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THE MANAGEMENT COMPANY, LLC
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
16

17 KATHERINE NICHOLS,
18 Complainant,
19 vs.
20 THE TMC COMPANY, LLC, a limited liability
corporation; HENRY T. NICHOLAS, III, an
21 individual; KIM DAVIS, an individual, and
DOES1 through 20, inclusive,
22 Defendants.

23 THE MANAGEMENT COMPANY, LLC, a
limited liability company,
24 Cross-Complainant,
25 vs.
26 KATHERINE NICHOLS, an individual, and
ROES 1 through 20, inclusive,
27 Cross-Defendants.
28

Case No. 30-2009-00118329

Judge Derek W. Hunt, Dept. C24

**THE MANAGEMENT COMPANY, LLC's
CROSS-COMPLAINT AGAINST
KATHERINE NICHOLS FOR:**

**(1) CONVERSION;
(2) BREACH OF DUTY OF LOYALTY;
(3) FRAUD AND DECEIT; and
(4) ACCOUNTING**

Date Action Filed: February 6, 2009
Trial Date: Not Assigned

1 Cross-Complainant The Management Company, LLC (“TMC”) alleges as follows based on
2 information and belief:

3 **INTRODUCTION**

4 1. Plaintiff/Cross-Defendant Katherine Nichols (“Ms. Nichols”) filed the underlying
5 action to divert attention from her own misconduct and fraud and (apparently in her mind) to give
6 her a negotiating position with regard to her embezzlement of TMC assets, as well as her abuse of
7 the trust and authority she was afforded in her job. Ms. Nichols is a sophisticated claimant who
8 TMC believes has a history of making spurious claims against employers; while others have
9 acquiesced, TMC and Defendant Dr. Henry Nicholas, III (“Dr. Nicholas”) have not and will not.

10 2. Before June 2007, when Ms. Nichols began working full-time for Dr. Nicholas and
11 TMC, she was in an unsuccessful, soured relationship with the father of her daughter (with whom
12 she was living), and claimed that she was on the verge of being evicted from her apartment. She
13 told Dr. Nicholas that she was in an abusive relationship and begged him for help in getting away
14 from a difficult situation.

15 3. Moved by her story, Dr. Nicholas arranged for TMC to hire her and pay her a
16 salary of \$80,000.00, plus full benefits for her and her daughter. Dr. Nicholas believed at the time
17 that Ms. Nichols was qualified to do the job (she had many years of human resources experience)
18 and that she could occupy a position of trust and responsibility within his family management
19 company. In addition to offering her a generous annual salary, Dr. Nicholas arranged for TMC to
20 pay her a “start bonus” of \$15,000.00 so that she would have cash to deal with what she had
21 described as an unbearable living situation. Ms. Nichols accepted Dr. Nicholas’s offer with
22 gratitude and began working for TMC on a full-time basis.

23 4. Thereafter, Dr. Nicholas continued showing generosity to Ms. Nichols and her
24 daughter. Among other things, he arranged for TMC to help her and her daughter relocate to a
25 home in August 2007, by paying moving expenses and subsidizing a portion of her rent for nearly
26 one year (totaling approximately \$13,000). With this assistance, Ms. Nichols was able to move
27 into a home in Laguna Beach that was much closer to the school attended by her daughter, as well
28 as escape what she described as an “abusive relationship” with the man who fathered her

1 daughter.¹ Dr. Nicholas also allowed Ms. Nichols to bring her daughter to events at the Nicholas
2 home and on family vacations with the Nicholas children, when Ms. Nichols' job required travel.

3 5. Dr. Nicholas also assisted her by paying for attorney's fees associated with Ms.
4 Nichols' legal dispute with the father of her daughter. In total, Ms. Nichols was receiving
5 compensation in excess of \$100,000, including the salary and other gratuities that she received.

6 6. Ms. Nichols repaid Dr. Nicholas' generosity by stealing and/or misappropriating
7 thousands of dollars from Dr. Nicholas and TMC, lying to Dr. Nicholas and her co-workers and
8 having inappropriate sexual relations with co-workers (including subordinates) and others during
9 what were supposed to be work-hours. Ms. Nichols also began displaying inappropriate and
10 hostile behavior at the Nicholas household towards co-workers as well as Dr. Nicholas' significant
11 other, Kim Davis ("Ms. Davis"). Dr. Nicholas was shocked and perplexed by Ms. Nichols'
12 conduct at the time, which was quite different from her conduct during the prior months of her
13 employment. It now appears that her behavior was calculated to delay the discovery of her
14 misusing TMC funds and engaging in other improper behavior.

15 7. Immediately following a birthday party for Ms. Nichols at the Ritz Hotel in March
16 2008, which cost thousands of dollars and was paid for by TMC, Ms. Nichols failed to return to
17 work. Ms. Nichols continued collecting her salary (which was then nearly \$100,000 a year) for
18 several months even though she was not working. She demanded that she be terminated,
19 presumably to collect unemployment, but by her conduct, effectively quit TMC.

20 8. After TMC finally terminated Ms. Nichols, an at-will employee, on June 20, 2008,
21 Ms. Nichols demonstrated the adage that no good deed goes unpunished (in this case no series of
22 good deeds) by filing a baseless lawsuit filled with lies and sensationalistic allegations. Among
23 other things, her lawsuit included a shocking and false allegation that she was terminated for
24 testifying before a grand jury. Ms. Nichols is well aware that this allegation is not only untrue, but
25 completely preposterous. In fact, TMC and Dr. Nicholas were well aware of her obligation to
26

27 ¹ Dr. Nicholas later learned that Ms. Nichols invited her daughter's father to move-in with her
28 and her daughter in the home subsidized by TMC in Laguna Beach.

1 testify before the grand jury and did nothing to interfere or in any way impede or influence her
2 testimony.

3 9. Ms. Nichols' baseless lawsuit also alleges, among other things, that she was not
4 paid overtime. It is telling that Ms. Nichols asserted this claim for overtime violations (after
5 nearly a year of employment and after her termination) even though she was hired with an
6 extensive background in human resources and had significant human resources responsibilities for
7 TMC. Her unfounded claims are nothing more than an attempt to shift focus away from her own
8 egregious and multiple wrongdoings. Wrongdoings such as Ms. Nichols' widespread and brazen
9 embezzlement of TMC funds which ranged from using TMC funds to pay for a cleaning service to
10 clean her personal apartment, to arranging for TMC to purchase an air conditioning unit and
11 numerous other expensive items for her residence, and spending thousands of dollars in limousine
12 charges for personal trips (including visits to her ex-boyfriend in Long Beach and intimate outings
13 with subordinates and other co-workers). To add insult to injury, many of her excursions were
14 taken in the middle of the work day, with Ms. Nichols lying to her colleagues about her
15 whereabouts, telling them that she was on company business. Furthermore, Ms. Nichols has
16 refused to return company assets and property, despite TMC's demands, including expensive
17 computer equipment.

18 **THE PARTIES**

19 10. Cross-Complainant The Management Company, LLC ("TMC") is a limited
20 liability company organized under the laws of California with its principal place of business in
21 Orange County, California. TMC was the victim of fraud and embezzlement by its former
22 employee, Cross-Defendant Katherine Ms. Nichols.

23 11. Cross-Defendant Katherine Nichols ("Ms. Nichols") is an individual who, at all
24 relevant times herein, resided in Orange County, California and was an employee of TMC.

25 12. TMC sues Cross-Defendants ROES 1 through 20 under fictitious names. Their true
26 names and capacities, whether individual, corporate, associate, or otherwise, are unknown to
27 TMC. When TMC ascertains their true names and capacities, it will amend the Cross-Complaint
28 to insert the true name and capacity of each fictitiously-named Cross-Defendant. On information

1 and belief, each fictitiously named Cross-Defendant is legally responsible in some manner for the
2 occurrences alleged in this Cross-Complaint, and that those cross-defendants directly and
3 proximately caused TMC's damages.

4 13. On information and belief, at all times relevant to this Cross-Complaint, Cross-
5 Defendants, and each of them, were the agents, servants, employees, alter egos, successors-in-
6 interest, subsidiaries, affiliated companies or corporations, and joint ventures of the other Cross-
7 Defendants, and were as such acting within the course, scope, and authority of each other Cross-
8 Defendant. TMC further alleges on information and belief that each of the Cross-Defendants
9 acted in concert with, and with the consent of, each of the other Cross-Defendants, and that each
10 of the Cross-Defendants ratified or agreed to accept the benefits of the conduct of each of the
11 Cross-Defendants.

12 **GENERAL ALLEGATIONS**

13 14. Dr. Henry T. Nicholas, III is one of the co-founders of Broadcom Corporation, a
14 global leader in semiconductors for wired and wireless communications. Dr. Nicholas resigned
15 from Broadcom in January 2003. Since his resignation from Broadcom, Dr. Nicholas has
16 dedicated himself to charitable and philanthropic work, including vigorous defense of victims'
17 rights, and has pursued a variety of business interests.

18 15. TMC is an operating entity created to provide various services to the Nicholas
19 family, including management of family residences, security, and aircraft services. TMC has
20 employed a staff of personal assistants, technical support, household help, drivers, security, and
21 other personnel who attend to the needs of the Nicholas family.

22 16. Ms. Nichols began working on a part-time basis for TMC in or about January,
23 2007. Ms. Nichols had an extensive background and experience in human resources.

24 17. In May 2007, when Ms. Nichols began discussing her interest in full-time work at
25 TMC, she pleaded with Dr. Nicholas for help in "getting away" from the father of her daughter, in
26 avoiding eviction and for financial help. At that time, she claimed that she was in a troubled,
27 abusive relationship with the father of her daughter with whom she was living, and that she on the
28 verge of being evicted from her home.

1 18. Moved by her story, Dr. Nicholas arranged for TMC not only to hire her and pay
2 her a salary of \$80,000.00, plus full benefits for her and her daughter, but to give her a “start
3 bonus” of \$15,000.00. He later arranged for TMC to help Ms. Nichols relocate herself and her
4 daughter to a home in Laguna Beach, including paying her moving expenses and subsidizing a
5 portion of her rent for nearly one year (totaling approximately \$13,000).

6 19. Ms. Nichols worked primarily out of Dr. Nicholas’ private residence in Newport
7 Beach. Ms. Nichols supervised an entire staff, which at the time was comprised of approximately
8 15 employees. Ms. Nichols had discretion to hire, discipline, and fire employees and to use her
9 judgment to accomplish TMC’s objectives. At any given time, well over a dozen employees and
10 independent contractors, many of whom Ms. Nichols had hired, reported to her. Ms. Nichols also
11 managed company benefit plans and managed TMC’s dealings with various vendors. She was
12 responsible for dealings with outside counsel on human resources matters. Ms. Nichols occupied
13 an important position of trust and responsibility within the company (and for Dr. Nicholas).

14 20. As a result of the kindness and assistance given to her by Dr. Nicholas and TMC,
15 Ms. Nichols and her daughter were able to dramatically improve their lives and living conditions:
16 Ms. Nicholas had a good paying job complete with full benefits for her and her daughter, she and
17 her daughter were able to avoid eviction proceedings that were progressing at her apartment in San
18 Clemente, and they were able to escape from a difficult (and what she termed abusive) relationship
19 and move to a home in Laguna Beach, near her daughter’s school.

20 21. Dr. Nicholas and TMC were initially pleased with Ms. Nichols’ work, and on
21 January 1, 2008, she was promoted and given a raise in salary to \$95,000 a year. Shortly
22 thereafter, however, Ms. Nichols’ personality and performance changed. Ms. Nichols’ began
23 displaying increasingly erratic and combative behavior towards coworkers and Dr. Nicholas’
24 significant other, Kim Davis.

25 **Ms. Nichols Misappropriated Money and Assets from TMC and Dr. Nicholas**

26 22. TMC discovered that Ms. Nichols repaid Dr. Nicholas’ generosity and kindness
27 towards her and her daughter by (1) stealing and misappropriating for her own benefit money from
28 him and his company, TMC; (2) lying to Dr. Nicholas and her co-workers about her whereabouts

1 and work-related activities; and (3) having inappropriate sexual relationships with co-workers and
2 disrupting the home and work environment with bizarre erratic and hostile behavior towards
3 Dr. Nicholas, Ms. Davis, and other coworkers.

4 23. Examples of Ms. Nichols' theft include:

5 a. Using TMC funds to pay for a cleaning service to clean her personal
6 apartment;

7 b. Arranging for TMC to purchase an air conditioning unit and numerous other
8 expensive items for her residence;

9 c. Spending thousands of dollars in limousine charges for personal trips,
10 including to her ex-boyfriend in Long Beach and intimate outings with subordinates and other co-
11 workers; and

12 d. Using the company credit card for personal purchases.

13 These items are not inclusive and are only provided as examples; TMC's investigation of Ms.
14 Nichols' wrongdoing is ongoing.

15 24. To add insult to injury, many of Ms. Nichols' "excursions," paid for illegally and
16 improperly with company funds, were taken in the middle of the work day on company time, with
17 Ms. Nichols lying to her colleagues about her whereabouts and activities and telling them that she
18 was on company business.

19 25. Ms. Nichols did not disclose these intimate relationships with subordinates and
20 other co-workers that she was engaged in during her employment with the company, despite her
21 position as a supervisor. Nor, of course, did she disclose her misappropriation of corporate funds.

22 26. Since Ms. Nichols' termination, she has refused to return company assets and
23 property, despite demands, including expensive computer equipment.

24 **Ms. Nichols' Erratic and Abusive Behavior**

25 27. In early 2008, Dr. Nicholas began noticing a shift in Ms. Nichols' behavior and
26 performance. Ms. Nichols began to demonstrate an unprovoked and unwarranted hostility and
27 defensiveness towards certain TMC coworkers and Ms. Davis. Ms. Nichols' erratic behavior was
28 disruptive to the Nicholas household and was beyond inappropriate. Despite her bizarre behavior,

1 Dr. Nicholas felt empathy for Ms. Nichols, as a single mother who had been in an abusive
2 relationship and thus, TMC did not immediately terminate her. TMC and Dr. Nicholas were also
3 unaware of her embezzlement and fraud at that time.

4 28. Ms. Nichols' portrait of herself as a victim is yet another fabrication undermined by
5 —among other things—the fact that she never once complained during employment of any
6 harassment, but instead hatched the allegation only after her termination. Despite her extensive,
7 human resources experience, Ms. Nichols never once raised the issue of overtime during her
8 employment with TMC. She never raised the issue because there was no issue — her duties and
9 high salary clearly placed her in an exempt status. Furthermore, she was ultimately replaced by a
10 woman, negating her claim that she was the victim of sex discrimination.

11 29. Continuing her pattern of lies, since her termination Ms. Nichols has not lived like
12 a devastated victim as she paints herself out to be in her Complaint. Instead, TMC is informed
13 and believes that she maintains an active social life and that she has obtained employment with a
14 wealthy businessman in the bay area.

15 30. In addition to Ms. Nichols' wrongful conduct and the obviously exaggerated and in
16 many cases fabricated nature of her claims, Ms. Nichols' attempt to create leverage by alleging
17 that she was terminated for testifying before a grand jury is not only inaccurate, it is preposterous.
18 In fact, TMC and Dr. Nicholas were well aware of her obligation to testify before the grand jury
19 and did nothing to interfere or in any way impede or influence her testimony.

20 31. Clearly, Ms. Nichols filed her lawsuit to divert attention from, and (apparently in
21 her own mind) to give her leverage with respect to, her own extensive deceit and improper
22 conduct in the face of enormous generosity shown by TMC and Dr. Nicholas.
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1 **FIRST CAUSE OF ACTION**

2 **Conversion**

3 **(Against all Cross-Defendants)**

4 32. TMC incorporates by reference as though fully set forth herein all previous
5 allegations of this Cross-Complaint.

6 33. As alleged above, TMC is informed and believes that Ms. Nichols and ROES 1-20
7 converted an array of property from TMC, including but not limited to cash and computer and
8 electrical equipment.

9 34. TMC is, and at all times relevant herein was, the owner of its property and assets,
10 including the assets identified above, and TMC was entitled to exclusive possession of its property
11 and assets.

12 35. As a direct and proximate result of the unlawful conversion by Ms. Nichols and
13 ROES 1-20, TMC has suffered and will continue to suffer actual damages, including costs
14 incurred attempting to mitigate damages, costs incurred in seeking to recover its property, loss of
15 use of the property, and legal costs and expenses. TMC is entitled to the immediate return of its
16 property and to an award of damages in an amount to be proven at trial.

17 36. The acts and omissions of Ms. Nichols and ROES 1-20 were intentional, malicious,
18 and oppressive, and were done with the intent and design to damage TMC. In fact, Ms. Nichols
19 thereafter refused to return TMC's property despite requests for the same and the obvious
20 awareness that an employment relationship no longer existed. For those reasons, TMC is entitled
21 to recover punitive damages in an amount to be determined at the time of trial.

22 **SECOND CAUSE OF ACTION**

23 **Breach of Duty of Loyalty**

24 **(Against all Cross-Defendants)**

25 37. TMC incorporates by reference as though fully set forth herein all previous
26 allegations of this Cross-Complaint.

27 38. While employed by TMC, Ms. Nichols owed a duty of loyalty to TMC (and related
28 parties) to affirmatively protect their interests and to refrain from doing anything that would work

1 injury to the company, or that would deprive the company of profit or advantage that Ms. Nichols'
2 skill and ability might bring to the company.

3 39. As alleged in this Cross-Complaint, Ms. Nichols engaged in multiple acts while a
4 manager/supervisor of TMC that were likely to injure TMC or to benefit herself at TMC's
5 expense. Among these acts were: (i) causing TMC to pay for her personal expenses; (ii) putting
6 personal purchases on the company credit card; and (iii) converting TMC funds.

7 40. As a direct and proximate result of Ms. Nichols' conduct, TMC has suffered and
8 will continue to suffer actual damages in an amount that is in excess of this Court's minimum
9 jurisdiction and will be determined at the time of trial.

10 41. Ms. Nichols' acts and omissions were intentional, malicious and oppressive, and
11 they were done with the intent and design to damage TMC. TMC is entitled, therefore, to recover
12 punitive damages, in an amount to be determined at the time of trial.

13 **THIRD CAUSE OF ACTION**

14 **Fraud and Deceit**

15 **(Against all Cross-Defendants)**

16 42. TMC incorporates by reference as though fully set forth herein all previous
17 allegations of this Cross-Complaint.

18 43. During her employment with TMC, Ms. Nichols knowingly made false statements
19 of fact to the company by, *inter alia*, representing that expense reimbursement requests she
20 submitted were for company expenses, when in fact they were not. In addition, Ms. Nichols
21 knowingly made false statements of fact to TMC by representing that charges on her company
22 credit card were company-related, when in fact they were not.

23 44. These false statements of fact were intended to induce and did induce TMC's
24 justifiable reliance on them. TMC relied to its detriment on these misrepresentations. Had TMC
25 known the true facts, TMC would not have allowed Ms. Nichols to unjustly profit from her
26 conduct.

1 **PRAYER FOR RELIEF**

2 Cross-Complainant The Management Company, LLC prays for judgment against Cross-
3 Defendants Katherine Nichols and ROES 1-20 as follows:

- 4 1. For general and special damages, plus interest, according to proof at trial;
5 2. For restitution and disgorgement of all profits in an amount sufficient to force Cross-
6 Defendants to disgorge all ill-gotten gains;
7 3. For punitive damages according to proof at trial;
8 4. For costs incurred herein;
9 5. For an accounting;
10 6. For prejudgment interest; and
11 7. For such other relief as the Court deems just and proper.

12 Dated: April 29, 2009

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14 JAMES J. BROSNAHAN
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18 By: _____
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