

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ROBERT MISCHEL,

Plaintiff,

v.

GANNAWAY WEB HOLDINGS, LLC d/b/a  
"WORLDNOW" and ALBERT C. GANNAWAY  
III, in his personal and professional capacities,

Defendants.

Civil Action No.:

**IRIZARRY, J.**  
**COMPLAINT**

**DECLARATORY RELIEF  
REQUESTED**

**SCANLON, M.J.**

Plaintiff Robert Mischel ("Mr. Mischel"), by and through undersigned counsel, Wigdor LLP, as and for his Complaint in this action against Defendants Gannaway Web Holdings, LLC d/b/a "WorldNow" ("WorldNow" or "the Company"), and Albert C. Gannaway III, in his professional and personal capacities ("Defendant Gannaway") (WorldNow and Defendant Gannaway together, "Defendants"), hereby alleges as follows:

**PRELIMINARY STATEMENT**

1. Robert Mischel, the 60 year-old, loyal and highly-successful former Chief Financial Officer ("CFO"), Chief Operating Officer ("COO") and Treasurer of WorldNow, brings this action to redress Defendants' blatant, repeated and continuing violations of his employment agreement (the "Employment Agreement"), as well as the egregious discrimination to which he has been subjected at the hands of Defendants. Despite the fact that the Employment Agreement provides that: "[Mr. Mischel] shall be employed as the Chief Financial Officer, Treasurer and Chief Operating Officer of the Company [WorldNow] and, as such, shall have authority and responsibility (including hiring and firing of personnel) for those operations of the Company placed under the employee's control," Defendants have effectively terminated Mr.

Mischel's employment with regard to these positions. Mr. Mischel's duties, responsibilities and direct reports have been removed, and his position with WorldNow no longer resembles that of a CFO, COO and Treasurer.

2. Additionally, Mr. Mischel has been subjected to repeated and constant screaming fits by Defendant Gannaway, including one that a colleague states was the most vicious verbal attack he had seen in his 40 years in the professional world, and another in which Defendant Gannaway told Mr. Mischel that their friendship was "dead," that he would be the "toughest" and "meanest" "Marine Sergeant," that Mr. Mischel would be his "grunt," and that he would "pound on [Mr. Mischel]" like Mr. Mischel has "never been pounded on before." Rather than being isolated incidents or rare occurrences, this type of hostility has been directed at Mr. Mischel on a routine basis, including in front of clients and colleagues, and Mr. Mischel lives in constant fear that Defendant Gannaway will explode at any moment.

3. Unfortunately, it has become clear that Defendant Gannaway's treatment of Mr. Mischel constitutes blatant age discrimination. Defendant Gannaway has made repeated negative age-based comments to and about Mr. Mischel, and in front of colleagues and clients, and has effectively reorganized the entire Company by replacing its older employees and Board members with younger and less experienced individuals, including, *inter alia*: (i) removing the three members of the Board of Directors (the "Board") that Defendant Gannaway controls, one of whom, Mr. Mischel, was 59, and the other two of whom are in their 70s, and replacing them with individuals decades younger and less experienced; (ii) effectively terminating Mr. Mischel and replacing him with an employee decades younger and far less qualified; and (iii) forcing WorldNow's former General Counsel (in his 70s) to resign from that position and replacing him with an individual decades younger and far less experienced.

4. Though Mr. Mischel has been effectively terminated, he is forced to report to work each day and perform duties that are outside of the scope of his contractually guaranteed positions, and are oftentimes belittling and humiliating. Therefore, Mr. Mischel seeks a declaration that Defendants have breached his contract and terminated Mr. Mischel without cause pursuant to applicable provisions in the Employment Agreement. Mr. Mischel likewise seeks a declaration that the non-compete and non-solicit provisions of his Employment Agreement are unenforceable as a result of Defendants' breaches.

5. If Mr. Mischel is not granted the declaratory relief sought, Defendants will continue to be permitted to force Mr. Mischel to come to work each day and perform duties that are inconsistent with his contractually guaranteed positions of CFO, COO and Treasurer. Moreover, given that Mr. Mischel has been effectively terminated, he must be relieved of any obligations not to compete or solicit, as, at the age of 60, it will be nearly impossible for Mr. Mischel to fundamentally change his career path and enter into a new industry.

6. Accordingly, Mr. Mischel brings this action seeking declaratory, injunctive and equitable relief, as well as monetary and non-monetary damages, to redress Defendants' unlawful employment practices in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 *et seq.* ("ADEA"), the New York State Executive Law §§290 *et seq.* ("NYSHRL"), and the Administrative Code of the City of New York §§8-101 *et seq.* ("NYCHRL").

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343, as this action involves federal questions regarding the deprivation of Plaintiff's rights under federal law, specifically, the ADEA. Furthermore, this Court has

jurisdiction over Plaintiff's First Cause of Action for Declaratory Judgment pursuant to 28 U.S.C. § 2201.

8. This Court has supplemental jurisdiction over Plaintiff's related claims arising under state and/or local law pursuant to 28 U.S.C. § 1367(a).

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to this action occurred in this district.

### **PARTIES**

10. Mr. Mischel is a 60 year-old employee of WorldNow and resides in the State of New York, Westchester County. At all relevant times, Mr. Mischel was and is an "employee" under all applicable statutes.

11. WorldNow is a Delaware Limited Liability Company with a principal place of business in Queens, New York. At all relevant times, WorldNow was and is an "employer" under all relevant statutes.

12. Defendant Gannaway is the Chief Executive Officer of WorldNow. At all relevant times, Defendant Gannaway was and is an "employer" and a "person" under all relevant statutes. At all relevant times herein, Defendant Gannaway aided, abetted and/or directly participated in the unlawful actions taken against Plaintiff described herein, including unlawfully terminating Plaintiff from his contractually guaranteed positions with WorldNow.

### **PROCEDURAL REQUIREMENTS**

13. Plaintiff filed a charge of discrimination and retaliation with the Equal Employment Opportunity Commission ("EEOC") on or around June 21, 2013, alleging violations of the ADEA. On April 28, 2014, the EEOC issued a Notice of Right to Sue. This

Complaint is being filed more than 60 days after Mr. Mischel's EEOC filing, and within 90 days of the date of the aforementioned Notice of Right to Sue.

14. Pursuant to NYCHRL § 8-502, Mr. Mischel will serve a copy of this Complaint upon the New York City Commission on Human Rights and the New York City Law Department, Office of the Corporation Counsel, within ten days of its filing, thereby satisfying the notice requirements of that section.

15. Any and all other prerequisites to the filing of this suit have been met.

### **FACTUAL ALLEGATIONS**

#### **I. Mr. Mischel's Employment with WorldNow**

16. Mr. Mischel has been employed by WorldNow for over a decade.

17. Mr. Mischel's employment with WorldNow is governed by the terms of the Employment Agreement, which provides: "The Employee [Mr. Mischel] shall be employed as the Chief Financial Officer, Treasurer and Chief Operating Officer of the Company [WorldNow] and, as such, *shall have authority and responsibility (including hiring and firing of personnel) for those operations of the Company placed under the employee's control.*" (emphasis added).

A true and accurate copy of the Employment Agreement is attached hereto as **Exhibit A**.

18. Section 7(c) of the Employment Agreement states:

If the Employee's employment hereunder is terminated by the Company for any reason other than (a) for Cause, or (b) by reason of Death or Disability, then the Employee shall be entitled to the following only:

(i) the Company shall pay the Employee all Accrued Compensation, a Pro Rata Bonus, if applicable, and Pro Rata Profit Participation, if applicable, in each case pursuant to the terms of paragraphs 7(b)(ii) and (iii) hereof, respectively; and

(ii) the Company shall continue to pay Employee his Base Salary (at the rate his time of termination) at the times set forth in paragraph 3(a) for the remainder of the Term.

19. Mr. Mischel's Employment Agreement runs through December 31, 2015.

20. Throughout Mr. Mischel's employment, his performance has been excellent and he has never been the subject of any warning or discipline concerning his performance.

21. By way of example only, Defendant Gannaway often stated that Mr. Mischel's performance has saved WorldNow and his \$33,000,000 investment in the Company.

22. Also by way of example only, under Mr. Mischel's leadership and guidance, WorldNow has achieved positive earnings before interest, taxes, depreciation and amortization ("EBITDA") in every single month since July of 2003. Positive EBITDA is a recognized indication of financial success.

23. More recently, and despite Mr. Mischel's being forced to work in the extremely hostile environment described below, in both 2012 and 2013, WorldNow achieved record earnings and the Company's valuation improved by over 30% from 2012 to 2013.

24. 2014 is on pace to be a record year from both a revenue and profitability standpoint, and the most recent valuation of the Company was up 30% from the prior year's valuation.

## **II. Defendants' Effective Termination of Mr. Mischel**

25. Despite Mr. Mischel's outstanding performance, Defendants have effectively terminated Mr. Mischel from his contractually guaranteed positions of CFO, COO and Treasurer, and taken away his corresponding responsibilities.

26. Defendant Gannaway has unambiguously stated on numerous occasions that Mr. Mischel is no longer the CFO of WorldNow, and that Mr. Mischel was being replaced as CFO by an individual named Kevin Dailey.

27. This was stated directly to Mr. Mischel, including on April 15, 2013, April 30, 2013 and May 16, 2013.

28. The decision to terminate Mr. Mischel's position as CFO also was announced to others in the office, including on April 16, 2013, when Defendant Gannaway informed John Wilk, WorldNow's current General Counsel, Inna Vartlesky, currently a Senior Vice President of the Finance team, and Joe Sticca, the current Chief Product Officer, of his decision to terminate Mr. Mischel's employment as the Company's CFO.

29. Defendant Gannaway repeated this in the office on other occasions as well, including on or around May 9, 2013 and on or around May 22, 2013.

30. On April 29, 2013, Victor Miller, who was at that time a consultant for WorldNow, wrote an email to, *inter alia*, Defendant Gannaway. The email stated, in part, "Gary intends to hire Kevin Dailey as his new CFO . . . As a courtesy, before hiring Kevin, Kevin and I are scheduled to meet with Paul McTear [WorldNow's minority investor] . . . before formally bringing Kevin on board. Kevin's start date is scheduled for the first week of May."

31. On May 7, 2013, a Department Head Meeting Agenda for the following day's Department Head Meeting was circulated. The agenda refers to "management changes," which, upon information and belief, refers to Mr. Mischel's replacement as CFO.

32. On May 16, 2013, Defendant Gannaway wrote an email in which he stated that he had "added a new C-level Executive," which, upon information and belief, refers to Mr. Mischel's replacement as CFO.

33. On May 28, 2013, an affidavit was put together with the influence of Mr. Wilk that listed Mr. Mischel's title only as COO, and not CFO.

34. Defendant Gannaway admitted that he wanted to push Mr. Mischel aside, and did so.

35. Mr. Mischel's duties as CFO, as well as those as COO and Treasurer, have been revoked in violation of the Employment Agreement. By way of example only, Defendant Gannaway has cut Mr. Mischel out of decision-making concerning high level financial matters, including, but not limited to: (i) Defendant Gannaway signing a \$600,000 deal to license a social media platform without consulting Mr. Mischel in June 2013; (ii) Defendant Gannaway and Mr. Dailey discussing potentially hiring an investment banking firm; (iii) Defendant Gannaway hiring and giving raises to a number of individuals without consulting Mr. Mischel regarding the Company's budget; (iv) Defendant Gannaway forbidding Mr. Mischel to speak with key investors; and (v) Defendant Gannaway failing to consult with Mr. Mischel regarding a number of other financial matters, instead consulting with Mr. Dailey or Ms. Vartlesky.

36. Defendant Gannaway also has repeatedly concealed information concerning WorldNow's finances from Mr. Mischel, and specifically excluded Mr. Mischel from the process of meeting with prospective lenders from whom WorldNow sought financing of up to \$20,000,000. This is an extremely significant amount given that WorldNow's current bank financing is only \$5,500,000.

37. Defendant Gannaway also excluded Mr. Mischel from the process of conducting financial due diligence with regard to a very material prospective acquisition, including by excluding him from meeting with the target company's financial staff and from most meetings and calls with executives from the target company.



38. Similarly, Defendant Gannaway has systematically revoked the vast majority of Mr. Mischel's direct reports in violation of his Employment Agreement.

39. By way of example only, in 2011, the following senior management reported to Mr. Mischel: (i) General Counsel; (ii) Vice President of Finance; (iii) Senior Vice President of Product Development; (iv) Vice President of Local Sales; (v) Vice President of National Sales; and (vi) Director of Human Resources.

40. All of Mr. Mischel's direct reports have been taken away from him other than General Counsel and the Senior Vice President of Finance, both of whom were placed in those positions without Mr. Mischel's input. These individuals, as well as other team leads that used to report to Mr. Mischel, were also given raises without the input of Mr. Mischel, the purported CFO, COO and Treasurer.

41. Moreover, even though the General Counsel (Mr. Wilk) and Senior Vice President of Finance (Ms. Vartlesky) are supposed to be reporting to Mr. Mischel, Defendant Gannaway routinely sidesteps him and deals with Mr. Wilk and Ms. Vartlesky on material matters without consulting Mr. Mischel.

42. Defendant Gannaway also has taken away decision making on the timing of revenue share payments to customers and payments to third party vendors.

43. Moreover, without consulting Mr. Mischel, Defendant Gannaway promoted the Senior Vice President of Product Development to Chief Product Officer, the Vice President of National Ad Sales to Senior Vice President of National Ad Sales, and several other senior management to other "C" level titles.

44. Defendant Gannaway also continues to leave Mr. Mischel out of team meetings with top executives of the Company with regard to the Company's core products and strategy.

45. Simply put, Mr. Mischel is no longer permitted to exercise his “authority and responsibility (including hiring and firing of personnel) for those operations of the Company placed under [his] control.” This is with regard to his duties as CFO, COO and Treasurer.

46. As a result of WorldNow’s ongoing and unlawful breach of Mr. Mischel’s Employment Agreement, Mr. Mischel is forced to report to work every day and perform functions that are simply not those that should be performed by a CFO, COO and Treasurer. Many of these functions are humiliating. By way of example only, Mr. Mischel has been required to take notes for Defendant Gannaway in important business meetings and in front of colleagues.

47. If the Court does not declare that Defendants have and continue to breach Mr. Mischel’s Employment Agreement and effectively terminated his employment without cause pursuant to Section 7(c) of the Employment Agreement, Defendants will be able to hold Mr. Mischel hostage by forcing him to continue to perform duties far outside the scope of contractually guaranteed positions.

### **III. Discrimination Committed Against Mr. Mischel**

48. The adverse actions described above, including the revocation of Mr. Mischel’s contractually guaranteed duties and responsibilities, and the effective termination of his employment as WorldNow’s CFO, COO and Treasurer, were taken because of Mr. Mischel’s age (60).

49. Defendant Gannaway has made numerous disparaging age-based comments directed towards Mr. Mischel, including telling him that he looks too old.

50. Defendant Gannaway also has requested that Mr. Mischel dye his hair because it is graying.

51. Defendant Gannaway has likewise commented negatively on the gray hair of other employees. By way of example only, in or around April, 2013, Defendant Gannaway demanded that one gray-haired employee's photograph be removed from a slide in a presentation because there would be "too much gray hair" on the slide if the photograph was included.

52. Incredibly, Defendant Gannaway explicitly told Mr. Mischel that he wanted "younger" employees displayed in place of the gray-haired employee.

53. Mr. Mischel's initial replacement as CFO, Mr. Dailey, is decades younger and unqualified for the position. Mr. Dailey is not a certified public accountant, nor does he have anywhere near the experience and expertise that Mr. Mischel possesses.

54. WorldNow has articulated, to Mr. Mischel, a purported non-discriminatory justification for revoking his CFO duties and responsibilities; namely, that the Company's COO should not also be its CFO. However, Mr. Mischel successfully occupied the COO and CFO positions for over a decade, and having one individual occupy both roles is not unique or unusual at all.

55. In May, 2013, Mr. Mischel also was replaced by Mr. Dailey as a member of the Board.

56. At the same time, the other two members of the Board appointed by Defendant Gannaway (other than himself), also were replaced. These Board members were former General Counsel George Fearon (approximately 70 years old) and Joseph Bartlett (in his late-70s). Both were replaced by individuals decades their junior and far less experienced. Thus, in one fell swoop, Defendant Gannaway replaced all three of the Board members that he controls with significantly younger individuals.

57. Defendant Gannaway also requested that Mr. Fearon retire as WorldNow's General Counsel. Mr. Fearon ultimately was pressured into giving up that position, and has been replaced by Mr. Wilk, yet another less-experienced individual who is decades Mr. Fearon's junior.

58. Mr. Mischel also has been subjected to an extremely hostile working environment because of his age.

59. Defendant Gannaway has often screamed at and berated Mr. Mischel. On at least one occasion, one of these frequent fits of rage lasted more than four hours.

60. Defendant Gannaway also yelled at and threatened to fire Mr. Mischel on numerous occasions, including one instance in December, 2012 that was described by a witness as the most aggressive attack he had witnessed in his forty-plus years in the professional world.

61. Two days following that tirade, Defendant Gannaway yelled at Mr. Mischel again, stating that their friendship was "dead," that he would be the "toughest" and "meanest" "Marine Sergeant," that Mr. Mischel would be his "grunt," and that he would "pound on [Mr. Mischel]" like Mr. Mischel has "never been pounded on before."

62. Defendant Gannaway also has berated Mr. Mischel at a dinner with clients and colleagues.

63. Rather than being isolated incidents or rare occurrences, this type of hostility has been directed at Mr. Mischel on a routine basis.

#### **IV. WorldNow's Consciousness of Guilt**

64. After putting the Company on notice of the unlawful actions taken against Mr. Mischel, WorldNow attempted to "undo" the damage by pretending as though Mr. Mischel was still its acting CFO.

65. On June 12, 2013, Mr. Mischel's attorneys forwarded a draft EEOC Charge (the "draft Charge") to WorldNow's then-attorneys, Littler Mendelson P.C. The draft Charge contained Mr. Mischel's allegation that "on May 28, 2013, an affidavit was put together with the influence of Mr. Wilk that listed [Mr. Mischel's] title only as [Chief Operating Officer] and not CFO."

66. That very same day, Mr. Wilk sent an email in a transparent attempt to absolve WorldNow of any responsibility for the affidavit. In the email, he claimed that he had nothing to do with drafting the affidavit, and that Mr. Mischel's titles should include the CFO position.

67. Similarly, the draft EEOC Charge described the fact that Defendant Gannaway often cut Mr. Mischel out of key discussions and projects (as discussed above). The day after receiving the draft EEOC Charge, Kevin Dailey, Mr. Mischel's intended replacement as CFO, wrote an email CC'ing Defendant Gannaway in an effort to make it seem as though Mr. Mischel had been involved in an important project.

68. Nothing more clearly illustrates WorldNow's consciousness of guilt than its subsequent decision, made after the EEOC Charge was actually filed, to remove Mr. Dailey from the Board and either fire him as CFO, or not formally hire him to the position.

69. However, the fact that Mr. Dailey ultimately did not replace Mr. Mischel, and the fact that WorldNow refers to Mr. Mischel as its CFO, is neither here nor there.

70. As described above, while WorldNow currently refers to Mr. Mischel as its CFO, his duties, responsibilities, direct reports and contractually guaranteed rights have been revoked and not restored. Thus, WorldNow's purported attempt to reverse Mr. Mischel's effective termination as CFO is nothing more than a transparent effort to avoid liability for the Company's unlawful actions.

**V. Other Relevant Contractual Provisions**

71. Section 8 of the Employment Agreement states as follows:

Noncompetition. Employee agrees that (A) while he is employed by the Company (whether or not during the Term of this Agreement or any renewal or extension thereof, and for any period in which Employee is an at-will employee of the Company thereafter), and (B) for a period of one year following the termination of Employee's employment for any reason (the "Noncompetition Period"): he Will not, directly or indirectly, without prior written consent of the Company, be employed by, provide consulting or other services to (either as an individual or through any other person or entity), own, manage, operate, join, control, participate in, or be connected as a stockholder, partner, employee or otherwise with any business, individual, partner, firm, corporation or other entity (a) for which the Company has rendered services at any time prior to the termination of Employee's employment with the Company, or (b) with which the Employee and/or Gannaway Group actively negotiated during the six (6) months prior to the termination of Employee's employment with the Company or (c) is or becomes a competitor of Company (such activities collective, the "Competitive Activities"). The parties expressly agree that this covenant and the covenants contained in paragraphs 8-10 hereof shall survive the termination of this Agreement or of Employee's employment hereunder.

72. Section 10 of the Employment Agreement further states:

Antisolicitation. Employee agrees that (A) during any period that he is employed by the Company (whether or not during the Term of this Agreement or any renewal or extension thereof, or for any period of at-will employment thereafter) and (B) for a period of two years following the termination of his employment for any reason (the "Antisolicitation Period"); he will not influence or attempt to influence customers of the Company or any of its present or future subsidiaries or affiliates, either directly or indirectly, to divert their business from the Company to any individual, partnership, firm, corporation or other entity that is in competition with the business of the Company or any subsidiary or affiliate of the Company at any time during the Antisolicitation Period. Employee promises and agrees that during the Antisolicitation Period he will not directly or indirectly solicit any of the Company's employees or contractors to work for any other business, individual, partnership, firm, corporation or other entity

in competition with the Company or any subsidiaries or affiliates of the Company at any time during the Antisolicitation Period.

73. In addition to his uncertainty as to his current employment status and obligations *vis-à-vis* continuing to work for Defendants, Mr. Mischel also is uncertain as to what his rights and obligations are after leaving WorldNow. Specifically, if Defendants are deemed to have terminated Mr. Mischel without cause, Mr. Mischel requires guidance as to his obligations regarding Sections 8 and 10 of the Employment Agreement referenced above.

74. At 60 years old, Mr. Mischel is running out of time to obtain new employment that is commensurate with his skill and experience. Mr. Mischel's ability to secure a new job will be even more limited if he is forced to switch industries at this point in his career.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Declaratory Judgment)**

75. Plaintiff hereby repeats and re-alleges each and every allegation in the above paragraphs, inclusive, as if fully set forth herein.

76. Plaintiff seeks a declaratory judgment: (i) that Defendants have breached his Employment Agreement by terminating Mr. Mischel without cause pursuant to Section 7(c) of the Employment Agreement; and (ii) that Mr. Mischel should not be bound by Sections 8 and 10 of the Employment Agreement.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Discrimination in Violation of the ADEA)**

77. Plaintiff hereby repeats and re-alleges each and every allegation in the above paragraphs, inclusive, as if fully set forth herein.

78. Defendants have discriminated against Plaintiff on the basis of his age in violation of the ADEA by, *inter alia*, revoking and significantly diminishing his material duties and

responsibilities of his contractually guaranteed positions as CFO and COO, removing him from the Board of Directors and subjecting him to a hostile work environment.

79. Plaintiff seeks all damages resulting from Defendants' unlawful discriminatory conduct in violation of the ADEA

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Discrimination in Violation of NYSHRL)**

80. Plaintiff hereby repeats and re-alleges each and every allegation in the above paragraphs, inclusive, as if fully set forth herein.

81. Defendants have discriminated against Plaintiff on the basis of his age in violation of the NYSHRL by, *inter alia*, revoking and significantly diminishing his material duties and responsibilities of his contractually guaranteed positions as CFO and COO, removing him from the Board of Directors and subjecting him to a hostile work environment.

82. Plaintiff seeks all damages resulting from Defendants' unlawful discriminatory conduct in violation of the NYSHRL.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(Aiding and Abetting Violations of NYSHRL Against Defendant Gannaway)**

83. Plaintiff hereby repeats and re-alleges each and every allegation in the above paragraphs, inclusive, as if fully set forth herein.

84. Defendant Gannaway has knowingly or recklessly aided, abetted and directly participated in the unlawful employment practices perpetrated against Plaintiff in violation of the NYSHRL.

85. Plaintiff seeks all damages resulting from Defendant Gannaway's unlawful aiding and abetting in violation of the NYSHRL.



**AS AND FOR A FIFTH CAUSE OF ACTION**  
**(Discrimination in Violation of NYCHRL)**

86. Plaintiff hereby repeats and re-alleges each and every allegation in the above paragraphs, inclusive, as if fully set forth herein.

87. Defendants have discriminated against Plaintiff on the basis of his age in violation of the NYCHRL by, *inter alia*, revoking and significantly diminishing his material duties and responsibilities of his contractually guaranteed positions as CFO and COO, removing him from the Board of Directors and subjecting him to a hostile work environment.

88. Plaintiff seeks all damages resulting from Defendants' unlawful discriminatory conduct in violation of the NYCHRL.

**AS AND FOR A SIXTH CAUSE OF ACTION**  
**(Aiding and Abetting Violations of NYCHRL Against Defendant Gannaway)**

89. Plaintiff hereby repeats and re-alleges each and every allegation in the above paragraphs, inclusive, as if fully set forth herein.

90. Defendant Gannaway has knowingly or recklessly aided, abetted and directly participated in the unlawful employment practices perpetrated against Plaintiff in violation of the NYCHRL.

91. Plaintiff seeks all damages resulting from Defendant Gannaway's unlawful aiding and abetting in violation of the NYCHRL.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Robert Mischel prays that the Court enter judgment in his favor and against Defendants, containing the following relief:

A. A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the United States and the State and City of New York;

- B. An injunction and order permanently restraining Defendants from engaging in such unlawful conduct;
- C. Reinstatement to the positions of CFO, COO and Treasurer;
- D. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all monetary and/or economic harm;
- E. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for harm to his professional and personal reputations and loss of career fulfillment;
- F. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all non-monetary and/or compensatory harm, including but not limited to, compensation for his mental anguish;
- G. An award of damages for any and all other monetary and/or non-monetary losses suffered by Plaintiff in an amount to be determined at trial, plus prejudgment interest;
- H. An award of punitive damages;
- I. An award of liquidated damages;
- J. An award of costs that Plaintiff has incurred in this action, as well as Plaintiff's reasonable attorneys' fees to the fullest extent permitted by law; and
- K. Such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: New York, New York  
July 17, 2014

Respectfully submitted,

**WIGDOR LLP**

By: 

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*Attorneys for Plaintiff*

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## EMPLOYMENT AGREEMENT

THIS AGREEMENT (the "Agreement") entered into as of the 1st day of January, 2011, by and between GANNAWAY WEB HOLDINGS, LLC, d/b/a WorldNow 27-01 Queens Plaza North, Long Island City, New York 11101 (the "Company" or "Employer") and ROBERT MISCHER, 47 Livingston Avenue, Dobbs Ferry, New York 10522, an individual (the "Employee") (hereinafter collectively referred to as "the parties").

WHEREAS, the Company wishes to retain the services of the Employee for the period set forth herein and under the terms and conditions provided in this Agreement, and the Employee wishes to serve in the employ of the Company on the terms and conditions provided in this Agreement;

NOW, THEREFORE, in consideration of the respective agreements of the parties contained herein, it is agreed as follows:

1. Employment. (a) The Company hereby retains the services of the Employee for the purpose, among others, of managing the financial and business affairs of Company. In the performance of Employee's duties and obligations, Employee shall at all times be subject to the control and direction of and shall report directly to Albert Gannaway, III ("Mr. Gannaway"), or the successor or designee of Mr. Gannaway and the Company Board of Managers.

(b) The Employee shall be employed as the Chief Financial Officer, Treasurer and Chief Operating Officer of the Company and, as such, shall have authority and responsibility (including hiring and firing of personnel) for those operations of the Company placed under Employee's control, (except that hiring and firing of executive level personnel and engaging professionals such as attorneys and accountants shall be upon the prior approval of Mr. Gannaway or the Company's Board of Managers as required.) and shall perform such other and related duties as may from time to time be assigned.

(c) Excluding periods of vacation and sick leave to which the Employee is entitled, and except as expressly provided herein, the Employee shall devote his full and exclusive attention and time to the business and affairs of the Company, shall diligently discharge the responsibilities assigned to him hereunder, and shall promote the interest and welfare of the Company. Additionally, the Employee at any time during the term hereof may (i) subject to Mr. Gannaway's prior approval, serve on corporate, civic or charitable boards or committees, (ii)

manage personal investments, (iii) deliver lectures and teach at educational institutions, provided that such activities do not interfere with the performance of his responsibilities hereunder, (iv) attend such courses for continuing professional education as may be required for Employee to maintain good standing as a professional accountant.

(d) The Employee's primary place of business shall be located in the City of New York, however, the Employee shall undertake such travel as is or may be necessary in the interests of the Company.

2. Term. The term of employment under this Agreement (the "Term") shall commence on January 1, 2011 (the "Commencement Date") and end on December 31, 2015.

3. Compensation.

(a) Base Salary. The Company agrees to pay or cause to be paid to the Employee during the Term of this Agreement a total base salary of \$300,000 per year, payable in equal monthly installments. There shall be annual increases to such salary (effective on each anniversary of this Agreement) equal to any increase in the calendar annual CPI<sup>1</sup>. The salary amount payable to Employee under this Section 3(a) is referred to in this employment agreement as the "Base Salary". Such salary shall be payable in accordance with the Company's customary practices applicable to its employees.

(b) Annual Bonus. Not later than 10 days after the end of each calendar year during the Term hereof, provided Company has met or exceeded its Annual Budget (as herein defined), Company shall pay Employee a lump sum bonus payment in an amount equal to twenty-five percent (25%) of the Employee's then current Base Salary. The term "Annual Budget" as used herein shall mean the annual budget approved by the Company Board of Managers as same may have been modified with the approval of the Company Board of Managers.

(c) Senior Executive Incentive Compensation Plan. In addition to the payments set forth in 3(a) and 3(b) above, Employee shall be eligible to participate in any Senior Executive Incentive Compensation Plan which from time to time shall be established by Company or the Company Board of Managers or its Compensation Committee.

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<sup>1</sup> New York, Northern New Jersey, Long Island Consumer Price Index for all urban consumers.

4. Employee Benefits.

(a) Plans. The Employee shall be entitled to participate in those employee benefit plans maintained by the Company that are made available to employees generally, such as pension, health insurance, disability, dental, life or travel accident insurance, or alternatively, Employee shall be entitled to benefits comparable to such plans. The Employee's participation in such plans, shall be on the same basis and terms as are applicable to employees of the Company generally, as such plans may from time to time be modified, revoked or replaced in the Company's sole discretion.

(b) Fringe Benefits and Perquisites. The Employee shall be entitled to those fringe benefits and perquisites (e.g., Company cars, club dues, physical examinations, financial planning and tax preparation services), if any, that are generally made available by the Company to its similarly situated employees.

(c) Eligibility. Notwithstanding anything to the contrary herein, Employee shall be entitled to benefits from the Company contained in Paragraphs 4(a) and 4(b) hereof commencing on the first day of employment with the Company hereunder.

(d) Business Expenses. The Employee shall be entitled to receive prompt reimbursement of all reasonable expenses actually incurred by him in connection with the performance of his duties hereunder or for promoting, pursuing or otherwise furthering the business or interests of the Company, to the extent these are properly documented and promptly submitted for reimbursement and are otherwise in accord with the Company's reimbursement policies and/or practices. Such reimbursement shall include the reasonable costs incurred by Employee in connection with business-class travel and first-class or business-class accommodations for business travel to the extent normally provided to similarly situated employees of the Company, however, Employee shall obtain prior approval from the Company for all intercontinental travel. In addition, Employee shall be reimbursed for the cost of continuing professional education courses and seminars and shall be reimbursed for AICPA and State Board of Accounting dues.

(e) Office and Facilities. The Employee shall be provided with an appropriate office with such secretarial and other support facilities as are adequate for the performance of his duties hereunder.

(f) Life Insurance. Employee understands that the Company may, in its sole discretion, decide to purchase a key-man life insurance policy on the life or disability of Employee. Employee agrees to cooperate fully with the Company in obtaining such a key-man life and/or disability insurance policy, including submitting to reasonable physical examinations if required to do so by the insurance carrier or other entity. Employee acknowledges that (i) the Company will be responsible for any premiums due on the key-man life or disability insurance policy, (ii) all incidents of ownership in any such key-man life or disability insurance policy with respect to the Employee are held by the Company, and (iii) the Company will be the sole beneficiary of any such policy or will appoint, in its sole discretion, a beneficiary. The inability of the Company to secure any such policy shall not affect the obligations of the Company hereunder.

5. Vacation. The Employee shall be entitled to annual vacation in accordance with the policies as periodically established by the Company, which shall in no event be less than four (4) weeks per year vacation with pay (for purposes of accrual, one week's vacation will be considered earned and accrued upon completion of each three months' of continuous employment). To the extent the Employee does not use the full vacation period during any year during the term hereof, the unused balance shall accrue and be carried over into subsequent years; provided, however, that no more than an aggregate of two (2) weeks may be carried forward from one year to the next with respect to unused vacation time. The Employee shall maintain and submit on a yearly basis accurate records of his vacation time usage.

6. Termination. The Employee's employment hereunder may be terminated under the following circumstances:

(a) Cause. The Company may terminate the Employee's employment for "Cause." "Cause" as used herein means:

(i) the Employee's material breach of this Agreement;



(ii) indictment (or its equivalent) of the Employee for any crime constituting a felony in the jurisdiction in which committed, or commission of any other crime or action involving theft, fraud, dishonesty or moral turpitude;

(iii) the failure or refusal of the Employee to follow one or more lawful and proper directives of the Company delivered to the Employee which directives are fair and reasonable and commensurate with the position held by Employee;

(iv) gross negligence in the performance of Employee's duties; or

(v) any misconduct having a materially adverse effect upon the Company, its products or services, or upon its reputation or legal position;

provided, however, that no termination of the Employee's employment shall be for Cause until the Employee shall have received a copy of a written notice so stating.

(b) Disability. The Company may terminate the Employee's employment upon the Employee's "Disability", which, for purposes of this Agreement, means a physical or mental infirmity which impairs the Employee's ability to perform his essential job functions with and without a reasonable accommodation, which continues for a period of at least one hundred eighty (180) consecutive days or which an independent physician certifies with a reasonable degree of medical certainty is likely to persist for such period.

7. Compensation Upon Termination. Upon termination of the Employee's employment during the Term of this Agreement (including any extensions thereof), the Employee shall be entitled to the following benefits as set forth in this Paragraph 7.

(a) If the Employee's employment is terminated by the Company for Cause or by Employee, the Employee shall be entitled to the following only:

(i) amounts earned or accrued hereunder through the earliest date on which the Company actually severs



Employee's employment (the "termination date") but not paid as of the termination date, only including (A) Base Salary, (B) reimbursement for any and all monies advanced or expenses incurred in connection with the Employee's employment incurred by the Employee on behalf of the Company for the period ending on the termination date, under the terms set forth in paragraph 4(d) above, (C) accrued but unused vacation pay, and (D) any previous compensation which the Employee has previously deferred (including any interest earned or credited thereon) (collectively, "Accrued Compensation").

(b) If the Employee's employment is terminated by the Company due to the Employee's Disability or by reason of the Employee's death, the Employee, or his estate, shall be entitled to the following only:

(i) the Company shall pay the Employee all Accrued Compensation;

(ii) if Employee had been employed more than one-half of the fiscal year in which such termination occurs, the Company shall pay to the Employee, or his estate, if applicable, a pro rata amount, for the period through the termination date, of the total bonus or incentive award under paragraph 3(b), 3(c) or otherwise, if any, that the Employee would have been entitled to receive in respect of the fiscal year in which the Employee's termination date occurs had he continued in employment until the end of such fiscal year, calculated based on performance targets and goals (if applicable) as had been achieved of the Company and by the Employee, as applicable, for such period (a "Pro Rata Bonus");

(iii) six months Base Salary.

(c) If the Employee's employment hereunder is terminated by the Company for any reason other than (a) for Cause, or (b) by reason of Death or Disability, then the Employee shall be entitled to the following only:

(i) the Company shall pay the Employee all Accrued Compensation, a Pro Rata Bonus, if applicable, and Pro

Rata Profit Participation, if applicable, in each case pursuant to the terms of paragraphs 7(b)(ii) and (iii) hereof, respectively; and

(ii) the Company shall continue to pay Employee his Base Salary (at the rate at his time of termination) at the times set forth in paragraph 3(a) for the remainder of the Term

8. Noncompetition. Employee agrees that (A) while he is employed by the Company (whether or not during the Term of this Agreement or any renewal or extension thereof, and for any period in which Employee is an at-will employee of the Company thereafter), and (B) for a period of one year following the termination of Employee's employment for any reason (the "Noncompetition Period"): he will not, directly or indirectly, without prior written consent of the Company, be employed by, provide consulting or other services to (either as an individual or through any other person or entity), own, manage, operate, join, control, participate in, or be connected as a stockholder, partner, employee or otherwise with any business, individual, partner, firm, corporation or other entity (a) for which the Company has rendered services at any time prior to the termination of Employee's employment with the Company, or (b) with which the Employee and/or Gannaway Group actively negotiated during the six (6) months prior to the termination of Employee's employment with the Company or (c) is or becomes a competitor of Company (such activities collective, the "Competitive Activities"). The parties expressly agree that this covenant and the covenants contained in paragraphs 8-10 hereof shall survive the termination of this Agreement or of Employee's employment hereunder.

9. Confidential Information. Employee agrees that (A) during any period that he is employed by the Company (whether or not during the Term of this Agreement or any renewal or extension thereof, or for any period of at-will employment thereafter) and (B) at any time following the termination of his employment for any reason: he will not, directly or indirectly, divulge, furnish or make accessible to any party not authorized by the Company to receive it, any of the proprietary or confidential information or knowledge of the Company, and including without limitation, any financial information, marketing plans, strategies, trade secrets, data, know-how, process, techniques or other proprietary information of the

Company or its affiliates (the "Confidential Information"), other than in the course of performing his duties hereunder and with the consent of the Company, which consent shall not be unreasonably withheld, in accordance with the Company's policies and regulations, as established from time to time, for the protection of the Company's Confidential Information. The term "Confidential Information" does not include, and there shall be no obligation hereunder with respect to, information that is obvious, or that may readily be determined by any person reasonably knowledgeable in the industry in which the Company operates by diligent review and examination of public sources, or that becomes generally available to the public other than as a result of disclosure by the Employee or any agent or other representative thereof. The Employee shall not have any obligation hereunder to keep confidential any Confidential Information to the extent disclosure of any thereof is required by law, or determined in good faith by the Employee during his employment (upon consultation with Mr. Gannaway) to be necessary or appropriate to comply with any legal or regulatory order, regulation or requirement; provided, however, that in the event disclosure is required by law, the Employee shall provide the Company with reasonable notice of such requirement so that the Company may seek an appropriate protective order. Upon termination of Employee's employment by Company, all tangible confidential or proprietary information in the possession of the Employee in any form (electronic or otherwise), shall be returned to the Company, and Employee shall not make or retain any copies or excerpts thereof, except that Employee may retain copies of all materials that may be of an exclusively personal nature to Employee.

10. Antisolicitation. Employee agrees that (A) during any period that he is employed by the Company (whether or not during the Term of this Agreement or any renewal or extension thereof, or for any period of at-will employment thereafter) and (B) for a period of two years following the termination of his employment for any reason (the "Antisolicitation Period"): he will not influence or attempt to influence customers of the Company or any of its present or future subsidiaries or affiliates, either directly or indirectly, to divert their business from the Company to any individual, partnership, firm, corporation or other entity that is in competition with the business of the Company or any subsidiary or affiliate of the Company at any time during the Antisolicitation Period. Employee promises and agrees that during the Antisolicitation

Period he will not directly or indirectly solicit any of the Company's employees or contractors to work for any other business, individual, partnership, firm, corporation or other entity in competition with the Company or any subsidiaries or affiliates of the Company at any time during the Antisolicitation Period.

11. Disclosure to Company, Ownership of Property.

(i) Employee agrees promptly to disclose and deliver to Company copies of any and all literary material, discoveries, improvements, trade secrets, techniques, processes, know-how and any other intellectual property rights, whether or not subject to patent, trademark, copyright or trade secret protection under law and whether or not reduced to practice, which are created by Employee or those under his direction during his employment by the Company and/or which relate to or result from actual or anticipated business, work, research or investigations of the Company or any subsidiary or affiliate, either alone or jointly with others, and which have been reduced to writing (the work being hereinafter collectively referred to as the "Intellectual Property").

(ii) Employee acknowledges and agrees that all the Intellectual Property shall be the sole property of the Company or any other entity designated by it, and Employee hereby assigns to the Company his entire right, title and interest in and to all the Intellectual Property. The Company or any other entity designated by it shall be the sole owner of all domestic and foreign rights pertaining to the Intellectual Property.

(iii) Notwithstanding any provision in this Agreement to the contrary, this Paragraph 11 shall not apply to an invention which was developed entirely on the Employee's own time without using the Company's property, Confidential Information or facilities except for those inventions that either (a) relate at the time of conception or reduction to practice of the invention to the Company's business or actual or demonstrably anticipated research or development, or (b) result from any work performed by the Employee for the Company or its subsidiaries or affiliates.

12. Injunction. Employee agrees that it would be difficult to measure damage to the Company from any breach by Employee of his promises set forth in Paragraphs 8 through 11 of

this Agreement, that injury to the Company from any such breach would be impossible to calculate, and that money damages would therefore be an inadequate remedy for such a breach. Accordingly, Employee agrees that if he shall breach any provision of Paragraphs 8 through 11 of this Agreement or any of them, the Company shall be entitled, in addition to any other remedies it may have, to injunctions or other appropriate orders to restrain any such breach by Employee without showing or proving any actual damage sustained by Company. Additionally, and not in limitation of any of the foregoing, Employee agrees that the Company, at its discretion, may seek an injunction against him in the courts of the State of New York and that Employee shall submit to the jurisdiction of the State and Federal courts located in the State of New York and that service by mail or overnight courier upon Employee (as set forth in Paragraph 16 hereof) shall be effective service of process in any such action and Employee hereby stipulates to the enforceability of any injunction that may issue, even if the laws of the jurisdiction where Employee is then residing would not authorize such injunctive relief.

13. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Company, its successors and assigns. The term "Company" as used herein shall include such successors and assigns. The term "successors and assigns" as used herein shall mean a corporation or other entity acquiring all or substantially all the assets and business of the Company (including this Agreement) whether by operation of law or otherwise. Neither this Agreement nor any right or interest hereunder shall be assignable or transferable by the Employee, his beneficiaries or legal representatives, except with respect to paragraph 7(b) in the event of Employee's death by will or by the laws of descent and distribution.

14. Warranties and Representations.

(a) The Company warrants that it has full power and authority to enter in to this Agreement.

(b) Employee warrants and represents that (i) he has full power and authority to enter and perform this Agreement and that he is not prohibited from doing so by any agreement, contract, understanding or decree with any current or former employer, or any other person or entity.

(c) The parties hereto shall indemnify and hold each other harmless from any and all claims, actions, liabilities and damages (including reasonable attorney's fees) resulting from a breach of any of their respective warranties and representations to the other hereunder.

15. Liability Insurance. The Company shall furnish the Employee, if applicable, with the same Directors' and Officers' liability insurance furnished to other directors or officers from time to time.

16. Notice. For the purposes of this Agreement, notices and all other communications provided for in the Agreement (including the Notice of Termination) shall be in writing and shall be deemed to have been duly given when personally delivered (including by facsimile, receipt confirmed) or sent by certified mail, return receipt requested, postage prepaid, addressed to the following addresses for each party:

To the Company: Gannaway Web Holdings LLC.  
27-01 Queens Plaza North, Suite 502  
Long Island City, NY 11101  
Attn: Mr. Gary Gannaway

with a copy to: George R. Fearon, Esq.  
Phillips Nizer LLP  
666 Fifth Avenue  
New York, NY 10103-0084  
(212) 262-5152 (facsimile)

To the Employee: Mr. Robert Mischel  
47 Livingston Avenue  
Dobbs Ferry, N.Y. 10522

All notices and communications shall be deemed to have been received on the date of delivery thereof or on the third business day after the mailing thereof, except that notice of change of address shall be effective only upon receipt.

17. Miscellaneous. No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Employee and the Company. No waiver by either party hereto at any time



of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreement or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement.

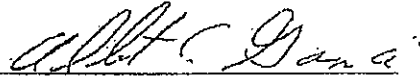
18. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York without giving effect to the conflict of law principles thereof. All actions or proceeding which arise from or relate to this Agreement shall be brought in the courts of the State of New York (State or Federal) which courts the parties hereby agree shall have exclusive jurisdiction thereof.

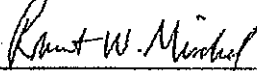
19. Severability; Entire Agreement. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. This Agreement shall constitute the entire agreement between the parties hereto and supersede all prior agreements, if any, understandings and arrangements, oral or written, between the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by its duly authorized officer and the Employee has executed this Agreement as of the day and year first above written.

GANNAWAY WEB HOLDINGS, LLC.

By:

  
Albert C. Gannaway, III  
Chief Executive Officer

  
Robert Mischel