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Business

Mauna Loa accused of breaking pacts

□ Fired officer, current supplier both say new owners broke promises

By Janet Snyder
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A former officer of the Mauna Loa Macadamia Nut Corp. is suing the firm and its new San Francisco-based owners for more than \$200,000 in unpaid wages, stock and unspecified punitive damages, alleging fraud and breach of contract.

The suit by former Mauna Loa Macadamia Nut chief financial officer and

chief operating officer Dennis Simonis alleges that he was fired five months after helping The Shansby Group purchase the company last year.

Simonis is seeking \$175,000 in severance, a \$30,000 relocation allowance, all accrued vacation pay, 6 percent of the stock in the company, fair market value of a projected sale bonus and unspecified damages.

Simonis' suit alleges that Shansby Group general partner Charles Esserman promised in a July 18 letter that Simonis would continue in Mauna Loa's employ, with an annual salary of \$175,000 and a performance bonus of up to 100 percent of his salary, a \$900 per month car

allowance and other fringe benefits.

The suit also claims Simonis was promised 6 percent of Mauna Loa stock if he were terminated without cause. Esserman also promised, the lawsuit says, that if Simonis were fired without cause, he would receive 12 months' compensation and a \$30,000 relocation allowance.

Similar terms were offered to Mauna Loa President Scott Wallace in the same letter agreement, the suit states.

A couple of days later, the lawsuit claims, Esserman faxed a generic employment agreement and generic stock agreement to Simonis and Wallace, which contained numerous blanks. Also, the stock

agreement did not reflect the terms of the July 18 letter, the lawsuit said.

After the price and terms of Shansby Group's purchase of Mauna Loa were established and the closing was imminent, Simonis and Wallace sought clarification of the employment agreements in a Sept. 7 letter to Esserman. The lawsuit says the Shansby Group executive reacted angrily in a conference call with the two men.

"Esserman informed Wallace and (Simonis) that (The Shansby Group) was 'deeply disturbed' by their 'outrageous' demands — demands which, in

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fact, involved no more than the fulfillment of promises that Esserman had already made in the letter agreement and upon which (Simonis) had relied to his detriment," the lawsuit said.

Esserman told the men that they had seriously damaged their working relationship with him.

"Esserman clearly intended through his words and his tone to intimidate Wallace and (Simonis) and coerce them into accepting whatever terms Mauna Loa's new owners sought to impose for their continued employment, notwithstanding that the binding (July 18) letter agreement already existed between the parties."

Around Sept. 25, the lawsuit claims, Esserman presented Simonis with a final employment agreement and a stock agreement and gave him four days to execute the agreements.

That Sept. 29 employment agreement between Simonis and Mauna Loa Macadamia Nut Corp. says it supercedes any prior agreements regarding Simonis' employment, including the July 18 letter from Esserman to Simonis.

The Sept. 29 agreement cut Simonis' severance pay in half, to six months, and halved his shares of vested stock to three percent, and added what the lawsuit calls an "onerous" confidentiality provision.

According to the lawsuit, Simonis was fired without cause March 9. Prior to that, Mauna Loa filled his position with a new executive without Simonis' consent.

"While with Mauna Loa, (Simonis) was placed under substantial pressure to offer false and/or misleading testimony on Mauna Loa's behalf in a pending litigation; he declined," the lawsuit said. "Shortly thereafter he was replaced and then terminated without cause."

The suit alleges that the new owners engaged in misrepresentation and fraud because they had never intended to keep the promises made to Simonis in the letter agreement.

Simonis and his attorney, Jeffrey Hiatt, appeared in Judge Riki May Amano's court April 27, seeking a preliminary injunction and partial summary judgment to restrain the new owners from seeking to enforce any provisions in the Sept. 29 agreement, which would preclude Simonis from

taking a job offer from Mauna Loa supplier ML Macadamia Orchards, L.P.

Simonis was offered a job at the orchard company as its chief financial officer. The orchard company supplies macadamia nuts to candy manufacturer Mauna Loa.

Amano granted the new owners a continuance until 8 a.m. on May 16 to hear the motion for preliminary injunction and partial summary judgment.

A companion lawsuit has been filed by ML Macadamia Orchards against Mauna Loa, which alleges that the new owners breached purchase contracts established between the two firms in the 1980s.

"After Mauna Loa was acquired by The Shansby Group in or about September 2000, Mauna Loa radically changed its policy on payment and reporting," the lawsuit said. "Mauna Loa began to breach those contracts with (ML Macadamia Nut Orchards), tortiously, with a deliberate and pre-conceived intent to harm (ML Macadamia Nut Orchards) economically and without justification."

The lawsuit said that Mauna Loa underpaid the orchard company by more than \$600,000 for nuts delivered for the third quarter of 2000, and owes the grower 9.5 percent dating back to Oct. 30. The lawsuit also claims damages of \$75,000 plus attorney fees and other expenses, as well as unspecified punitive damages.

Judge Greg Nakamura will hear a motion for summary judgment at 8:30 a.m. on May 18, that seeks to establish that Mauna Loa was obliged to buy 100 percent of the nuts from ML Macadamia Nut Orchards under the contracts, not just usable portions.

Esserman, in an e-mail message Tuesday to the Tribune-Herald, said he had been advised not to comment on the two cases.

"We are committed to the macadamia nut industry and I look forward to being able to tell you more in the near future," said Esserman's e-mail message.

The Shansby Group specializes in buying food, over-the-counter pharmaceuticals and other consumer brands, such as Famous Amos cookies and Cutex nail polish remover.