

CAUSE NO. \_\_\_\_\_

R.B. INTERESTS, INC.

*Plaintiff,*

vs.

CATHERINE E. CUMPSTON,  
INDIVIDUALLY.

*Defendant.*

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, R.B INTERESTS, INC., ("RBI"), files this Original Petition against Defendant, CATHERINE CUMPSTON (the "Defendant"), and in support thereof, would respectfully show this Court as follows:

**DISCOVERY**

1. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.

**PARTIES**

2. Plaintiff R.B. Interests, Inc. is a Texas for profit corporation that conducts business in and around Harris County, Texas.

3. Defendant Catherine E. Cumpston, Inc. is an individual who may be served with process at her residence and/or place of business at 6103 Schaumburg Dr., Spring, Texas 77388 or wherever she may be found.

**JURISDICTION AND VENUE**

3. This is a suit for damages with said damages being within the jurisdictional monetary limits of this Court.

4. RBI seeks estimated monetary relief of over \$200,000.00 but not more than \$1,000,000.00. Tex. R. Civ. P. 47(c)(2).

5. Venue is proper in Harris County, Texas because it is the county of Defendant's residence at the time the cause of action accrued. Tex. Civ. Prac. & Rem. Code § 15.002(a)(2).

#### **FACTUAL BACKGROUND**

6. RBI is Texas based earth and dirt-work subcontractor for commercial construction projects.

7. On or about October 2017, Defendant began her employment with RBI as an office manager on a full time basis. While Defendant was employed by the RBI, she was entrusted with and had access to RBI's operating accounts for the business, as well as its company credit cards and other financial information.

8. Upon information and belief, Defendant used RBI's financial information to conduct the following fraudulent and illegal activities: (i) issuing herself double pay checks from RBI's bank accounts; (ii) use company funds from RBI's operating accounts to pay for personal items; (iii) use RBI's company credit card to pay for personal items; and (iv) used RBI's name and company information to fraudulently secure a \$150,000.00 Economic Injury Disaster Loan from the US Small Business Administration ("SBA").

9. Immediately after discovering Defendant's illegal and unlawful activities, Defendant's employment with RBI was terminated.

#### **CAUSES OF ACTION**

10. RBI incorporates the preceding allegations herein by reference as if

fully set forth.

**A. THEFT LIABILITY ACT**

11. RBI had a possessory right to its operating account of its business, as well as its confidential information used to open the accounts. Defendant unlawfully appropriated, secured, or stole RBI's property. Defendant's unlawful taking was made with the intent to deprive RBI of its property.

12. RBI has sustained damages as a result of the theft.

**B. MONEY HAD AND RECEIVED**

13. In addition to, or in the alternative, RBI claims that Defendant holds money which belongs to RBI in equity or good conscience.

**C. BREACH OF FIDUCIARY DUTY**

14. RBI and Defendant had a fiduciary relationship by virtue of their employment relationship. As a result, Defendant owed RBI a duty of loyalty and utmost good faith; a duty to refrain from self-dealing; and a duty to act with integrity of the strictest kind and in due regard for RBI's interests. Defendant breached her duty to RBI by committing various acts, including but not limited to: (i) issuing herself double pay checks from RBI's bank accounts; (ii) use company funds from RBI's operating accounts to pay for personal items; (iii) use RBI's company credit card to pay for personal items; and (iv) used RBI's name and company information to fraudulently secure a \$150,000.00 Economic Injury Disaster Loan from the SBA.

15. RBI has been damaged by Defendant's breach of her fiduciary duty.

**D. CONSTRUCTIVE TRUST**

16. As a result of the actions described herein, Defendant has received

property, which in equity and good conscience should be possessed or owned, in whole or in part, by RBI. If Defendant is allowed to retain said property, in whole or in part, Defendant would be unjustly enriched. RBI is entitled to recover the property it would have possessed and owned but for the actions of the Defendant.

17. RBI would show the Court that it would be unconscionable for the Defendant to retain the property, as more thoroughly described herein to the detriment of RBI's personal ownership of the property. Further, if such be necessary, RBI would show the Court that unless a constructive trust is imposed upon the property, Defendant will be unjustly enriched to the detriment of RBI.

#### **EXEMPLARY/PUNITIVE DAMAGES**

18. RBI seeks the recovery of exemplary and/or punitive damages from Defendant in connection with its claims for civil theft, money had and received and breach of fiduciary duty.

#### **ADDITIONAL DAMAGES**

19. In relation to RBI's cause of action for civil theft, RBI also seeks damages against Defendant pursuant to Section 134.005 of the Texas Civil Practice & Remedies Code.

#### **ATTORNEY'S FEES**

20. RBI seeks recovery of its reasonable and necessary attorney's fees and court costs for trial and upon appeal, if applicable, pursuant to Chapters 38 and 134 of the Texas Civil Practices and Remedies Code and/or otherwise allowable by law or statute.

### **EXPERTS**

21. Pursuant to Rule 192.3 of the Texas Rules of Civil Procedure, RBI hereby designates the undersigned attorneys, Kenton Andrews and Matthew S. Cire, as its experts to testify as to reasonable and necessary attorney's fees incurred by any party in this litigation seeking the recovery of attorney's fees.

### **CONDITIONS PRECEDENT**

22. All conditions precedent to RBI's right to recover have occurred, have been performed or have been waived.

### **DISCOVERY RULE**


23. The causes of action set out in RBI's pleadings are not barred by limitations due to the application of the discover rule and the doctrine of fraudulent concealment.

### **PRAYER**

WHEREFORE PREMISES CONSIDERED, Plaintiff, R.B. Interests, Inc., requests that the Court enter judgment against Defendant, Catherine E. Cumpston for RBI's actual damages, additional damages, exemplary and/or punitive damages, interest, attorney's fees, both through trial and judgment and upon any appeal of this matter; that the Court institute a constructive trust; and that the Court award RBI such other and further relief, both legal and equitable, to which RBI may be justly entitled.

Respectfully submitted,

**ANDREWS MYERS, P.C.**

By: \_\_\_\_\_

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