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15 Attorneys for Plaintiff,
16 KENNETH J. SMITH, dba LANDER STREET SHELL

17 UNITED STATES DISTRICT COURT
18 WESTERN DISTRICT OF WASHINGTON

19 KENNETH J. SMITH, dba LANDER
20 STREET SHELL, an individual,

21 Plaintiff,

22 v.

23 PACWEST ENERGY, LLC, a
24 Delaware limited liability company;
25 and DOES 1 through 10, inclusive,

26 Defendants.

Case No.: 16-cv-01317

COMPLAINT FOR:

1. DAMAGES, INJUNCTIVE AND
EQUITABLE RELIEF
(VIOLATIONS OF THE
PETROLEUM MARKETING
PRACTICES ACT, 15 U.S.C. §
2801, ET SEQ. (PMPA));
2. DAMAGES AND INJUNCTIVE
RELIEF (VIOLATIONS OF
WASHINGTON GASOLINE
DEALER BILL OF RIGHTS ACT
(GDBRA), WASHINGTON
FRANCHISE INVESTMENT
PROTECTION ACT (FIPA), AND
WASHINGTON CONSUMER
PROTECTION ACT (CPA));

DEMAND FOR JURY TRIAL

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PRELIMINARY ALLEGATIONS

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2 1. Plaintiff, KENNETH J. SMITH, dba LANDER STREET SHELL
3 (hereinafter referred to as “PLAINTIFF”), is an individual who operates a Shell-
4 branded motor fuel service station business (hereinafter, the “Business”) located at
5 2461 4th Avenue S, Seattle, Washington 98134-1925, in King County (hereinafter
6 referred to as the “Station Premises”).

7 2. PLAINTIFF is informed and believes and based thereon alleges that
8 Defendant, PACWEST ENERGY, LLC (hereinafter referred to as “PACWEST”) is a
9 Delaware limited liability company doing business within the County of King, State
10 of Washington, and subject to the jurisdiction of the above-entitled Court. PACWEST
11 owns the Station Premises upon which the Business is located.

12 3. PLAINTIFF is not aware of the true names or capacities, whether
13 individual, corporate, associate, or otherwise, of Defendants named herein as DOES 1
14 through 10, inclusive, and therefore sues these Defendants by such fictitious names.
15 PLAINTIFF shall amend this Complaint to allege the true names and capacities of the
16 fictitiously named Defendants when ascertained. PLAINTIFF is informed and
17 believes and on that basis alleges that each of the fictitiously named Defendants is in
18 some manner intentionally or negligently responsible for the things herein alleged and
19 the damages suffered by PLAINTIFF.

20 4. PLAINTIFF is informed and believes and based thereon alleges that each
21 of the DEFENDANTS, fictitious and real, are responsible in some manner for the
22 occurrences herein alleged, and that PLAINTIFF’S damages as herein alleged were
23 proximately caused by their conduct.

24 5. PLAINTIFF is informed and believes and based thereon alleges that at all
25 times mentioned herein, each of the fictitiously named Defendants was the agent,
26 servant, employee, co-venturer and/or alter ego of each of the remaining fictitiously
27 named Defendants and were acting within the course, scope, purpose, consent,
28 knowledge and authorization of such agency, employment and/or joint venture and

1 each fictitiously named Defendant has ratified and approved the acts of his, her and/or
2 its agent.

3 6. Whenever in this Complaint reference is made to “DEFENDANTS, and
4 each of them,” such allegation shall be deemed to mean the acts of DEFENDANTS
5 acting individually, jointly and/or severally.

6 JURISDICTION

7 7. Jurisdiction over this action is based on the provisions of the Petroleum
8 Marketing Practices Act, 15 U.S.C. Section 2805, et seq. (hereinafter, the “PMPA”),
9 which explicitly confers jurisdiction on the United States District Courts over civil
10 actions brought against franchisors by franchisees, regardless of the amount in
11 controversy. Jurisdiction over this action is therefore appropriate since this case
12 involves a Federal Question pursuant to the provisions of 28 U.S.C. Section 1331.

13 8. Jurisdiction over the remaining counts of this Complaint arise under 28
14 U.S.C. Section 1367 because the state and common law claims alleged herein are so
15 related to federal claims that they form part of the same case or controversy.
16 Jurisdiction over the remaining counts of this Complaint also arise under 28 U.S.C.
17 Section 1332 because the matter in controversy exceeds the sum or value of \$75,000,
18 exclusive of interest and costs, and is between citizens of different states.

19 VENUE

20 9. Venue is appropriate in this district pursuant to 28 U.S.C. Section
21 1391(b) and 15 U.S.C. Section 2805(a) because the subject real property and business
22 premises are located within the boundaries of the Western District.

23 COMMON ALLEGATIONS

24 10. PLAINTIFF, 72 years old, has leased the Station Premises and owned
25 and operated a motor fuel service station business thereon since August 1990 under
26 various lease/franchise agreements with certain gasoline refiners/distributors.

27 11. PLAINTIFF (as the lessee) and PACWEST (as the lessor) entered into a
Retail Facility Lease, effective November 1, 2010 (the “Lease”), and a Retail Sales

1 Agreement, effective November 1, 2010 (the “Franchise Agreement”). Both the
2 Lease and the Franchise Agreement were for a term of five (5) years, with an
3 expiration date of October 31, 2015. Both the Lease and the Franchise Agreement
4 provided that if the parties did not extend or renew said agreements by written
5 instrument, then the terms of said agreements would be extended on a month-to-
6 month basis on the same terms and conditions for not more than six (6) successive
7 months, subject to termination or non-renewal by PACWEST during such extension
8 period.

9 12. In or about June 2014, PLAINTIFF considered selling the Business and
10 PACWEST expressed an interest in buying the Business. PLAINTIFF had
11 discussions with PACWEST about selling the Business to PACWEST. However,
12 soon thereafter PLAINTIFF’s Business became much more profitable and
13 PLAINTIFF decided not to sell at that time.

14 13. Following the expiration of the Lease and Franchise Agreement on
15 October 31, 2015, the Lease and Franchise Agreement continued on a month-to-
16 month basis for six consecutive months.

17 14. Prior to the end of the sixth month following the expiration of the Lease
18 and Franchise Agreement, PACWEST informed PLAINTIFF that PLAINTIFF’s
19 franchise would not be renewed by PACWEST for a new term. PACWEST only
20 offered PLAINTIFF a month-to-month tenancy if PLAINTIFF agreed to an increase
21 in monthly rent from \$9,250 per month to \$20,000 per month, and agreed to perform
22 certain improvements to the Station Premises at a cost to PLAINTIFF of \$315,000.
23 PLAINTIFF did not agree to the changes or additions demanded by PACWEST.

24 15. PLAINTIFF is informed and believes and based thereon alleges that the
25 rent increase and site improvements demanded by PACWEST were excessive and
26 commercially unreasonable, and would effectively eliminate PLAINTIFF’s goodwill
27 in his franchise if it were to continue under those terms. PLAINTIFF is further
~ informed and believes and based thereon alleges that PACWEST’s failure to renew

1 PLAINTIFF's franchise and its insistence on such changes or additions to the
2 franchise relationship were not made in good faith and in the normal course of
3 business, and were solely for the purpose of forcing PLAINTIFF to give up his
4 franchise so that PACWEST could convert the Station Premises to a company
5 operated station or to otherwise prevent renewal of the franchise relationship.

6 16. PLAINTIFF is informed and believes and based thereon alleges that
7 PACWEST did not renew PLAINTIFF's franchise upon expiration of the sixth and
8 final extension of the Lease and Franchise Agreement on April 30, 2016. Further,
9 PACWEST did not give PLAINTIFF one year's notice of non-renewal and failed to
10 fairly compensate PLAINTIFF for the fair market value at the time of expiration of
11 the franchise of PLAINTIFF's good will and PLAINTIFF's inventory, supplies,
12 equipment, and furnishings reasonably required in the conduct of the franchise
13 business.

14 FIRST CLAIM FOR RELIEF

15 (For Damages, Injunctive Relief and Equitable Relief, Exemplary Damages,
16 Attorneys' Fees and Costs for Violation of the Petroleum Marketing Practices Act, 15
17 U.S.C. § 2801, et seq.)

18 17. PLAINTIFF incorporates and re-alleges the allegations of paragraphs 1
19 through 16, inclusive, as if fully set forth herein.

20 18. PACWEST is a franchisor and PLAINTIFF is a franchisee within the
21 meaning of the PMPA.

22 19. The PMPA was intended to protect gas station franchise owners from
23 arbitrary and discriminatory termination or non-renewal of their franchises with large
24 oil corporations and gasoline distributors, and to remedy the disparity in bargaining
25 power between the parties to gasoline franchise contracts.

26 20. Under the PMPA, "[t]he terms 'fail to renew' and 'nonrenewal' mean,
27 with respect to any franchise relationship, a failure to reinstate, continue, or extend the
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1 franchise relationship ... at the conclusion of the term, or on the expiration date, stated
2 in the relevant franchise....” (15 U.S.C. § 2801(14)(A)).

3 21. The PMPA prohibits a franchisor from failing to renew a franchise
4 relationship where the franchisee does not agree to the franchisor’s proposed changes
5 or additions to the provisions of the franchise if “such changes or additions are [not]
6 the result of determinations made by the franchisor in good faith and in the normal
7 course of business” and “such failure is ... the result of the franchisor’s insistence
8 upon such changes or additions for the purpose of converting the leased marketing
9 premises to operation by employees or agents of the franchisor for the benefit of the
10 franchisor or otherwise preventing the renewal of the franchise relationship.” (15
11 U.S.C. § 2802(b)(3)(A)).

12 22. PLAINTIFF is informed and believes and based thereon alleges that
13 PLAINTIFF’s franchise was non-renewed by PACWEST in violation of the PMPA.

14 23. If PACWEST is permitted to non-renew PLAINTIFF’s franchise or to
15 force PLAINTIFF to agree to the arbitrary, excessive and commercially unreasonable
16 terms it has demanded, it would cause PLAINTIFF substantial hardship and
17 irreparable harm. PLAINTIFF will suffer such significant losses that he will no
18 longer be able to remain in business and he will lose his sole means of support, other
19 than social security.

20 24. There are legitimate and serious questions surrounding the validity of
21 PACWEST’s actions. PACWEST’s conduct, rights and obligations to PLAINTIFF
22 are fair grounds for litigation under the PMPA.

23 25. PLAINTIFF is entitled to a temporary restraining order, preliminary
24 injunction and permanent injunction restraining and enjoining PACWEST, its agents,
25 employees, officers, directors, managing agents, joint venturers, attorneys, affiliates or
26 subsidiaries, from terminating or non-renewing PLAINTIFF’s franchise or taking any
27 further steps towards termination or non-renewal of PLAINTIFF’s franchise.

1 26. PLAINTIFF is also entitled to and requests a temporary restraining order,
2 preliminary injunction and permanent injunction restraining and enjoining
3 PACWEST, its agents, employees, officers, directors, managing agents, joint
4 venturers, attorneys, affiliates or subsidiaries, from engaging in any retaliatory
5 conduct for bringing the instant action or bad faith efforts designed to establish pre-
6 textual grounds for termination and/or non-renewal of PLAINTIFF's franchise with
7 PACWEST.

8 27. PLAINTIFF is informed and believes and based thereon alleges that
9 when compared to PLAINTIFF, PACWEST will suffer minimal hardship, if any, if
10 PACWEST is restrained and enjoined from terminating or non-renewing
11 PLAINTIFF's franchise, from taking any further steps towards termination or non-
12 renewal of PLAINTIFF' franchise, from engaging in any retaliatory conduct for
13 bringing the instant action, or from engaging in bad faith efforts designed to establish
14 pretextual grounds for termination and/or non-renewal of PLAINTIFF's franchise
15 with PACWEST.

16 28. Any hardship imposed on PACWEST, as the franchisor, by a temporary
17 restraining order, preliminary injunction and/or permanent injunction would be far
18 less than the enormous hardship imposed on PLAINTIFF, as the franchisee, if the
19 injunctive relief sought were not granted.

20 29. PLAINTIFF is entitled to the above requested relief under Section
21 2805(b) of the PMPA because PLAINTIFF's remedies at law are not adequate to
22 protect PLAINTIFF's goodwill interest in his Business and his rights under the
23 PMPA.

24 30. PLAINTIFF is also entitled to any other equitable relief which the Court
25 determines is reasonably necessary in order to remedy the effect of PACWEST's
26 willful failure to comply with the PMPA.

1 31. PLAINTIFF is entitled to and requests actual damages, in an amount
2 according to proof at the time of trial, incurred as a result of each of PACWEST's
3 violations of the PMPA.

4 32. PLAINTIFF is entitled to and requests exemplary damages, in an amount
5 sufficient to deter further violations of the PMPA, as a result of PACWEST's willful
6 disregard of the requirements of the PMPA and the rights of PLAINTIFF in
7 connection with the franchise agreements pursuant to Section 2805(d) of the PMPA.

8 33. PLAINTIFF is entitled to and requests attorneys' fees, expert fees and
9 costs under the PMPA in connection with bringing the instant action pursuant to
10 Section 2805(d) of the PMPA.

11 SECOND CLAIM FOR RELIEF

12 (For Damages, Injunctive Relief, Punitive Damages, Attorneys' Fees and Costs for
13 Violations of Washington Gasoline Dealer Bill of Rights Act (RCW 19.120.010, et
14 seq.), Washington Franchise Investment Protection Act (RCW 19.100.010, et seq.)
15 and Washington Consumer Protection Act (RCW 19.86.010, et seq.))

16 34. PLAINTIFF incorporates and re-alleges the allegations of paragraphs 1
17 through 16 and 23 through 24, inclusive, as if fully set forth herein.

18 35. The foregoing conduct of PACWEST alleged herein constitutes unfair
19 and/or deceptive business practices which violated the Washington Gasoline Dealer
20 Bill of Rights Act, RCW 19.120.010, et seq. ("GDBRA"), the Washington Franchise
21 Investment Protection Act, RCW 19.100.010, et seq. ("FIPA"), and the Washington
22 Consumer Protection Act, RCW 19.86.010, et seq. ("CPA").

23 36. PLAINTIFF is entitled to and requests actual damages, in an amount
24 according to proof at the time of trial, incurred as a result of each of PACWEST's
25 violations of the CPA, GDBRA and FIPA.

26 37. PLAINTIFF is entitled to and requests treble damages, in an amount
27 sufficient to deter further violations of the CPA, GDBRA and FIPA, as a result of
28 PACWEST's willful disregard of the requirements of the CPA, GDBRA and FIPA

1 and the rights of PLAINTIFF in connection with the franchise agreement pursuant to
2 RCW 19.86.090.7.

3 38. PLAINTIFF is entitled to and requests attorneys' fees and costs under the
4 CPA, GDBRA and FIPA in connection with bringing the instant action.

5 39. There are legitimate and serious questions surrounding the validity of
6 PACWEST's actions. PACWEST's conduct, rights and obligations to PLAINTIFF
7 are fair grounds for litigation under the CPA, GDBRA and FIPA.

8 40. PLAINTIFF is entitled to a temporary restraining order, preliminary
9 injunction and permanent injunction restraining and enjoining PACWEST, its agents,
10 employees, officers, directors, managing agents, joint venturers, attorneys, affiliates or
11 subsidiaries, from terminating or non-renewing PLAINTIFF's franchise or taking any
12 further steps towards termination or non-renewal of PLAINTIFF's franchise, based
13 upon PLAINTIFF's refusal to agree to the arbitrary, excessive and commercially
14 unreasonable renewal terms demanded by PACWEST in bad faith.

15 41. PLAINTIFF is also entitled to and requests a temporary restraining order,
16 preliminary injunction and permanent injunction restraining and enjoining
17 PACWEST, its agents, employees, officers, directors, managing agents, joint
18 venturers, attorneys, affiliates or subsidiaries, from engaging in any retaliatory
19 conduct for bringing the instant action or bad faith efforts designed to establish pre-
20 textual grounds for termination and/or non-renewal of PLAINTIFF's franchise with
21 PACWEST.

22 42. Any hardship imposed on PACWEST, as the franchisor, by a temporary
23 restraining order, preliminary injunction and/or permanent injunction would be far
24 less than the enormous hardship imposed on PLAINTIFF, as the franchisee, if the
25 injunctive relief sought were not granted.

26 43. PLAINTIFF is entitled to the above requested relief under RCW
27 19.86.090 because PLAINTIFF's remedies at law are not adequate to protect
28

1 PLAINTIFF's goodwill interest in his Business and his rights under the CPA,
2 GDBRA and FIPA.

3 WHEREFORE, PLAINTIFFS pray for judgment as follows:

4 AS TO THE FIRST CLAIM FOR RELIEF:

- 5 1. A temporary restraining order/preliminary injunction/permanent injunction
6 restraining and enjoining PACWEST, its agents, employees, officers,
7 directors, managing agents, joint venturers, attorneys, affiliates or
8 subsidiaries, from attempting termination or non-renewal of PLAINTIFF's
9 franchise or taking any further steps towards the termination or non-renewal
10 of PLAINTIFF's franchise;
- 11 2. A temporary restraining order/preliminary injunction/permanent injunction
12 restraining and enjoining PACWEST, its agents, employees, officers,
13 directors, managing agents, joint venturers, attorneys, affiliates or
14 subsidiaries, from attempting to take, or taking any, bad faith efforts in
15 attempting to establish grounds for termination or non-renewal of
16 PLAINTIFF'S franchise;
- 17 3. An award of compensatory damages as allowed under the PMPA which
18 were incurred as a proximate result of PACWEST's violations of the PMPA;
- 19 4. Any other equitable relief which the Court determines is necessary in order
20 to remedy the effect of PACWEST's willful failure to comply with the
21 PMPA;
- 22 5. An award of exemplary damages in an amount to deter further violations of
23 the PMPA as a result of PACWEST's willful disregard of the requirements
24 of the PMPA and the rights of PLAINTIFF;
- 25 6. An award of attorneys' fees, expert fees and costs under the PMPA in
26 connection with bringing the instant action pursuant to the PMPA;

27 AS TO THE SECOND CLAIM FOR RELIEF:

- 1 7. An award of actual damages in an amount according to proof at the time of
- 2 trial, incurred as a proximate result of each of PACWEST's violations of the
- 3 CPA, GDBRA and FIPA;
- 4 8. An award of treble damages, in an amount sufficient to deter further
- 5 violations of the CPA, GDBRA and FIPA, as a result of PACWEST's
- 6 willful disregard of the requirements of the CPA, GDBRA and FIPA and the
- 7 rights of PLAINTIFF in connection with the franchise agreement pursuant to
- 8 RCW 19.86.090.7;
- 9 9. An award of attorneys' fees and costs under the CPA, GDBRA and FIPA in
- 10 connection with bringing the instant action;
- 11 10. A temporary restraining order/preliminary injunction/permanent injunction
- 12 restraining and enjoining PACWEST, its agents, employees, officers,
- 13 directors, managing agents, joint venturers, attorneys, affiliates or
- 14 subsidiaries, from attempting termination or non-renewal of PLAINTIFF's
- 15 franchise or taking any further steps towards the termination or non-renewal
- 16 of PLAINTIFF's franchise;
- 17 11. A temporary restraining order/preliminary injunction/permanent injunction
- 18 restraining and enjoining PACWEST, its agents, employees, officers,
- 19 directors, managing agents, joint venturers, attorneys, affiliates or
- 20 subsidiaries, from attempting to take, or taking any, bad faith efforts in
- 21 attempting to establish grounds for termination or non-renewal of
- 22 PLAINTIFF'S franchise;

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AS TO ALL CAUSES OF ACTION:

12. For costs of suit herein incurred; and

13. For such other and further relief as the Court may deem proper.

Dated: August 19, 2016

By: /s/ Harry B. Platis
Harry B. Platis
PLATIS LAW FIRM
Attorney for Plaintiff

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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure, Rule 38, PLAINTIFF hereby demands a trial by jury of all claims herein which are properly the subject of a trial by jury.

Dated: August 19, 2016

By: /s/ Harry B. Platis
PLATIS LAW FIRM
Harry B. Platis
Attorney for Plaintiff