

James H. Casello, Esq. SBN 76021
CASELLO & LINCOLN
525 Cabrillo Park Drive, Suite 104
Santa Ana, CA 92701
Telephone: (714) 541-8700
Facsimile: (714) 541-8707

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
01/04/2019 at 11:39:25 AM
Clerk of the Superior Court
By Angelina Nguyen-Do, Deputy Clerk

Attorneys for Plaintiff GOLDEN WEST PROPERTY MANAGEMENT INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL DISTRICT

30-2019-01042113-CU-BT-CJC

GOLDEN WEST PROPERTY
MANAGEMENT INC., a California
Corporation,

Plaintiff,

vs.

KIMBERLY DAWN NOLD, an individual;
CERTIFIED HOA MANAGEMENT, INC., a
California Corporation; and DOES 1-100,
inclusive,

Defendants.

Case No.

Judge Deborah Servino

**COMPLAINT FOR DEFAMATION;
TRADE LIBEL; WAGES PAID
(FAITHLESS SERVANT DOCTRINE);
INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE; UNFAIR
COMPETITION AND BREACH OF
FIDUCIARY DUTY**

Plaintiff GOLDEN WEST PROPERTY MANAGEMENT INC., (hereinafter GWPM)
complains and alleges as follows:

1. Plaintiff is a California corporation in good standing with its principal place of business
in Cypress, California.

2. Defendant KIMBERLY DAWN NOLD ("hereinafter NOLD") is an individual residing
in the City of Huntington Beach, California within the County of Orange, California.

3. Defendant, CERTIFIED HOA MANAGEMENT, INC. is a California Corporation
doing business in the County of Orange, California. Hereinafter CERTIFIED HOA
MANAGEMENT, INC. Shall be referred to as "CERTIFIED".

1 4. Plaintiff is informed and believes that the Defendant NOLD is the principal officer and
2 the sole shareholder of Defendant CERTIFIED and at all material times herein mentioned was
3 acting in the course and scope of her employment with said company and doing the acts
4 hereinafter alleged.

5 5. Plaintiff is unaware of the true names or the capacity of the Defendants sued herein as
6 DOES 1 through 100 inclusive and therefore sue said Defendants by such fictitious names.
7 Plaintiff is informed and believes that each of the Defendants named herein as a DOE are liable to
8 the Plaintiff on the causes of action asserted herein. Plaintiff will amend this Complaint to state the
9 true names and capacities of said Defendants as soon the same has been ascertained.

10 6. At all times material hereto each of the Defendant was acting as the agent, servant,
11 employee, partner, master and or principal of each of the remaining Defendants and at all times
12 were acting in the course and scope of such agency, employment or partnership.

13 7. In and about April of 2013 Defendant NOLD was hired as a community manager by
14 Plaintiff. As is the case with all employees of Plaintiff MS. NOLD executed a non-disclosure
15 confidentiality agreement in which she agreed not to divulge to any third party any trade secretes,
16 confidential information or other data in the company either during or after her termination of her
17 employment. Plaintiff is informed and believe that the Defendant NOLD misappropriated from
18 Plaintiff's company records said non-disclosure confidentiality agreement.

19 8. In the months prior to her departure GWPM Defendant NOLD and representatives of
20 GWPM entered into discussions regarding the acquisition of Plaintiff by Defendant NOLD. In
21 connection therewith, Defendant NOLD signed an additional agreement to not disclose
22 information disclosed to her in the process of her doing due diligence with respect to the potential
23 sale of the company to her.

24 9. Plaintiff is informed and believes and thereon alleges that instead of purchasing GWPM
25 Defendant NOLD decided to acquire the accounts for which she was responsible for "free" by
26 actively soliciting Plaintiff's customers to become her clients immediately upon termination of her
27 employment with GWPM. Defendant NOLD certified her new company with the California
28 Secretary of State on September 20, 2018 which was her last date of employment with Plaintiff.

1 10. Plaintiff is informed and believes and thereon alleges that the Defendant NOLD prior
2 to the termination of her employment, started informing GWPM'S customers that she was starting
3 her own company and informing GWPM'S customers that one of the principals of GWPM had
4 been convicted of a felony for embezzling funds from GWPM.

5 11. Immediately after NOLD'S termination of her employment, Plaintiff started receiving
6 notices of termination from its customers that were being handled by Defendant NOLD. One such
7 notice asserting that the termination was "for cause" even though Defendant NOLD had been
8 handling that very same account while she was employed by Plaintiff. This confirms that
9 Defendant NOLD was communicating the "embezzlement" allegation to GWPM'S customers in
10 order to motivate them to go with her and her new company CERTIFIED.

11 12. Plaintiff is informed and believes and thereon alleges that while still working for
12 Plaintiff Defendant NOLD used Plaintiff's property including its equipment, copiers, computers,
13 telephones, emails, intellectual property and advertising materials to further her business and of the
14 business of the Defendant CERTIFIED.

15 13. Plaintiff is further informed and believes and therefore alleges that while still working
16 for GWPM the Defendant NOLD copied Plaintiff's files and forms and took copies with her to
17 assist her in competing with Plaintiff and this was all done with the intent of obtaining an unfair
18 competitive advantage against Plaintiff and to economically harm Plaintiff.

19 **FIRST CAUSE OF ACTION**

20 **DEFAMATION**

21 **AGAINST ALL DEFENDANTS**

22 14. Plaintiff realleges the allegations of paragraphs 1 through 13 as though set forth and
23 full at this point.

24 15. Plaintiff is informed and believes that the Defendant NOLD and in her capacity as an
25 officer and owner of Defendant CERTIFIED made the claim that one of GWPM'S principals had
26 been convicted of embezzlement from GWPM with the express intent of motivating the customers
27 of GWPM to become customers of her and her new company. Plaintiff is informed and believes
28 and thereon alleges that the allegation was made sometime shortly prior to September of 2018 and

1 continued thereafter.

2 16. The defamatory statement that GWPM was owned and operated by a convicted felon is
3 defamatory per se as to Plaintiff. Plaintiff is informed and believes and thereon alleges that the
4 defamatory communication, heretofore alleged, was done both orally and in writing by
5 Defendants.

6 17. The claim that a principal of Plaintiff had been convicted of embezzling funds from
7 GWPM was false and known to be false by the Defendants. It was the statement made with the
8 actual intent to harm Plaintiff and divert business to Defendants. The acts of the Defendants were
9 therefore done with actual malice entitling Plaintiff to recover exemplary or punitive damages.

10 18. As a result of the Defendants defamation of Plaintiff has been damaged by the loss of
11 its customers, the loss of its business reputation, all to Plaintiffs damage in an amount according to
12 proof.

13 **SECOND CAUSE OF ACTION**

14 **TRADE LIBEL**

15 **AGAINST ALL DEFENDANTS**

16 19. Plaintiff incorporates by reference each and every allegation of paragraphs 1 through
17 18, inclusive, as though set forth in full at this point.

18 20. The statements made by the Defendant NOLD on her behalf and on behalf of her
19 corporation disparaged the quality of Plaintiff's services as a property management company and
20 was false and known to be false by the Defendants.

21 21. As a direct and proximate cause of Defendant's trade libel Plaintiff has been damaged
22 in the form of lost business, damage to its reputation, and has therefore incurred a specific
23 pecuniary loss as a result of the business to Defendants. Said damages are requested according to
24 proof.

25 22. The conduct of the Defendants was done with actual malice thereby entitling Plaintiff
26 to the award of exemplary or punitive damages in the amount according to proof.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **WAGES PAID (FAITHLESS SERVANT DOCTRINE)**

3 **AGAINST ALL DEFENDANTS**

4 23. Plaintiff realleges the material allegations of paragraphs of 1 through 22 as though set
5 forth and full at this point. The conduct of the Defendants as heretofore alleged is an egregious
6 violation of her fiduciary obligations to Plaintiff and it works as a forfeiture of Defendant NOLD'S
7 right to compensation from Plaintiff. Plaintiff is entitled to the return of all wages paid to
8 Defendant during the period of her disloyalty.

9 24. In doing the acts above, Defendant NOLD acted with malice and oppression
10 constituting despicable conduct toward Plaintiff thereby entitling Plaintiff to punitive or exemplary
11 damage in an amount appropriate to punish and to make an example of said Defendant. Plaintiff
12 request said sums according to proof.

13 **FORTH CAUSE OF ACTION**

14 **INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

15 **AGAINST ALL DEFENDANTS**

16 25. Plaintiff incorporates by reference each and every allegation of paragraphs 1 through
17 24 as though set forth in full.

18 26. Plaintiff had a prospective business interest in doing continued business for the
19 customers of GWPM that were misappropriated by NOLD and Defendant CERTIFIED.

20 27. Defendants had actual knowledge of the existence of the economic relationship
21 referred to in the preceding paragraph as a result of her actually servicing said customers during
22 her employment with Plaintiff.

23 28. Through the actions of Defendants in each of them, which were both defamatory and
24 a breach of her fiduciary obligations to Plaintiff, Defendants and each of them diverted prospective
25 business from Plaintiff to themselves.

26 29. The acts of the Defendants and each of them were intended and designed to disrupt
27 Plaintiff's relationship and did actually disrupt those relationships.

28 30. As a direct and proximate result of the Defendants and each of them Plaintiff has been

1 damaged in the amount to be proven at the time of trial. The acts of the Defendants and each of
2 them, were done with a specific and intent to deprive Plaintiff of the economic benefit of said
3 business' interests which lawfully belonged to them and were done with fraud, oppression and or
4 malice thereby justifying the award of punitive or exemplary damages.

5 **FIFTH CAUSE OF ACTION**

6 **UNFAIR COMPETITION**

7 **AGAINST ALL DEFENDANTS**

8 31. Plaintiff realleges allegations of paragraphs of 1 through 30, inclusive, as though set
9 forth and full at this point.

10 32. The actions of Defendants, and each of them, are a form of unfair competition which
11 violate the terms of California Business and Professions Code § 17200 et seq.

12 33. As a proximate result the unfair business practices of Defendants, and each of them,
13 Plaintiff has been damaged in an amount according to proof at the time of trial.

14 **SIXTH CAUSE OF ACTION**

15 **BREACH OF FIDUCIARY DUTY**

16 **(AGAINST DEFENDANT KIMBERLY DAWN NOLD)**

17 34. Plaintiff incorporates by reference each and every allegation of paragraphs of 1
18 through 33, inclusive, as though set forth and full at this point.

19 35. As an account/community manager for Plaintiff Defendant NOLD owed the duty of
20 care, loyalty, confidentiality, full disclosure, and the duty of good faith and fair dealing at all times
21 towards Plaintiff.

22 36. NOLDS' acts, as more fully described above, include self dealing, usurpation of
23 corporate opportunity, misappropriation of corporate property, misuse of confidential information,
24 failure to disclose and other actions which breached those duties which were done for the own
25 purpose of her own personal gain and that of her company Defendant CERTIFIED.

26 37. As a direct and proximate result of the acts of the Defendant NOLD as herein above
27 alleged, Plaintiff is damaged in an amount to be proven at the time of trial.

28 38. The acts of Defendant NOLD were done with specific intent to deprive Plaintiff of the

1 economic benefit of their prospective business interests which belong to Plaintiff and were done
2 with fraud, oppression and malice thereby justifying an award of punitive and or exemplary
3 damages against Defendant NOLD.

4 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them as follows:

- 5 1. For compensatory damages in an amount according to proof but not less than
6 \$1,000,000.00;
- 7 2. For punitive damages in an amount according to proof but not less than 1,000,000.00;
- 8 3. For attorneys fees as permitted by statute or agreement;
- 9 4. For costs of suit incurred herein; and
- 10 5. For such other and further relief as this Court may deem just and proper.
- 11

12 Dated: January 04, 2019

CASELLO & LINCOLN

13
14
15 BY: 

16 JAMES H. CASELLO,
17 Attorney for Plaintiff,
18 GOLDEN WEST PROPERTY
19 MANAGEMENT INC.
20
21
22
23
24
25
26
27
28