above, except as to those obligations that were excused
15 by the actions and omissions of Hillcrest.

16 102. Hillcrest breached the implied covenant of good faith and fair dealing by
17 engaging in the conduct set forth in this Complaint that resulted in unfairly interfering with
18 Plaintiff's rights to receive the benefits of the parties' contract.

19 103. As a result of Hillcrest's conduct, Plaintiff was, and has been harmed in an
20 amount that will be established according to proof at trial.

21 **SIXTH CAUSE OF ACTION**

22 **Promissory Estoppel**

23 **(Against Hillcrest and Roes 1-40)**

24 104. Plaintiff restates and incorporates by this reference as if fully set forth herein
25 the preceding paragraphs of this complaint.

 105. Hillcrest made a clear and unambiguous promise to Plaintiff in exchange for

1 his payments to Hillcrest and satisfaction of Hillcrest's criteria, Plaintiff would receive fair
2 consideration for his membership to Hillcrest, as well as priority in the application process,
3 or Plaintiff would be entitled to an intermediate membership status until he turned 45, at
4 which point Plaintiff could achieve membership upon satisfaction of its requirements.

5 106. In reliance upon the promises made by Hillcrest, Plaintiff made payments to
6 Hillcrest exceeding \$25,000 and performed in accordance with Hillcrest's requirements.

7 107. Plaintiff's reliance on Hillcrest's promises was both reasonable and
8 foreseeable.

9 108. Hillcrest breached its promise to Plaintiff when Hillcrest terminated Plaintiff's
10 application for membership and/or terminated Plaintiff's intermediate membership.

11 109. As a result of his reliance, Plaintiff was injured and sustained damages in an
12 amount that will be established according to proof at trial.

13 **SEVENTH CAUSE OF ACTION**

14 **Intentional Interference with Contractual Relations**

15 **(Against Michael Flesch, Jason Kaplan, and Brad Fuller and Roes 1-40)**

16 110. Plaintiff restates and incorporates by this reference as if fully set forth herein
17 the preceding paragraphs of this complaint.

18 111. A contract existed between Plaintiff and Hillcrest.

19 112. Defendants Michael Flesch, Jason Kaplan, and Brad Fuller knew of
20 Plaintiff's contract with Hillcrest.

21 113. Defendants Michael Flesch, Jason Kaplan, and Brad Fuller engaged in
22 conduct that prevented performance of the contract between Plaintiff and Hillcrest.

23 114. Defendants Michael Flesch, Jason Kaplan, and Brad Fuller intended to
24 disrupt the performance of the contract or knew that disruption of performance was certain
25 or substantially certain to occur.

115. As a result of Defendants Michael Flesch, Jason Kaplan, and Brad Fuller's

1 interference, Plaintiff was injured and sustained damages in an amount that will be
2 established according to proof at trial. Defendants' conduct was a substantial factor in
3 causing Plaintiff's harm

4
5 **EIGHTH CAUSE OF ACTION**

6 **Intentional Interference with Prospective Economic Relations**

7 **(Against Michael Flesch, Jason Kaplan, and Brad Fuller and Roes 1-40)**

8 116. Plaintiff restates and incorporates by this reference as if fully set forth herein
9 the preceding paragraphs of this complaint.

10 117. Plaintiff and Hillcrest were in an economic relationship that probably would
11 have resulted in an economic benefit to Plaintiff. A Hillcrest membership is transferable
12 and has significant monetary value. In addition, being a member of Hillcrest affords a
13 person social standing, access, and a venue to host guests in furtherance of a person's
14 business. The City of Los Angeles recognizes that business activity most frequently
15 occurs in clubs having more than four hundred members which provide regular meal
16 services which facilities conducting such business. Los Angeles Municipal Code, Article
17 5.9, section 45.95.00. For instance, on information and belief, Michael Flesch has used
18 his role as a member of Hillcrest to raise money for his companies.

19 118. Defendants Michael Flesch, Jason Kaplan, and Brad Fuller knew of the
20 relationship between Plaintiff and Hillcrest.

21 119. Defendants Michael Flesch, Jason Kaplan, and Brad Fuller engaged in
22 wrongful conduct to interfere with Plaintiff's membership by causing Hillcrest to terminate
23 Plaintiff's application and intermediate membership.

24 120. By engaging in this conduct, Defendants Michael Flesch, Jason Kaplan, and
25 Brad Fuller intended to disrupt Plaintiff's access to and membership with Hillcrest, or knew
that disruption of Plaintiff's access to and/or membership with Hillcrest was certain or
substantially certain to occur.

1 121. As a result of Michael Flesch, Jason Kaplan, and Brad Fuller's conduct,
2 Plaintiff's relationship with Hillcrest was disrupted and Plaintiff was harmed.

3 122. Defendants Michael Flesch, Jason Kaplan, and Brad Fuller's conduct was a
4 substantial factor in causing Plaintiff's harm.

5
6 **NINTH CAUSE OF ACTION**

7 **Breach of Fiduciary Duty**

8 **(Against Michael Flesch, Jason Kaplan, and Brad Fuller and Roes 1-40)**

9 123. Plaintiff restates and incorporates herein as though fully set forth in the
10 preceding paragraphs.

11 124. At all relevant times, Defendants Michael Flesch, Jason Kaplan, and Brad
12 Fuller, in their leadership roles at Hillcrest, owed Plaintiff a fiduciary duty, and therefore
13 had a duty to act with the utmost good faith in the best interest of Hillcrest's members and
14 its applicants.

15 125. Defendants Michael Flesch, Jason Kaplan, and Brad Fuller assumed the role
16 of fiduciary to Plaintiff by acting on Plaintiff's behalf by advising and instructing Plaintiff
17 regarding his application to Hillcrest, by setting the guidelines for membership, and by
18 governing the application process, including deciding whether to approve an applicant.

19 126. To the extent that Plaintiff was a member of Hillcrest, Defendants Michael
20 Flesch, Jason Kaplan, and Brad Fuller owed Plaintiff a fiduciary duty through their
21 Leadership positions at Hillcrest.

22 127. As described above, Michael Flesch, Jason Kaplan, and Brad Fuller failed
23 to act with reasonable care as a director would have acted under the same or similar
24 circumstances.

25 128. As a result of Michael Flesch, Jason Kaplan, and Brad Fuller, Plaintiff was
harmed in an amount to be determined at trial.

129. Michael Flesch, Jason Kaplan, and Brad Fuller's conduct was a substantial

1 factor in causing Plaintiff's harm.

2
3 **TENTH CAUSE OF ACTION**

4 **Violation of Cal. Corp. Code § 7231**

5 **(Against All Defendants)**

6 130. Plaintiff restates and incorporates herein as though fully set forth in the
7 preceding paragraphs.

8 131. The standard of conduct for directors of Nonprofit Mutual Benefit
9 Corporations is set forth in Code § 7231(a), which provides as follows: "A director shall
10 perform the duties of a director, including duties as a member of any committee of the
11 board upon which the director may serve, in good faith, in a manner such director believes
12 to be in the best interests of the corporation, and with such care, including reasonable
13 inquiry, as an ordinarily prudent person in a like position would use under similar
14 circumstances."

15 132. The director's obligation to make a reasonable inquiry is derived from Code
16 §7231. This duty provides that directors cannot close their eyes to the activities of the
17 organization and, if they are put on notice by the presence of suspicious circumstances,
18 they may be required to make such reasonable inquiry as an ordinarily prudent person
19 would make under similar circumstances. In fulfilling their duty of inquiry, directors may
20 obtain the services of and rely upon opinions, reports or other information prepared or
21 presented by any of the following:

- 22 a. One or more officers or employees of the corporation whom the
23 directors believe to be reliable and competent in the matters
24 presented;
- 25 b. Counsel, independent accountants, or other persons on matters
which the director believes to be within such person's professional or
expert competence; and

1 c. A committee of the board upon which the director does not serve, as
2 to matters within the committee's designated authority, which
3 committee the director believes to merit confidence. If a director has
4 a reason to doubt information that he/she is being supplied, the
5 director owes a fiduciary duty to inquire further into those matters.
6 Such duty may be exercised by the board through the retention of
7 experts to assist the directors in verifying the information supplied,
8 obtaining additional information, and analyzing the matters to which
9 the information pertains.

10 133. Defendants failed to make a reasonable inquiry with regard to numerous
11 items, including, but not limited to Plaintiff's application for membership, Plaintiff's
12 complaints about discrimination, and improper conduct and interference by Michael Flesch
13 and Jason Kaplan.

14 134. On information and belief, Defendants had a policy of ignoring improper
15 conduct and failures in *social acceptability* by members of the Board of Directors, their
16 children, and their friends. Defendants placed their interest in nepotism above their duties.

17 135. As a result of Defendant's conduct, Plaintiff's relationship with Hillcrest was
18 disrupted, his application and/or membership was terminated, and Plaintiff was harmed in
19 an amount to be determined at trial.

20 136. The above-described conduct was a substantial factor in causing Plaintiff's
21 harm.

22 **ELEVENTH CAUSE OF ACTION**

23 **Constructive Fraud**

24 **(Against All Defendants)**

25 137. Plaintiff restates and incorporates by this reference as if fully set forth herein
the preceding paragraphs.

1 138. Defendants acted on Plaintiff's behalf for the purpose of guiding Plaintiff
2 through the Hillcrest application process. By providing Plaintiff with information and
3 guidance on the Hillcrest application process, while accepting Plaintiff's money,
4 Defendants assumed a duty to Plaintiff that they would provide him with accurate and
5 complete information.

6 139. Defendants knew, or should have known that Plaintiff would rely on
7 Defendants' affirmations about the requirements to join Hillcrest.

8 140. However, Defendants misled Plaintiff by failing to disclose that Plaintiff's
9 application would be rejected if he was in an interracial marriage, or if he complained about
10 discrimination or any bad faith conduct by any members of Hillcrest Leadership.

11 141. Defendants further misled Plaintiff by failing to disclose that they were
12 reserving membership spots for their own children, regardless of their worthiness and
13 satisfaction of the membership requirements, at the expense of paying applicants who did
14 satisfy the membership requirements, such as Plaintiff.

15 142. Defendants misled Plaintiff as to the *social acceptability* requirement of the
16 Club, granting and maintaining the membership of a pornographer, a sexual deviant,
17 philanderers, liars, and others with low moral compasses.

18 143. As a result of Defendants' conduct, Plaintiff was harmed in an amount to be
19 determined at trial.

20 144. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

21 **TWELFTH CAUSE OF ACTION**

22 **Negligent Misrepresentation**

23 **(Against All Defendants)**

24 145. Plaintiff restates and incorporates by this reference as if fully set forth herein
25 the preceding paragraphs.

146. Defendants made representations to Plaintiff that if he were to satisfy

1 Hillcrest's three pillars, he would be provided a fair opportunity for membership.

2 147. Defendants further represented that if Plaintiff, as the child of a member,
3 would be provided with priority with regard his membership.

4 148. Defendants further represented that if Plaintiff were to use the Club and pay
5 his dues, he would be provided a fair opportunity for membership.

6 149. Defendants had no reasonable grounds for believing the representations
7 were true when they made them to Plaintiff because Defendants employed a different
8 process, as described above, when determining a person's application for membership.

9 150. Defendant intended that Plaintiff rely on the representations, and Plaintiff did
10 rely on the representation, spending time and money in support of his Hillcrest Application.

11 151. As a result of Defendants' conduct, Plaintiff was harmed in an amount to be
12 determined at trial.

13 152. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

14 **THIRTEENTH CAUSE OF ACTION**

15 **Violation of California Business & Professions Code section 17200, et. seq.**

16 **(Against All Defendants)**

17 153. Plaintiff repeats and realleges by reference each and every allegation
18 contained hereinabove and incorporates the same herein as though fully set forth herein.

19 154. "The unfair competition law's scope is broad....it defines 'unfair competition'
20 to include 'any unlawful, unfair or fraudulent business act or practice. (Business and
21 Professions Code §17200 et seq.) Its coverage is 'sweeping, embracing anything that can
22 properly be called a business practice and that at the same time is forbidden by law.'" *Cel-
Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal. 4th 163, 180 (internal
23 citations omitted).

24 155. Pursuant to California's Unfair Competition Law, Defendants, and each of
25 them, were at all times relevant to this action, obligated to refrain from engaging in unfair

1 business practices.

2 156. During the period of Plaintiff's application, Defendants, and each of them,
3 engaged in a course of illegal business practices prohibited by the Unfair Competition Law.

4 157. Therefore, by so violating the law in the aforementioned ways, Defendants
5 have engaged in unlawful, unfair, and fraudulent business practices as described above,
6 in violation of Bus. & Prof. Code § 17200.

7 158. Defendants, pursuant to such unlawful practices, have enriched themselves
8 at the expense of innocent victims such as Plaintiff.

9 159. As a proximate result of Hillcrest's unlawful, unfair, and fraudulent business
10 practices, Plaintiff has suffered and continues to suffer substantial harm, in an amount
11 according to proof at trial.

12 160. Plaintiff has also incurred and continues to incur attorneys' fees and legal
13 expenses in an amount according to proof at trial.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff demands trial of all issues by jury.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for the following relief:

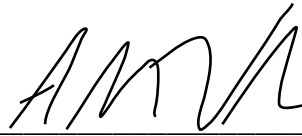
- 18 1. For compensatory damages in an amount to be proven at trial;
- 19 2. For emotional support damages in an amount to be proven at trial;
- 20 3. For an accounting;
- 21 4. For restitution in an amount to be proven at trial;
- 22 5. For unjust enrichment damages in an amount to be proven at trial;
- 23 6. For treble damages;
- 24 7. For punitive and exemplary damages in an amount to be proven at trial;

- 1 8. For reasonable attorney's fees and costs of suit incurred in pursuing this action;
2 9. For statutory penalties;
3 10. For prejudgment interest; and
4 11. For any other and further relief, the Court may deem just and proper.

5
6 Respectfully Submitted,

7 Dated: March 11, 2024

8 TRUJILLO & WINNICK, LLP

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10 _____
11 Alexander H. Winnick / Anthony W. Trujillo
12 Attorneys for Plaintiff MATTHEW WINNICK
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