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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD C. HAMILTON
3 Deepwater Court
Edgewater, Maryland 21037-1216,

Plaintiff,

v.

JOSHUA A. NOCHIMSON
2738 Langley Circle
Glenview, Illinois 60026,

Defendant.

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CIVIL ACTION

No.:

COMPLAINT

Plaintiff, Richard C. Hamilton ("Plaintiff" and/or "Mr. Hamilton"), by and through his undersigned attorneys, Sherman, Silverstein, Kohl, Rose & Podolsky, P.A., by way of a Complaint against Joshua A. Nochimson ("Defendant" and/or "Mr. Nochimson"), the Defendant in the above-captioned matter, says, states and avers as follows:

THE PARTIES

1. Mr. Hamilton is a resident of the State of Maryland with a primary residence of 3 Deepwater Court, Edgewater, Maryland 21037-1216.
2. Mr. Nochimson is a resident of the State of Illinois with a primary residence of 2738 Langley Circle, Glenview, Illinois 60026.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332 because complete diversity of citizenship exists between Plaintiff and Defendant, and the amount in

controversy exceeds the sum of seventy-five thousand dollars (\$75,000), exclusive of interest and costs.

4. The U.S. District Court for the Eastern District of Pennsylvania (the "EDPA") is a proper venue for this matter because, under 28 U.S.C. §1391(b), a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in the EDPA.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

5. Paragraphs 1 – 4 above are hereby re-alleged and incorporated by reference as if set forth fully at length herein.

6. Mr. Hamilton is a professional basketball player currently under contract with the Detroit Pistons of the National basketball Association.

7. From 1996 through 1999, Mr. Hamilton was a student at the University of Connecticut and a member of the university's men's basketball team.

8. During that time, Mr. Hamilton became friends with Mr. Nochimson, who was a student manager of the university's men's basketball team.

9. After helping to lead the University of Connecticut to the 1999 NCAA Men's Basketball National Championship, Mr. Hamilton left college and entered the National Basketball Association's amateur draft, in which he was selected seventh overall by the Washington Wizards.

10. After being drafted, Mr. Hamilton began making preparations to move from his childhood home of Coatesville, Pennsylvania to the Washington, DC area.

11. Around this time in Coatesville, Pennsylvania, Mr. Hamilton and Mr. Nochimson entered into an agreement whereby Mr. Nochimson would serve as Mr. Hamilton's personal

assistant in exchange for a place to live, living expenses, and experience, which Nochimson hoped to parlay into a career in professional sports management.

12. After Mr. Nochimson appeared to do a good job as Mr. Hamilton's personal assistant, the parties amended their earlier agreement and Mr. Hamilton agreed to pay Mr. Nochimson \$25,000/year for his services (an amount which was subsequently raised to \$45,000/year and then \$50,000/year).

13. Also around this time, Mr. Nochimson also received the title of Mr. Hamilton's "business manager" and was provided access to Mr. Hamilton's private financial information, including his bank accounts and American Express credit card, to enable him to pay Mr. Hamilton's bills and living expenses.

14. Unbeknownst to Mr. Hamilton, however, from 2003 to 2008, Mr. Nochimson abused his authority as Mr. Hamilton's business manager to steal approximately one million dollars (\$1,000,000) from Mr. Hamilton, including:

- a. the unauthorized use and application of Mr. Hamilton's American Express frequent flyer mileage totaling one million four hundred thousand (1,400,000) miles;
- b. the unauthorized use of Mr. Hamilton's American Express card to purchase airline flights and game tickets (among other things), totaling approximately eighty-five thousand dollars (\$85,000) between the years of 2005 and 2008 alone;
- c. unauthorized wire transfers from Mr. Hamilton's banking account to Mr. Nochimson's private account, totaling at least three thousand three hundred dollars (\$3,300);

d. unauthorized checks written to Mr. Nochimson drawn on Mr. Hamilton's banking account, totaling approximately one hundred and twelve thousand dollars (\$112,000); and

e. the unauthorized receipt and conversion of money received pursuant to an endorsement contract between Mr. Hamilton and Upper Deck, Inc., totaling two thousand four hundred dollars (\$2,400).

15. In addition, Mr. Hamilton also lent Mr. Nochimson eighty thousand dollars (\$80,000) to repair his (Nochimson's) home in Maryland, for which Mr. Hamilton has never been repaid.

16. In June of 2008, Mr. Hamilton learned that, unbeknownst to him, Mr. Nochimson had been using his American Express card to make unauthorized purchases (among other things) for several years.

17. When confronted by Mr. Hamilton regarding the foregoing accusations, Mr. Nochimson confirmed that he had indeed stolen the amounts referenced in Paragraph 14 above from Mr. Hamilton.

18. At that time, Mr. Hamilton terminated Mr. Nochimson and Mr. Nochimson decertified himself as an agent for National Basketball Association players.

COUNT I – BREACH OF FIDUCIARY DUTY

19. Paragraphs 1 – 18 above are hereby re-alleged and incorporated by reference as if set forth fully at length herein.

20. At all relevant times, a fiduciary duty existed between Mr. Hamilton and Mr. Nochimson by virtue of the parties' agreement whereby Mr. Nochimson served as Mr. Hamilton's business manager in exchange for a yearly salary.

21. Moreover, as Mr. Hamilton's business manager, Mr. Nochimson was required to act in good faith and solely for the benefit of Mr. Hamilton in all matters for which he was employed.

22. Despite this duty owed to Mr. Hamilton, Mr. Nochimson intentionally failed to act in good faith and solely for the benefit of Mr. Hamilton in all matters for which he was employed, through:

- a. the unauthorized use and application of Mr. Hamilton's American Express frequent flyer mileage totaling one million four hundred thousand (1,400,000) miles;
- b. the unauthorized use of Mr. Hamilton's American Express card to purchase airline flights and game tickets (among other things), totaling approximately eighty-five thousand dollars (\$85,000) between the years of 2005 and 2008 alone;
- c. unauthorized wire transfers from Mr. Hamilton's banking account to Mr. Nochimson's private account, totaling at least three thousand three hundred dollars (\$3,300);
- d. unauthorized checks written to Mr. Nochimson drawn on Mr. Hamilton's banking account, totaling approximately one hundred and twelve thousand dollars (\$112,000); and
- e. the unauthorized receipt and conversion of money received pursuant to an endorsement contract between Mr. Hamilton and Upper Deck, Inc., totaling two thousand four hundred dollars (\$2,400).

23. In addition, Mr. Hamilton also lent Mr. Nochimson eighty thousand dollars (\$80,000) to repair his (Nochimson's) home in Maryland, for which Mr. Hamilton has never been repaid.

24. As a direct and proximate result of Mr. Nochimson's foregoing breach of the fiduciary duty he owed to Mr. Hamilton, Mr. Hamilton has been damaged monetarily in an amount exceeding the sum of seventy-five thousand dollars (\$75,000), exclusive of interest and costs.

WHEREFORE, Plaintiff demands judgment against Defendant for compensatory damages, pre- and post-judgment interest, attorney's fees, costs of suit, and such other relief as this Court determines is just and proper under the circumstances presented.

COUNT II – CONVERSION

25. Paragraphs 1 – 24 above are hereby re-alleged and incorporated by reference as if set forth fully at length herein.

26. As mentioned above, from 2003 to 2008, Mr. Nochimson abused his authority as Mr. Hamilton's business manager to convert approximately one million dollars (\$1,000,000) from Mr. Hamilton's ownership for his own use, including:

- a. the unauthorized use and application of Mr. Hamilton's American Express frequent flyer mileage totaling one million four hundred thousand (1,400,000) miles;
- b. the unauthorized use of Mr. Hamilton's American Express card to purchase airline flights and game tickets (among other things), totaling approximately eighty-five thousand dollars (\$85,000) between the years of 2005 and 2008 alone;
- c. unauthorized wire transfers from Mr. Hamilton's banking account to Mr. Nochimson's private account, totaling at least three thousand three hundred dollars (\$3,300);

d. unauthorized checks written to Mr. Nochimson drawn on Mr. Hamilton's banking account, totaling approximately one hundred and twelve thousand dollars (\$112,000); and

e. the unauthorized receipt and conversion of money received pursuant to an endorsement contract between Mr. Hamilton and Upper Deck, Inc., totaling two thousand four hundred dollars (\$2,400).

27. In addition, Mr. Hamilton also lent Mr. Nochimson eighty thousand dollars (\$80,000) to repair his (Nochimson's) home in Maryland, for which Mr. Hamilton has never been repaid.

28. Mr. Nochimson has failed to return the aforementioned converted monies to Mr. Hamilton's rightful possession and control.

29. As a direct and proximate result of Mr. Nochimson's foregoing conversion, Mr. Hamilton has been damaged monetarily in an amount exceeding the sum of seventy-five thousand dollars (\$75,000), exclusive of interest and costs.

WHEREFORE, Plaintiff demands judgment against Defendant for compensatory damages, pre- and post-judgment interest, attorney's fees, costs of suit, and such other relief as this Court determines is just and proper under the circumstances presented.

**SHERMAN, SILVERSTEIN, KOHL,
ROSE & PODOLSKY, P.A.**

Dated: May 14, 2009

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