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6 **PACIFIC HEART MEDICAL GROUP, INC.**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 31 2011

R. Devries

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF RIVERSIDE, RIVERSIDE HISTORIC COURTHOUSE**

10
11 **PACIFIC HEART MEDICAL GROUP, INC.,)**
a California corporation,)

12 Plaintiff,)

13 v.)

14 **KM STRATEGIC MANAGEMENT, LLC, a)**
California limited liability company;)
15 **MICHAEL FOUTZ, an individual; and DOES)**
16 1 through 100, inclusive,)

17 Defendants.)

CASE NO. RIC 1117544

COMPLAINT FOR:

1. Breach of Contract
2. Conversion
3. Trespass to Personal Property
4. Claim and Delivery
5. Money Had and Received
6. Imposition of Constructive Trust
7. Unjust Enrichment
8. Accounting
9. Unfair Business Practices

DEMAND FOR JURY TRIAL

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19
20 Plaintiff **PACIFIC HEART MEDICAL GROUP, INC.** (“Pacific Heart”) alleges against
21 Defendants **KM STRATEGIC MANAGEMENT, LLC** (“KM”), **MICHAEL FOUTZ** (“Foutz”) and
22 **DOES 1 through 100**, and each of them, as follows:
23

24 **GENERAL ALLEGATIONS**

25 1. At all relevant times, Plaintiff **PACIFIC HEART MEDICAL GROUP, INC.** has been
26 and is a California corporation with its principal offices located in Murrieta, California.

27 2. Plaintiff is informed and believes and thereon alleges that at all relevant times Defendant
28 **KM STRATEGIC MANAGEMENT, LLC** has been and is a limited liability company duly organized

1 and existing under the laws of the State of California, with its principal place of business in Hemet,
2 California.

3 3. Plaintiff is informed and believes and thereon alleges that at all relevant times Defendant
4 MICHAEL FOUTZ has been and is a individual residing in Riverside County, California.

5 4. Plaintiff does not know the true names of Defendants DOES 1 through 100, inclusive,
6 and therefore sues them by those fictitious names. Plaintiff is informed and believes and thereon
7 alleges that each of these Doe Defendants was in some manner responsible for the events and
8 happenings alleged in this Complaint and for Plaintiff's injuries and damages.

9 5. Plaintiff is informed and believes, and on that basis alleges, that at all times herein
10 mentioned, each of the Defendants herein were the agents and/or co-conspirators with each of the
11 remaining Defendants, and in acting or omitting to act as alleged were acting or omitting to act within
12 the scope of such agency and/or conspiracy with the knowledge, permission, consent and/or approval of
13 all Defendants, and each of them.

14
15 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

16 6. On or about September 2, 2009, Pacific Heart Medical Group, Inc. ("Pacific Heart") was
17 created to provide cardiology-related medical services in the geographic region of Murrieta, Hemet,
18 Temecula and Corona, California.

19 7. Dr. Festus Dada is, and at all relevant times was, the sole owner and shareholder of
20 Pacific Heart.

21 8. In January 2010, KM assumed the role as Pacific Heart's management company, a role
22 occupied by KM until it "withdrew" from that position in July 2011, when it became evident that it was
23 going to be terminated for mismanagement, self-dealing and misappropriation of funds. Foutz is, and at
24 all relevant times was, a shareholder, officer, director and the controlling manager of KM.

25 9. KM, at the direction of Foutz, managed all account receivables and payables of Pacific
26 Heart, including the receipt, deposit and accounting of all Pacific Heart revenue from managed care
27 health plans, Medicare and patients directly.

28

1 10. KM's management functions also included

- 2 a. Responsibility for the administration of the professional and non-
- 3 professional staff of Pacific Heart to ensure compliance with all state and
- 4 federal employment statutes and regulations;
- 5 b. Paying all bills of Pacific Heart as they came due in the ordinary course of
- 6 business.
- 7 c. Paying the salaries, draws, bonuses and other remuneration to the
- 8 physicians rendering services for Pacific Heart.
- 9 d. Managing all bank accounts for Pacific Heart, including not only the
- 10 opening and closing of accounts, the balancing and reconciliation of
- 11 accounts, but the deposit of checks, writing of checks, and transfer of
- 12 funds by wire transfer, ECF, ACH or any other means.
- 13 e. Formal accounting functions, such as the preparation of monthly,
- 14 quarterly and annual financial reports detailing the business performance
- 15 of Pacific Heart.
- 16 f. The provision of a database for the retention and management of patient
- 17 records.
- 18 g. Payment of all payroll taxes, preparation of federal and state tax returns
- 19 for Pacific Heart, and payment of such taxes when due and owing.

20 11. Despite KM's obligation to supply Pacific Heart and Dr. Dada with monthly, quarterly

21 and annual financial information concerning Pacific Heart, KM, at the direction of Foutz, failed to

22 supply Pacific Heart or Dr. Dada with any financial information concerning Pacific Heart's finances

23 until June 2011.

24 12. A review of limited books and records of Pacific Heart revealed that KM and Foutz

25 improperly paid the sum of \$23,511.42 to the law firm of Davis & Wojcik, which KM and Foutz

26 apparently retained on their own initiative, without ever obtaining Dr. Dada's or Pacific Heart's

27 authorization.

28 13. A review of limited books and records of Pacific Heart also revealed that KM and Foutz

1 improperly paid the sum of \$4,175 to the accounting firm of Pehl, Foutz, Foutz & Teegarden, which
2 KM and Foutz apparently retained on their own initiative, without ever obtaining Dr. Dada's or Pacific
3 Heart's authorization.

4 14. A review of limited books and records of Pacific Heart also revealed that in excess of
5 \$532,000 in payments from Medicare had been issued to Pacific Heart, yet that money is missing and
6 there is no information by KM or Foutz demonstrating that those funds had actually been deposited into
7 an appropriate Pacific Heart bank account.

8 15. Faced with termination because of the improprieties alleged herein, KM, at the direction
9 of Foutz, elected to "withdraw" from the management of Pacific Heart.

10 16. Instead of effecting a cooperative and orderly transition of the management of
11 Pacific Heart in June and July 2011, KM, at the direction of Foutz, instead engaged in intentional
12 actions that were designed to, and did in fact, significantly disrupt the business of Pacific Heart.

13 17. Among other retaliatory acts of KM that were intended to disrupt and injure the business
14 of Pacific Heart, KM and Foutz periodically blocked access to Pacific Heart's electronic medical
15 records data during times of patient visits thereby adversely affecting Pacific Heart's ability to provide
16 appropriate patient care. In addition, KM and Foutz refused to provide Pacific Heart with its electronic
17 medical records and revenue data, which was needed by Pacific Heart so that it could to maintain and
18 update its own database once KM's management ceased. This caused damage to Pacific Heart's
19 relations with its patients and compromised its quality of care, since Pacific Heart physicians were
20 forced to either reschedule appointments with patients who were onsite but whose records could not be
21 accessed, or perform consultations without access to patient histories.

22 18. As part and parcel of KM and Foutz's mismanagement of Pacific Heart, KM failed to
23 place the software licence to the NexGen software (the electronic patient record management system) in
24 Pacific Heart's name, causing it to incur unnecessary costs and expenses in exporting the data to a new
25 software platform. Approximately ten days were wasted by Pacific Heart staff attempting to reconcile
26 the NexGen software problem caused by KM and to export patient information into a new platform.

27 19. KM and Foutz's mismanagement and attempts to disrupt Pacific Heart's business also
28 included, KM, at the direction of Foutz, taking steps to cancel and canceling the contract between

1 Pacific Heart and Temecula Valley Physicians Medical Group (TVPMG), another KM-managed entity.
2 As a direct result of this conduct, Pacific Heart was deprived of sums it would have earned in the
3 ordinary course of business from referrals from TVPMG.

4 20. KM, at the direction of Foutz, also paid several of its own employees' salaries with
5 Pacific Heart funds, without authority to do so. On information and belief, the salaries of Kirk Levitt
6 and Wes Stevenson, both of whom are KM employees, were paid out of Pacific Heart accounts without
7 ever obtaining Dr. Dada's or Pacific Heart's corporate authorization.

8 21. As part and parcel of KM and Foutz's mismanagement of Pacific Heart, KM, at the
9 direction of Foutz, failed to supply Pacific Heart with copies of pertinent records directly relating to
10 Pacific Heart's operations until approximately July 6, 2011. The Pacific Heart business records held
11 hostage by KM and Foutz included:

- 12 a. Bank Statements
- 13 b. AR Aging Report
- 14 c. AP Aging Report
- 15 d. Vender List
- 16 e. Profit/Loss Statement
- 17 f. Balance Sheet
- 18 g. Tax Return (on extension Statement)
- 19 h. Lease Agreements
- 20 i. Utility Bills
- 21 j. Physician Malpractice Insurance Policy
- 22 k. Liability Policy
- 23 l. Workers Compo Policy
- 24 m. Physician Provider AGREEMENTS
- 25 n. Tech Service Provider Agreements
- 26 o. Medical Supply Agreement
- 27 p. Lists of Medical Equipment, Computers and Peripherals, Servers, Furniture,
28 TV's, and Cell Phone numbers

- 1 q. Employment Agreements
- 2 r. Employee Files
- 3 s. EDD Report
- 4 t. Payroll Tax Report
- 5 u. Calls Schedule
- 6 v. Health Insurance Policy
- 7 w. Employee Payroll Detail List
- 8 x. W-4 Employees
- 9 y. Articles of Incorporation
- 10 z. EIN Number
- 11 aa. Business License
- 12 bb. Medicare Provider Number
- 13 cc. Medical Provider Number
- 14 dd. Computer Passwords
- 15 ee. List of Software and Licenses
- 16 ff. Contract re: Merchant Services
- 17 gg. Credentialing Documentation
- 18 hh. Fictitious Name Statement
- 19 ii. Hospital Agreements
- 20 jj. EOB's

21 22. The records listed above should have been provided to Pacific Heart in the ordinary
22 course of business, and as a matter of course, but on information and belief were withheld by KM and
23 Foutz so that KM could exercise dominion over Pacific Heart's operations and finances, which KM did
24 to Pacific Heart's detriment.

25 23. Even after releasing these documents in July 2011, KM and Foutz continued to attempt
26 to disrupt Pacific Heart's operations by, among other things, refusing to forward Pacific Heart's mail to
27 it, which – given KM's refusal to provide Pacific Heart with a complete list of Pacific Heart's own
28 payors, payees, and vendors – wreaked havoc with Pacific Heart's operations, as Pacific Heart could not

1 issue forwarding address information to these unknown third parties, vendors, payors or payees, nor pay
2 bills that were due and owing to unknown third parties.

3 24. In late August 2011, Pacific Heart learned that seven previously undisclosed bank
4 accounts had been opened in Pacific Heart's name by KM, at the direction of Foutz, at the Bank of
5 Hemet. Records for all of those accounts have not been turned over by KM or Foutz to Pacific Heart,
6 and Pacific Heart is investigating whether further improprieties and/or misappropriation of Pacific
7 Heart's funds were committed by KM and Foutz using this multiplicity of secretly-opened bank
8 accounts.

9 25. Investigation by Pacific Heart of the limited and incomplete financial records that are
10 available to it reveals that at least \$532,000 of Pacific Heart funds, consisting of payments to Pacific
11 Heart from Medicare, have been misappropriated by KM, at the direction of Foutz, and converted to its
12 own use.

13 26. In furtherance of KM and Foutz's use of Pacific Heart for its own financial gain, KM
14 administrator, Kirk Levitt, instructed several members of the Pacific Heart office staff to keep secret
15 from Dr. Dada a check for \$85,000 issued to Pacific Heart from Medicare. Levitt, at the direction of
16 KM and Foutz, misappropriated the \$85,000 and converted those funds for the use of KM and Foutz.
17 Dr. Dada did not learn of this wrongdoing until KM and Foutz relinquished control of Pacific Heart in
18 June and July 2011, and it was admitted that Levitt instructed individuals to keep that payment a secret.

19 27. In addition to the aforementioned acts of wrongdoing, on or about June 15, 2011, KM, at
20 the direction of Foutz, wrongfully misappropriated a Siemens Nuclear camera and one echo machine,
21 both of which were property of Pacific Heart. Defendants converted these items to their own use,
22 wrongfully depriving Pacific Heart of the use of these items.

23
24 **FIRST CAUSE OF ACTION**

25 **BREACH OF CONTRACT**

26 **(Against All Defendants)**

27 28. Plaintiff alleges and incorporates by reference, as though fully set forth, all of the
28 preceding paragraphs.

1 29. In January 2010, KM orally agreed to assume the role of Pacific Heart's manager.

2 30. KM historically has acted as manager to other business ventures of Dr. Dada, including
3 but not limited to Prime Partners IPA of Temecula, Inc., and Dr. Dada had trusted that KM and its
4 personnel, including but not limited to Foutz, would act appropriately and in Pacific Heart's best
5 interest.

6 31. KM agreed to perform management services for Pacific Heart for consideration.

7 32. KM and Foutz breached KM's contractual obligations to Pacific Heart by failing to
8 provide it with any financial information pertaining to Pacific Heart for a period of some 18 months,
9 despite demands for production of such financial information.

10 33. KM and Foutz breached KM's contractual obligations to Pacific Heart by unilaterally
11 taking more than \$532,000 from Pacific Heart's bank accounts over a period of 18 months without
12 authority to do so, without approval of such payments to KM by Pacific Heart, and without disclosing
13 to Pacific Heart that KM was issuing such payments to itself.

14 34. KM and Foutz breached KM's contractual obligations to Pacific Heart by unilaterally
15 paying more than \$23,000 to the law firm of Davis & Wojcik for unknown services, without authority
16 to do so, without approval of such payments by Pacific Heart, and without disclosing to Pacific Heart
17 that KM was issuing such payments.

18 35. KM and Foutz breached KM's contractual obligations to Pacific Heart by unilaterally
19 paying the sum of \$4,175 to the accounting firm of Pehl, Foutz, Foutz & Teegarden for unknown
20 services, without authority to do so, without approval of such payments by Pacific Heart, and without
21 disclosing to Pacific Heart that KM was issuing such payments.

22 36. KM and Foutz breached KM's contractual obligations to Pacific Heart by refusing to
23 allow Pacific Heart access to its electronic patient records during the summer of 2011.

24 37. KM and Foutz breached KM's contractual obligations to Pacific Heart by refusing to
25 identify all bank accounts it had opened in Pacific Heart's name.

26 38. KM and Foutz breached KM's contractual obligations to Pacific Heart by refusing to
27 identify all vendors, payees, and payors of Pacific Heart, and by refusing to forward its mail to it.

28

1 39. KM and Foutz breached KM's contractual obligations to Pacific Heart by failing to pay
2 Pacific Heart's payroll taxes.

3 40. KM and Foutz breached KM's contractual obligations to Pacific Heart by seeking to
4 disrupt Pacific Heart's operations during the transition to new management.

5 41. KM and Foutz breached KM's contractual obligations to Pacific Heart by failing to
6 provide it with the annual tax returns of Pacific Heart.

7 42. KM and Foutz breached KM's contractual obligations to Pacific Heart by failing to
8 obtain software licenses in Pacific Heart's name. Defendants further breached KM's contractual
9 obligation by all of the other wrongful conducted described herein.

10 43. Plaintiff has performed all obligations and satisfied all responsibilities arising on its
11 behalf pursuant to the agreement between the parties, except those waived or excused by operation of
12 law or as a result of Defendants' breach of contract and misconduct complained of herein.

13 44. The wrongful conduct by Defendants alleged herein also constitutes a breach of the
14 covenant of good faith and fair dealing, which is implied in the agreement between the parties.

15 45. As a proximate result of Defendants' breach of the agreement between the parties,
16 Plaintiff has sustained damages in excess of \$700,000, in an amount to be proved at trial.

17
18 **SECOND CAUSE OF ACTION**

19 **CONVERSION**

20 **(Against All Defendants)**

21 46. Plaintiff alleges and incorporates by reference, as though fully set forth, all of the
22 preceding paragraphs.

23 47. At all times mentioned herein, and in particular on or about June 28, 2011, Plaintiff
24 was and still is the owner of (a) the monies wrongfully transferred by KM, at the direction of Foutz,
25 from Pacific Heart's bank accounts to KM, (b) the \$532,000 in Medicare funds misappropriated and
26 converted by KM, at the direction of Foutz, for their respective use, (c) the \$85,000 check that was
27 secreted from Pacific Heart and Dr. Dada; (d) the \$23,511.42 wrongfully transferred by KM, at the
28 direction of Foutz, from Pacific Heart's banks accounts to the law firm of Davis & Wojcik, (e) the

1 \$4,175 wrongfully transferred by KM, at the direction of Foutz, from Pacific Heart's banks accounts to
2 the accounting firm of Pehl, Foutz, Foutz & Teegarden, and (f) the Siemens Nuclear camera and echo
3 machine wrongfully taken from Pacific Heart's office (Items a-f above are collectively defined herein
4 as the "Personal Property"). Plaintiff was and is entitled to possession of the Personal Property.

5 48. On or about June 28, 2011, the Personal Property had a total value of not less than
6 \$645,000.

7 49. Between January 1, 2010 and June 28, 2011, the Defendants stole the property, as
8 alleged above, and converted the Personal Property to the Defendants' own use. Defendants never
9 had a lawful right to the Personal Property and have, since stealing the Personal Property, been in
10 wrongful possession of the Personal Property.

11 50. At the time Defendants took these actions, Defendants knew that the Personal Property
12 did not belong to them and that it belonged to Plaintiff.

13 51. Defendants took these actions with the intent to deprive Plaintiff of money and
14 property lawfully belonging to Plaintiff.

15 52. As a proximate result of the wrongful conduct of Defendants, Plaintiff has been
16 deprived of it rightful funds and Personal Property, by reason of which Plaintiff has been damaged in
17 the sum to be proven at trial.

18 53. The aforementioned conduct by Defendants was willful, wanton, malicious, illegal,
19 oppressive and constituted an intentional misrepresentation, deceit, theft and concealment of material
20 facts know to Defendants, with the intention to depriving Plaintiff of property or legal rights or
21 otherwise causing injury, and was despicable conduct that subjected Plaintiff to a cruel and unjust
22 hardship in conscious disregard of Plaintiff's rights, so as to justify an award of exemplary and
23 punitive damages.

24
25 **THIRD CAUSE OF ACTION**

26 **TRESPASS TO PROPERTY**

27 **(Against All Defendants)**

28 54. Plaintiff alleges and incorporates by reference, as though fully set forth, all of the

1 preceding paragraphs.

2 55. Defendants, without Plaintiff's permission, took possession of Plaintiff's Personal
3 Property as alleged herein.

4 56. On June 28, 2011, the items of Personal Property had the value as alleged above.

5 57. As a proximate result of Defendants' trespass with respect to the Personal Property,
6 Plaintiff has been damaged in an amount of not less than \$645,000.

7 58. The aforementioned conduct by Defendants was willful, wanton, malicious, illegal,
8 oppressive and constituted an intentional misrepresentation, deceit, theft and concealment of material
9 facts know to Defendants, with the intention to depriving Plaintiff of property or legal rights or
10 otherwise causing injury, and was despicable conduct that subjected Plaintiff to a cruel and unjust
11 hardship in conscious disregard of Plaintiff's rights, so as to justify an award of exemplary and
12 punitive damages.

13
14 **FOURTH CAUSE OF ACTION**

15 **CLAIM AND DELIVERY - COMPLAINT FOR POSSESSION OF PERSONAL**
16 **PROPERTY AND FOR DAMAGES**

17 **(Against All Defendants)**

18 59. Plaintiff alleges and incorporates by reference, as though fully set forth, all of the
19 preceding paragraphs.

20 60. As alleged above, Plaintiff was and is the rightful owner of the Personal Property.

21 61. Plaintiff is and, at all times herein mentioned, was entitled to the immediate and
22 exclusive possession of the Personal Property.

23 62. As alleged herein, Defendants wrongfully obtained possession of the Personal
24 Property. Since that time, Defendants have been, and are now, in wrongful possession of the Personal
25 Property, in violation of Plaintiff's right to immediate and exclusive possession.

26 63. During, and as a proximate result of, Defendants' wrongful possession of the Personal
27 Property, Plaintiff has suffered the loss of the use and enjoyment of the Personal Property. The
28 reasonable value of the use of the Personal Property is approximately \$100.00 per day, which

1 constitutes reasonable interest on, and rental value of, the Personal Property.

2 64. During, and as a proximate result of, Defendants' wrongful possession of the Personal
3 Property, Plaintiff has suffered the loss of the depreciation of the Personal Property in the
4 approximate amount of \$100.00 per day.

5 65. In taking, wrongfully possessing, and detaining the Personal Property, Defendants'
6 conduct was willful, wanton, malicious, illegal, and oppressive and was taken with the intent to
7 defraud, conduct that justifies the imposition of exemplary and punitive damages.

8
9 **FIFTH CAUSE OF ACTION**
10 **MONEY HAD AND RECEIVED**
11 **(Against All Defendants)**

12 66. Plaintiff alleges and incorporates by reference, as though fully set forth, all of the
13 preceding paragraphs.

14 67. At an unknown time within the applicable statute of limitations, but in any event no
15 later than June 28, 2011, Defendants, and each of them, became indebted to Plaintiff in the minimum
16 sum of \$645,000 for money had and received by Defendants for the use and benefit of Plaintiff.

17 68. Plaintiff has demanded payment from Defendants and by means of this Complaint
18 makes further demand.

19 69. No payment has been made by Defendants to Plaintiff, and there is now due and owing
20 the sum of not less than \$645,000 cash, plus interest on that amount at the rate of ten percent (10%)
21 per year.

22 70. Accordingly, Plaintiff has been damaged in the amount alleged herein.

23
24 **SIXTH CAUSE OF ACTION**
25 **IMPOSITION OF A CONSTRUCTIVE TRUST**
26 **(Against All Defendants)**

27 71. Plaintiff alleges and incorporates by reference, as though fully set forth, all of the
28 preceding paragraphs.

1 72. As alleged herein, Plaintiff was the owner of the Personal Property identified herein.

2 73. Defendants obtained Plaintiff's Personal Property by theft, misappropriation,
3 embezzlement, or malfeasance as alleged herein.

4 74. By virtue of Defendants' wrongful acts and possession of Plaintiff's Personal
5 Property, Defendants, and each of them, hold Plaintiff's Personal Property as a constructive trustee
6 for Plaintiff's benefit.

7 75. Plaintiff has been damaged in the amounts alleged herein.

8
9 **SEVENTH CAUSE OF ACTION**

10 **UNJUST ENRICHMENT**

11 **(Against All Defendants)**

12 76. Plaintiff alleges and incorporates by reference, as though fully set forth, all of the
13 preceding paragraphs.

14 77. By their wrongful conduct and practices, Defendants were unjustly enriched at the
15 expense of and to Plaintiff's detriment.

16 78. It is unjust to allow Defendants to retain the profits from their deceptive, misleading,
17 bad faith, and unlawful conduct alleged without providing compensation to Plaintiff.

18 79. Defendants acted with conscious disregard for Plaintiff's rights.

19 80. Plaintiff seeks restitution from Defendants and seeks an order from this Court
20 disgorging all payments, revenues, and profits Defendants obtained as a result of their wrongful
21 conduct as alleged herein.

22
23 **EIGHTH CAUSE OF ACTION**

24 **ACCOUNTING**

25 **(Against All Defendants)**

26 81. Plaintiff alleges and incorporates by reference, as though fully set forth, all of the
27 preceding paragraphs.

28 82. An actual controversy has arisen related to the rights of Pacific Heart and Defendants

1 with respect to, among other things, the propriety of Defendants having taken funds from Pacific
2 Heart's bank accounts and other mismanagement of Pacific Heart's funds and managed care practice.

3 83. The actual controversy has arisen pursuant to the acts and/or omissions to act by
4 Defendants, and each of them, as alleged in this complaint.

5 84. Defendants owed a fiduciary duty to Pacific Heart requiring Defendants to exercise the
6 utmost good faith, care, trust, loyalty and honesty attendant upon fiduciaries.

7 85. A sum of money is due to Pacific Heart as a result of Defendants' unauthorized taking
8 of funds from bank accounts holding Pacific Heart's funds, the precise amount of which can be
9 established by an accounting.

10 86. Despite repeated requests, Defendants have refused, and continue to refuse, to permit
11 Pacific Heart access to Defendants' book and records and have precluded Pacific Heart from
12 acquiring any information pertaining thereto.

13
14 87. Plaintiffs therefore request that the court conduct or order to be conducted an
15 accounting as to the books and records of Defendants, as well as any and all documentation related to
16 Defendants' management of Pacific Heart's managed care practice.

17
18 **NINTH CAUSE OF ACTION**
19 **UNFAIR BUSINESS PRACTICES**
20 **(Against All Defendants)**

21 88. Plaintiff alleges and incorporates by reference, as though fully set forth, all of the
22 preceding paragraphs.

23 89. Defendants are informed and believe and thereon allege that at all times relevant,
24 Defendants, and each of them, engaged in the unlawful, unfair and/or fraudulent business acts or
25 practices as described herein.

26 90. Pursuant to California *Business and Professions Code* §17200 *et seq.*, Plaintiff
27 requests all remedies available, including, but not limited to, disgorgement and restitution of any and
28 all monies received by Defendants, and each of them, as a result of unfair business practices, and an

1 order enjoining Defendants' unfair, unlawful and/or fraudulent business practices, which are ongoing.

2
3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment and other relief against Defendants, and each of
5 them, as follows:

6 **A. FIRST CAUSE OF ACTION (Breach of Contract)**

- 7 1. For compensatory damages, according to proof, but in an amount no less than
8 \$5,000,000; and
9 2. For any and all special, incidental and/or consequential damages, according to
10 proof.

11 **B. SECOND CAUSE OF ACTION (Conversion)**

- 12 1. For damages in an amount according to proof, but in an amount no less than
13 \$5,000,000; and
14 2. For exemplary and punitive damages as allowed by law and in a sum to be
15 proven at trial.

16 **C. THIRD CAUSE OF ACTION (Trespass to Personal Property)**

- 17 1. For damages in an amount according to proof, but in an amount no less than
18 \$5,000,000; and
19 2. For exemplary and punitive damages as allowed by law and in a sum to be
20 proven at trial.

21 **D. FOURTH CAUSE OF ACTION (Claim and Delivery)**

- 22 1. For possession of the Personal Property, or, if the Personal Property cannot be
23 delivered, for a value in the sum of not less than \$5,000,000;
24 2. For damages in an amount according to proof; and
25 3. For damages of renal value and depreciation according to proof.

26 **E. FIFTH CAUSE OF ACTION (Money Had and Received)**

- 27 1. For the principal sum of not less than \$5,00,000.
28

1 **F. SIXTH CAUSE OF ACTION (Constructive Trust)**

- 2 1. For an order declaring that Defendants hold Plaintiff's Personal Property in
3 trust for Plaintiff;
4 2. For an order granting possession of the Personal Property to Plaintiff; and
5 3. For damages in the amount of all monies found owing to Plaintiff.

6 **G. SEVENTH CAUSE OF ACTION (Unjust Enrichment)**

- 7 1. For damages according to proof, but in an amount no less than \$5,000,000.

8 **H. EIGHTH CAUSE OF ACTION (Accounting)**

- 9 1. For an order authorizing an accounting of the books and records of Defendants,
10 as well as any and all documentation related to the revenue stream for
11 Defendants.

12 **I. NINTH CAUSE OF ACTION (Unfair Business Practices)**

- 13 1. For restitution and/or disgorgement, according to proof, but in an amount no
14 less than \$5,000,000; and
15 2. For injunctive relief to prevent Defendants from continuing to engage in unfair
16 business practices.

17 **J. ALL CAUSES OF ACTION**

- 18 1. For interest on damages according to proof at the maximum legal rate;
19 2. For costs of suit incurred;
20 3. Attorneys' fees as allowed by law; and
21 4. For such other and further relief as the Court may deem proper.

22
23 Dated: October 31, 2011

CALLAHAN & BLAINE, APLC

24
25 By: 

Marc R. Miles
Kristy A. Schlesinger
Robert S. Lawrence
Attorneys for Plaintiff
PACIFIC HEART MEDICAL GROUP, INC.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury.

Dated: October 31, 2011

CALLAHAN & BLAINE, APLC

By: _____

Marc P. Miles

Kristy A. Schlesinger

Robert S. Lawrence

Attorneys for Plaintiff

PACIFIC HEART MEDICAL GROUP, INC.

F:\Pacific Heart Complaint REV 3.wpd

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street
Riverside, CA 92501
www.riverside.courts.ca.gov

NOTICE OF ASSIGNMENT TO DEPARTMENT FOR CASE MANAGEMENT PURPOSES
AND CASE MANAGEMENT CONFERENCE (CRC 3.722)

PACIFIC HEART MEDICAL GROUP INC VS KM STRATEGIC

CASE NO. RIC 1117544

This case is assigned to the Honorable Judge Craig G. Riemer
in Department 05 for case management purposes.
The Case Management Conference is scheduled for 04/30/12
at 8:30 in Department 05.

Case is Assigned to Department 12 for Law and Motion Purposes.

The plaintiff/cross-complainant shall serve a copy of this notice on
all defendants/cross-defendants who are named or added to the
complaint and file proof of service.

Any disqualification pursuant to CCP Section 170.6(2) shall be
filed in accordance with that section.


CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of
California, County of Riverside, and that I am not a party to this
action or proceeding. In my capacity, I am familiar with the practices
and procedures used in connection with the mailing of correspondence.
Such correspondence is deposited in the outgoing mail of the Superior
Court. Outgoing mail is delivered to and mailed by the United States
Postal Service, postage prepaid, the same day in the ordinary course
of business. I certify that I served a copy of the foregoing
notice on this date, by depositing said copy as stated above.

Dated: 10/31/11

Court Executive Officer/Clerk

By:


RHIANNEN K DEVRIES, Deputy Clerk

ac:cmc;cmcb;cmch;cmct;cmcc
cmccb;cmch;cmct

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

NOTICE TO DEFENDANT: KM STRATEGIC MANAGEMENT, LLC, a
(AVISO AL DEMANDADO): California limited liability
company; MICHAEL FOUTZ, an individual; and DOES 1
through 100, inclusive,

FOR COURT USE ONLY -
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 31 2011

R. Devries

YOU ARE BEING SUED BY PLAINTIFF: PACIFIC HEART MEDICAL
(LO ESTÁ DEMANDANDO EL DEMANDANTE): GROUP, INC., a
California corporation,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA
4050 Main Street
Riverside, CA 92501
HISTORIC COURTHOUSE

CASE NUMBER:
(Número del Caso):
1117544

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Marc P. Miles (Bar No. 197741) (714) 241-4444 (714) 241-4445
Kristy A. Schlesinger (Bar No. 221850)
CALLAHAN & BLAINE, APLC
3 Hutton Centre Drive, Ninth Floor, Santa Ana, CA 92707

R. Devries

DATE: OCT 31 2011 Clerk, by _____, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. by personal delivery on (date):

[SEAL]

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Marc P. Miles (Bar No. 197741) Kristy A. Schlesinger (Bar No. 221850) CALLAHAN & BLAINE, APLC 3 Hutton Centre Drive, Ninth Floor Santa Ana, CA 92707 TELEPHONE NO.: (714) 241-4444 FAX NO.: (714) 241-4445 ATTORNEY FOR (Name): Plaintiff PACIFIC HEART MEDICAL GROUP, INC.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE STREET ADDRESS: 4050 Main Street MAILING ADDRESS: CITY AND ZIP CODE: Riverside, CA 92501 BRANCH NAME: HISTORIC COURTHOUSE	CASE NUMBER: 1117544 RICO
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NAME: PACIFIC HEART MEDICAL GROUP, INC., v. KM STRATEGIC MANAGEMENT, LLC, ET AL.	
JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 8

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 31, 2011
 Marc P. Miles, Esq. _____
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUPERIOR COURT, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

- | | |
|--|--|
| <input type="checkbox"/> BANNING 135 N. Alessandro Road, Banning, CA 92220 | <input type="checkbox"/> MURRIETA 30755-D Auld Road, Murrieta, CA 92563 |
| <input type="checkbox"/> BLYTHE 265 North Broadway, Blythe, CA 92225 | <input checked="" type="checkbox"/> RIVERSIDE 4050 Main St., Riverside, CA 92501 |
| <input type="checkbox"/> HEMET 880 N. State St., Hemet, CA 92543 | <input type="checkbox"/> RIVERSIDE 4175 Main St., Riverside, CA 92501 |
| <input type="checkbox"/> INDIO 46-200 Oasis St., Indio, CA 92201 | <input type="checkbox"/> TEMECULA 41002 County Center Dr., #100, Temecula, CA 92591 |
| <input type="checkbox"/> MORENO VALLEY 13800 Heacock St. #D201, Moreno Valley, CA 92553 | |

Name and Address

Marc P. Miles (Bar No. 197741)
Kristy A. Schlesinger (Bar No. 221850)
CALLAHAN & BLAINE, APLC
3 Hutton Centre Drive, Ninth Floor
Santa Ana, CA 92707
Attorney for Plaintiff
or Party without Attorney

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 31 2011

R. Devries

PACIFIC HEART MEDICAL GROUP, INC.

Plaintiff(s)

vs.

KM STRATEGIC MANAGEMENT, LLC, ET AL.

Defendant(s)

RIC
CASE NO. **1117544**

CERTIFICATE OF COUNSEL

The undersigned certifies that this matter should be tried or heard in the
Court for the following reason:

- The action arose in this judicial district.
- The action concerns real property located in this judicial district.
- The defendant resides in this judicial district.

Dated: October 31, 2011

Signed by: _____

ATTORNEY FOR PLAINTIFF(S)
OR PARTY WITHOUT ATTORNEY