

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF MECKLENBURG 2019 AUG -7 P 12:54 19 CVS 10080

HEAFNER FINANCIAL SOLUTIONS,
INC.,

Plaintiff/
Counterclaim Defendant,

vs.

BAKER WEALTH MANAGEMENT,
INC., and JASON M. BAKER,

Defendants/
Counterclaim and Third-
Party Plaintiffs.

vs.

JAMES H. HEAFNER,

Third-Party Defendant.

**ANSWER, COUNTERCLAIM, &
THIRD-PARTY COMPLAINT
(Jury Trial Demanded)**

Baker Wealth Management Inc. ("BWM") and Jason M. Baker ("Baker"), Defendants and Counterclaim/Third-Party Plaintiffs (collectively, "Baker Parties") hereby answer the Complaint and assert their Counterclaims and Third-Party Complaint against Heafner Financial Solutions, Inc. ("HFS") and James Heafner ("Heafner") (collectively, along with Heafner alter ego and sham corporation Heafner Financial Services, Inc., "Heafner Parties"). BWM and Baker generally deny any allegation not expressly admitted.

ANSWER

First Defense

The Complaint fails to state a claim upon which relief can be granted and fails to join a necessary party, and therefore should be dismissed pursuant to N.C. R. Civ. P. 12(b)(6) and 12(b)(7).

Second Defense

Defendants respond as follows to the allegations in the Complaint, and generally deny any allegation not expressly admitted herein.

1. The Baker Parties admit the allegations contained in Paragraph 1 of the Complaint, upon information and belief.

2. The Baker Parties admit the allegations contained in Paragraph 2 of the Complaint.

3. The Baker Parties admit the allegations contained in Paragraph 3 of the Complaint.

4. The Baker Parties deny the allegations contained in Paragraph 4 of the Complaint.

5. The Baker Parties deny the allegations contained in Paragraph 5 of the Complaint.

6. The Baker Parties deny the allegations contained in Paragraph 6 of the Complaint.

7. Mr. Terpening's April 26, 2019 letter ("Demand Letter") is a document that speaks for itself, and no further response is required.

8. The Demand Letter is a document that speaks for itself, and no further response is required.

9. The Baker Parties deny the allegations contained in Paragraph 9 of the Complaint.

10. The Baker Parties deny the allegations contained in Paragraph 10 of the Complaint.

11. The Baker Parties deny the allegations contained in Paragraph 11 of the Complaint.

12. The Baker Parties deny the allegations contained in Paragraph 12 of the Complaint.

13. The Baker Parties deny the allegations contained in Paragraph 13 of the Complaint.

14. The Baker Parties deny the allegations contained in Paragraph 14 of the Complaint.

15. The Baker Parties deny the allegations contained in Paragraph 15 of the Complaint.

16. The Baker Parties deny the allegations contained in Paragraph 16 of the Complaint.

17. The Baker Parties deny the allegations contained in Paragraph 17 of the Complaint.

18. The Baker Parties deny the allegations contained in Paragraph 18 of the Complaint.

19. The Baker Parties deny the allegations contained in Paragraph 19 of the Complaint.

20. The Baker Parties deny the allegations contained in Paragraph 20 of the Complaint.

21. The Baker Parties deny the allegations contained in Paragraph 21 of the Complaint.

22. The Baker Parties deny the allegations contained in Paragraph 22 of the Complaint.

The remainder of the Complaint contains HFS's Prayer for Relief, to which no response is required. To the extent a response is deemed necessary, the Baker Parties deny the allegations and state that HFS is not entitled to any relief in this action.

Third Defense (Fraud)

During the negotiations for the Agreement and Promissory Note described in the Complaint, HFS represented to the Baker Parties that the consulting services, goodwill, and client list had value, that in fact they did not. In addition, HFS omitted to disclose to the Baker Parties that it was subject to legal threats and actions, as well as other negative factors, that not only rendered the consulting services, goodwill, and client list worthless, but harmful to the Baker Parties. For example, clients on the client list transferred from HFS to the Baker Parties were disgruntled because HFS had (unknown to the Baker Parties) sold them unsuitable investments, including some that turned out to be an investment fraud scheme. No goodwill arose from the relationship between the Baker Parties and HFS as described in the

Agreement and Promissory Note because, as HFS knew while the Agreement and Promissory Note were being negotiated, but concealed from the Baker Parties, the Heafner Parties were about to be the subject of numerous claims related to the Heafner Parties' placement of many clients into unsuitable investments, including an investment fraud scheme. As another example, known to HFS and unknown to the Baker Parties, the Heafner Parties would not be providing the promised consulting services because Mr. Heafner would soon flee to Puerto Rico and HFS would soon be out of business as a result of the public's discovery of the Heafner Parties' illegal conduct. HFS knew its representations were false at the time it made them, and they were made with the fraudulent intent of inducing the Baker Parties to act on them. The Baker Parties relied on the false representations in signing the Agreement and Promissory Note. The Baker Parties have been damaged by these false representations. The Agreement and Promissory Note were procured by fraud and not enforceable, void, and voidable against the Baker Parties.

Fourth Defense (Offset)

To the extent the Baker Parties are found to be liable to the Heafner Parties, which liability is denied, the amount of any liability should be offset by the amount of any benefits of the same or similar nature as there alleged in the Heafner Parties' Complaint, that the Heafner Parties received by knowingly accepting or directing payments to themselves or others.

**Fifth Defense
(Standing)**

HFS is not the proper party to enforce the Promissory Note or Agreement, therefore its Complaint should be dismissed for lack of standing and lack of privity.

**Sixth Defense
(Breach of Contract by Plaintiff)**

To the extent any contract exists, which is denied, HFS breached it by failing to perform or provide consideration.

**Seventh Defense
(Failure of Consideration)**

HFS's claim fails for lack of consideration.

**Eighth Defense
(Unclean Hands)**

HFS's claims are barred by the doctrine of unclean hands.

**Ninth Defense
(Contributory Negligence)**

HFS's claim fails because of its own negligence.

**Tenth Defense
(Agreement Unenforceable)**

The Agreement is unenforceable by HFS because it is void or voidable and fails to include material terms and is a mere "agreement to agree."

**Eleventh Defense
(Mitigating Damages)**

HFS has failed to mitigate its damages, if any.

**Twelfth Defense
(Indemnification)**

Heafner Financial Services, Inc. has agreed to hold harmless and indemnify Defendants.

**Thirteenth Defense
(Unjust Enrichment)**

Plaintiff's claims are barred because it was unjustly enriched at Defendants' expense.

**Fourteenth Defense
(Incorporation of Baker Parties' Claims)**

The Baker Parties incorporate the claims and defenses from their Counterclaim and Third-Party Complaint as affirmative defenses.

COUNTERCLAIM AGAINST HEAFNER FINANCIAL SOLUTIONS, INC.

For their Counterclaims against HFS, BWM and Baker allege as follows:

1. The foregoing Paragraphs are incorporated by reference as if expressly set forth herein.

PARTIES

2. Baker Wealth Management, Inc. ("BWM") is a North Carolina Corporation, with its principal place of business in Mecklenburg County, North Carolina.

3. Third-Party Plaintiff Jason M. Baker ("Baker") is a citizen and resident of Mecklenburg County, North Carolina. As noted above, BWM and Baker are collectively referred to herein as the Baker Parties.

4. Baker is Co-founder and President of BWM, and authorized to cause BWM to bring and defend lawsuits on BWM's behalf.

5. Upon information and belief, Third-Party Defendant James H. Heafner ("Heafner") was, during the relevant time period, a citizen and resident of Mecklenburg County, North Carolina, but recently fled to Puerto Rico, where he now resides at 90 Candalero Drive Apt #4 Palmas Del Mar, Humacao, PR 00791. Attorney Charles J. Bridgmon has agreed to accept service of the Third-Party Complaint and any other materials in this litigation on behalf of Heafner. Mr. Bridgmon's office address is: Bray and Long, PLLC, 2820 Selwyn Avenue Suite 400, Charlotte, North Carolina, 28209.

6. Upon information and belief, Heafner Financial Solutions, Inc. ("HFS") is a North Carolina Corporation, with its principal place of business in Mecklenburg County, North Carolina. Heafner was, at all relevant times, the President and, as of its Annual Report for FY 2018, only listed officer of HFS. As noted above, HFS and Heafner are collectively referred to as the Heafner Parties.

7. Heafner made all the statements, omissions, and acts complained of herein both individually and on behalf of HFS and the Heafner Parties.

8. HFS's corporate veil should be pierced because HFS is a mere alter ego for Heafner, who was HFS's sole or dominant shareholder and operated HFS such that it was a mere shield for his activities and HFS and Heafner should be viewed as one person.

9. Heafner exercised complete dominion over HFS, not only of finances, but of policy and business practices in respect to the negotiations for the Agreement and Promissory Note so that HFS, as to the transaction, had no separate mind, will, or existence of its own.

10. For example, Heafner directed funds intended for HFS to other entities, and conducted HFS business through shell corporations or entities such as Heafner Financial Services or Island Dreams Master Preservation, LLC. Heafner also accepted all payments on behalf of the Heafner Parties.

11. Heafner was the sole decision maker regarding investment purchases and products sold. Other employees provided administrative support for Heafner's financial wealth planning and client consulting.

12. The aforesaid control and breach of duty proximately caused the injury and loss the Baker Parties complain of herein.

JURISDICTION AND VENUE

13. This Court has personal jurisdiction over HFS pursuant to N.C. Gen. Stat. §1-75.4 because HFS is a domestic corporation that is engaged in substantial activity within North Carolina and has sufficient minimum contacts within North Carolina to permit the exercise of personal jurisdiction.

14. Venue is proper in this judicial district pursuant to N.C. Gen. Stat. §1-79 and N.C. Gen. Stat. § 1-82 because HFS's principal office is located in Mecklenburg County.

FACTS

15. On or around September 18, 2018, Heafner, individually and on behalf of HFS, approached Baker and BWM with a proposal that Baker and BWM would acquire Heafner and HFS's liquid management and financial planning business ("Heafner Securities Business").

16. Pursuant to the terms of the deal, Baker and BWM would purchase from HFS and Heafner, a (a) client list, as well as the (b) goodwill associated with that list, and (c) consulting services (including ongoing support) of the Heafner Parties, associated with the Heafner Securities Business.

17. With respect to the Heafner Securities Business goodwill, Heafner (individually and on behalf of the Heafner Parties) told Baker that the Heafner Parties had amassed a considerable cache of goodwill with their clients and with the Charlotte community, which Heafner indicated meant that, through his work and advertising, the Heafner Parties had acquired a reputation in the community for ethical conduct and serving clients with the highest levels of care and fiduciary duties. This included, among other attributes, that the Heafner Parties' clients were satisfied with them, and that they had earned a positive reputation and were acting in accordance therewith.

18. With respect to the client list associated with the Heafner Securities Business, Heafner represented to Baker that the clients on the client list were pleased or content with the Heafner Parties, and that they had invested for the clients in

suitable securities products. He further stated that his client list had over \$33,000,000 in assets under management.

19. With respect to consulting services to be provided by the Heafner Parties to the Baker Parties, associated with the Heafner Securities Business, Heafner and HFS represented to Baker and BWM that Heafner would remain available in Charlotte for at least the two to three years after the sale date to help Baker and BWM with clients, which was a material part of the benefit to Baker and BWM of their bargain, since Heafner and HFS had represented to Baker and BWM that they had a positive relationship with the clients on the client list, and significant financial planning acumen, as well as a reputation for integrity and a positive name in the community that would inure to the benefit of Baker and BWM.

20. During negotiations, Heafner stated that he had performed “good planning for the individuals on the client list and wanted to make sure the clients got into good hands.” He stated that all clients on the list lived within 30 miles of Charlotte. Heafner represented to the Baker Parties that once both parties were able to successfully transition the client list and the holdings reached their target goal, that BWM would then pay the Heafner Parties \$100,000 for the list, as well as for the Heafner Parties’ ongoing consulting services and goodwill.

21. The Heafner Parties represented that this transition would take at most 30 days. When Baker questioned that it may take double the amount of time, Heafner assured the Baker Parties that he “can’t possibly see that happening.”

22. The Heafner Parties stated that Heafner and HFS had a “great staff”, which would remain available to help Baker and BWM service the clients on the list. He stated that BWM and HFS, after the purchase, would work side-by-side so that BWM could benefit from HFS’s infrastructure and goodwill. The Heafner Parties represented that HFS would remain open and operate its insurance/annuity business that was not transferred with the Heafner Securities Business, and the Baker Parties would benefit from HFS support and referrals.

23. Both the Baker Parties and Heafner Parties discussed that, in exchange for the \$100,000 (and any other) payment from the Baker Parties to the Heafner Parties, they would work together over the coming years to guarantee the success of their business partnership. The Heafner Parties assured Baker and BWM that Heafner would be physically present to not only assist with the transition of clients’ liquid wealth assets, but more importantly, would foster and grow BWM’s reputation and namesake in the Charlotte community.

24. Underlying all those promises was Heafner and HFS’s assertion that Heafner and HFS had, and would maintain, positive goodwill – a positive reputation which association would benefit the Baker Parties and a roster of clients with a positive view of the Heafner Parties, who Heafner and HFS had placed in suitable investments and otherwise treated in a manner that would maintain a positive relationship.

25. During the negotiation process, on or around October 21, 2018, the Heafner Parties hosted an informational session and social gathering at Stone

Mountain Grill in Ballantyne to show the Baker Parties purported strength of the Heafner client list. Baker discovered after signing the purported Agreement and Promissory Note that Heafner had selected the subset of clients who did not have problems with Heafner to attend the event. After signing the purported Agreement, Baker received calls from disgruntled clients on the list who said they had not been invited to the event and had issues with the Heafner Parties and the unsuitable investment products in which Heafner had placed them.

26. Heafner and HFS also owned and maintained an insurance business, which was not part of the Heafner Securities Business and not part of what Heafner and HFS sold to Baker and BWM.

27. Heafner said to the Baker Parties that, as part of his consulting services to Baker and BWM, and in exchange for the \$100,000 paid by the Baker Parties to the Heafner Parties, he would remain in his Charlotte office to operate his insurance business while referring business to Baker and BWM and assisting them with the Heafner Securities Business.

28. 1 Global Capital LLC ("1 Global") is a private South Florida firm that, according to an SEC complaint filed August 23, 2018 in Federal Court in Ft. Lauderdale, fraudulently raised over \$ 287 million from over 3,400 investors through a four-year, unregistered securities offering.

29. During negotiations, Baker discovered that Heafner and HFS had directed numerous clients to invest in 1 Global which, according to the SEC, is an investment fraud scheme.

30. Concerned about the impact that the 1 Global situation might have on the value of the Heafner Securities Business that Baker and BWM were considering purchasing, Baker asked Heafner, on or around September 25, 2018, “if any fallout may be coming on the first global situation.” Heafner responded that nothing connected with 1 Global affected Heafner and HFS and that there were no 1 Global issues: “we have had nothing arise at all.”

31. As a precaution, Baker asked Heafner to exclude from the client list provided to BWM any HFS clients who had been sold 1 Global from the client list sold to Baker and BWM, and Heafner assured Baker he would do so.

32. During negotiations, on or around late September 2018, Baker asked Heafner whether there were any compliance issues at HFS. Heafner said there were no issues. The Baker Parties would never have paid the Heafner Parties any money or done any business with them if they had known of any Heafner Party compliance issues.

33. On November 13, 2018, Baker and BWM signed the Buy-Sell Agreement attached to the Complaint as Exhibit A (“Agreement”).

34. For sake of convenience, efficiency, and clarity, but without admitting the validity of the documents or waiving any defenses, Defendants sometimes will call the purported Agreement and Promissory Note “Agreement” or “Promissory Note” herein.

35. Heafner, both individually and through his big firm lawyer, pressured Baker to sign the Agreement for weeks. The Heafner Parties’ attorney sent revised

drafts of the agreement at odd, after-work hours and many of the terms were negotiated over the phone.

36. During the negotiations, the Heafner Parties approached the Baker Parties with other ventures that they believed would be beneficial for their working relationship. The Baker Parties understood that many of these opportunities would help to benefit their long-term working relationship and as a result felt immense pressure to keep that relationship positive. The Baker Parties understood that these opportunities were part of the on-going business relationship they were receiving as a result of any payment they made to the Heafner Parties.

37. The Heafner Parties were represented by legal counsel during negotiations for the Agreement and Promissory Note. The Baker Parties did not have legal counsel.

38. The Agreement purports to be “made between Heafner Financial **Services, Inc.**” and Defendants, not Plaintiff Heafner Financial **Solutions, Inc.** and Defendants. *See*, Compl. Ex. A, pp.1, 6 (emphasis supplied).

39. Plaintiff HFS is not a Party to the Agreement, the Agreement does not even mention or refer to Plaintiff, HFS.

40. Heafner Financial Services, Inc. (“Heafner Financial Services”) is not registered in North Carolina (or, upon information and belief, in any state) and is a shell company and alter ego for Heafner and/or HFS. As such, any allegations herein regarding actions of the Heafner Parties includes Heafner Financial Services.

41. The Agreement states that Defendants will pay Heafner Financial Services \$500,000 (or less, depending on the formula set forth in § 5 of the Agreement) “subject to the terms and conditions set forth in the Promissory Note attached as Exhibit B to the Agreement.”

42. The Agreement is missing significant material terms including, among others, the Promissory Note.

43. Exhibit B to the Agreement is attached to the Complaint as the last page of Exhibit A of the Complaint. It is blank, stating only [TO BE INSERTED].

44. Exhibit A to the Complaint is entitled “ The List,” but otherwise only states “[TO BE INSERTED],” along with what appear to be handwritten dates and initials, and the handwritten word “BLANK”.

45. Because of the numerous deficiencies of the agreement and their continued working relationship, the Baker Parties believed that the agreement was merely a non-binding formality necessary to begin the transition process. The Baker Parties did not believe that it represented the extensive conversations and negotiations that had been occurring over the past three months.

46. James H. Heafner executed the Agreement for Heafner Financial Services.

47. On November 20, 2018 Baker and BWM received the client list that had been missing from the Purported Agreement.

48. On or around December 3, 2018, BWM subject to pressure tactics, the strain of the transition, and desire to placate the Heafner Parties in order to maintain

the positive relationship, signed the Promissory Note that is the subject of the Complaint. As with the Agreement, the Baker Parties were not represented by counsel, did not review the Promissory Note, and regarded it as a non-binding formality that did not reflect the Parties' understanding.

49. Baker did not execute the Promissory Note individually, but was listed as a party.

50. The parties to the Promissory Note were BWM, as Maker. The Holder of the note was an entity called "Island Dreams Master Preservation, LLC" ("Island Dreams").

51. HFS is not a party to the Promissory Note, and is not even mentioned or referred to in the Promissory Note.

52. Island Dreams is a shell/sham company that, upon information and belief, is yet another alter ego for Heafner.

53. Island Dreams is not a Plaintiff in this action.

54. Promissory Note § 5 describes a formula that would cap total payments under the Promissory Note at \$500,000. The total payment could be lower than \$500,000 under the formula, but not higher.

55. Based on the current Total Market Value as calculated based on the formula in the Agreement and Promissory Note, the payment due under the Promissory Note (if it were valid and enforceable, which it is not) would be significantly less than \$500,000.

56. Shortly after the Agreement and Promissory Note were finalized, Baker and BWM began to discover that matters at HFS, the status and quality of the Heafner Securities Business, and Heafner and HFS's (or Heafner Financial Services') status, reputation, and ability to assist the Baker Parties were not as Heafner and HFS represented.

57. After the Baker Parties signed the Agreement and BWM signed the Promissory Note, the Baker Parties discovered that the Heafner Parties (Heafner individually, and on behalf of HFS) had lied to them during negotiations about many material facts pertaining to the purported Agreement and Promissory Note. More importantly, the Baker Parties discovered that the Heafner Parties had lied about material terms that indeed the Baker Parties to pay \$100,000 to the Heafner Parties.

58. On a video on his website (HeafnerFinancial.com), Heafner proclaims that he is and was a "fiduciary" for his clients and asserted that he "acted in his clients' best interests." However, it emerged after the Baker Parties signed the Agreement and Promissory Note that Heafner was not acting as a fiduciary or in his clients' best interests. Instead, as the Baker Parties realized only after they signed the documents, he was selling them unsuitable, complex annuities for which he received a substantial kickback, and unregistered securities like 1 Global, which is now in bankruptcy and being pursued by the SEC and DOJ for securities fraud.

59. The Heafner Party clients transferred to BWM on the client list were, in many instances, neither pleased nor content with the Heafner Parties. Many were rather displeased, often because the Heafner Parties had caused them to invest in

products that were unsuitable, had rushed or skipped the advising process, and had not adequately explained the products to their clients. For instance, the Heafner Parties had locked many clients into unsuitable annuities because they offered high commissions to the Heafner Parties, not because they were a suitable investment for a particular client. There was little to no “goodwill associated with [the Heafner Parties’] existing relationships with individuals on the client list,” as the Heafner Parties had represented.

60. Examples of the Heafner Parties’ conduct, which was concealed from the Baker Parties to induce them to buy the client list and purported goodwill and consulting services, include:

- a. The Heafner Parties invested an 85-year-old woman’s entire net worth into an equity index annuity with a 10-year surrender, virtually locking up all of her assets in unsuitable products. This woman had no recollection of signing the transfer forms. The Baker Parties were unable to free her money so that she would be able to move into an assisted living facility.
- b. The Heafner Parties processed a forged signature on one client’s account and when confronted about this action, fired the client and instructed her and her husband to find new representatives. Both clients were extremely upset with the Baker Parties because the Heafner Parties disinvited them to the introductory event hosted in October 2018, so that the Baker Parties would not discover the Heafner Parties’ misconduct.

The Baker Parties had to invest a significant amount of time and energy into repairing the relationship.

- c. The Heafner Parties neglected a client and instructed unlicensed employees to conduct Heafner's meetings and provide investment advice. Once he was transferred over to BWM, the Baker Parties had to invest significant time into rescinding the faulty investment.
- d. The Heafner Parties advised a client whose mother had passed away, that he could pull out his mother's annuity, but did not inform him that he would incur a large amount of capital gains due to the cost basis structure of the account.
- e. The Heafner Parties advised a client who had recently lost her husband to invest the husband's life insurance policy into 1 Global and an equity index annuity resulting in tremendous surrender fees. The client was vulnerable and unaware of the consequences of the investment due to the fact that her recently deceased husband was responsible for their investment decisions and financial planning.
- f. Ten days before 1 Global declared bankruptcy, the Heafner Parties (knowing of the impending problems with 1 Global) advised a client to invest \$172,000.00 of his retirement money in 1 Global, advising him that he would receive roughly 5-9% in returns. The Baker Parties were then responsible for communicating to the client that this was false information and that, due to the structure of the investment, the first

3% of returns were in reality, just his own money returned. Further, the investment was unlikely to perform well.

- g. The Heafner Parties did not invest over \$200,000.00 of a client's retirement funds. The assets earned no return during the entire period that the client had worked with the Heafner Parties and as a result, he chose not to continue a relationship with the Baker Parties. The client expressed to BWM that it was not their fault that he was switching advisors, but rather, that he did not want to associate himself at all with anything to do with the Heafner Parties.

61. As a result of this continued conduct, the Baker Parties had to spend many hours explaining to clients on the list what Heafner had done with their money, and help clients attempt to rectify the harm that Heafner caused.

62. If clients remained, therefore, it took far more time and effort to help them feel comfortable doing so. Some left. In most instances, the "goodwill" that the Heafner Parties had promised turned out to be "ill will."

63. The value of the clients on the list and the Heafner Parties' promised goodwill was therefore reduced, often to below worthless, because of Heafner's misconduct toward his former clients on the client list.

64. Some clients on the list provided to the Baker Parties had even been invested in 1 Global, the Baker Parties discovered afterwards, even though the Heafner Parties had promised those clients would be excluded.

65. The market value of the 1 Global clients holdings that were included in the client list accounted for nearly \$3,000,000.

66. These clients who the Heafner Parties had invested in 1 Global were particularly angry when they discovered Heafner had put their money into a fraudulent scheme, and they took out that anger on the Baker Parties, who they incorrectly saw as the Heafner Parties' successor.

67. Indeed, less than two weeks after BWM signed the Promissory Note, Heafner sent Baker, on December 16, 2018, an email admitting that, because of 1 Global and other issues, "the best direction is to rebrand and stop using 'HFS' and 'Jim Heafner,'" because Heafner and HFS anticipated media issues and lawsuits. In a written proposal dated December 19, 2019, Heafner wrote that an HFS "blow-up" could occur within the following three months, such that HFS could lose revenue.

68. According to former HFS employees, Heafner and HFS knew as early as July 2018 that the 1 Global situation would damage its client list, goodwill, and Heafner's ability to provide consulting services to the Baker Parties, even though Heafner waited until mid-December to begin suggesting this to them. In fact, as early as July 2018 (undisclosed to the Baker Parties), Heafner began to hold secret, weekly meetings within HFS, in which he acknowledged that the 1 Global situation would have a negative impact on HFS, to include an SEC or DOJ investigation into HFS. Consistent with Heafner's statements to HFS employees as early as mid-2018 (but concealed from the Baker Parties) HFS did, in fact, receive an SEC subpoena in 2019.

69. Undisclosed to the Baker Parties until after the Agreement and Promissory Note were signed, the Baker Parties have discovered from a former HFS employee that Heafner caused HFS to keep two sets of client records in case there was an SEC or DOJ investigation.

70. Through mere association with the Heafner Parties, the Baker Parties' reputation in the community has been tarnished to their financial detriment. To say the least, the client list and Heafner Party goodwill were far less valuable than represented.

71. The client list was not the only area where the Heafner Parties' pre-deal representations turned out to have been untrue. Far from having a strong and loyal staff who would remain available to help the Baker Parties after closing, the HFS staff were just as disgruntled as the clients and lacked the credentials they claimed to have.

72. For example, Alexandria Davis – who worked closely with Heafner as his VP of Operations and “right hand” – claimed on her marketing materials that she was a graduate of the University of North Carolina at Charlotte with a Business Administration Degree. However, national databases such as Student Clearing House do not indicate that she graduated from UNCC.

73. Many staff quit working for HFS, whether because of the 1 Global problem or other problems with Heafner. At least four HFS employees quit or were terminated because they “knew too much”: Anne Wright, Natalie King, Cassie Bishop, and Noelle Winston.

74. At least one HFS employee confirms that Cassie Bishop resigned from HFS in October 2018 because she knew that Heafner was underrepresenting the damage to HFS from 1 Global fallout. This was not disclosed to the Baker Parties until after the Agreement and Promissory Note were signed.

75. In August 2018, Noelle Winston was hired and promptly fired from HFS after she began to ask too many questions about 1 Global.

76. As a result, the Baker Parties did not receive the smooth transition facilitated by a loyal and compliant HFS staff that the Heafner Parties had promised.

77. The Heafner Parties' lies did not stop at misrepresentations and omissions to the Baker Parties about the client list, goodwill, and staff. Heafner also lied when he said HFS did not have compliance problems.

78. The Heafner Parties' compliance violations that the Baker Parties have recently discovered in the HFS client list files include blank forms signed by clients in client files, new account forms (with suitability information), beneficiary forms, and transactional forms.

79. As another example of compliance violations, Alexandria Davis entered *her own* email address where the client email address belongs on securities/RIA account forms, meaning that emails about investments intended for clients would be sent to Davis/HFS, leaving clients without the information.

80. Heafner signed blank copy trade authorizations.

81. Alexandria Davis signed Heafner's name to blank documents and trade forms.

82. In addition to the problems with the client list, goodwill and compliance that the Heafner Parties concealed during negotiations, the Baker Parties (during 2019) discovered many problems affecting Heafner himself.

83. Heafner represented during negotiations that he had resigned from Retirement Wealth Advisors, the registered investment advisor with which he had been affiliated through August 2018, because he no longer liked their offerings.

84. The Baker Parties discovered, only after the purported Agreement and Promissory Note were signed, that Heafner was discharged by Retirement Wealth Advisors, for failing to follow policies and procedures. Heafner did not have the reputation and goodwill that the Baker Parties had bargained for.

85. Only after the purported Agreement and Promissory Note were signed, the Baker Parties discovered that Heafner informed HFS staff that he had been terminated from Retirement Wealth Advisors for selling unregistered securities. However, he instructed HFS staff to falsely inform clients that it was Heafner who had fired Retirement Wealth Advisors due to the lack of diversity in its investments. Heafner also made this false statement to clients directly.

86. Further rendering Heafner's reputation, goodwill, and consulting services less valuable, three of his former clients filed claims against him, on or around November 19, 2018; December 12, 2018; and February 4, 2019 for unsuitability claims related to his sale to them of 1 Global. Allegations include breach of fiduciary duty and gross negligence. After the sale, it emerged that Heafner had

misrepresented that he had a good reputation worthy of the Baker Parties' paying for his goodwill and consulting services.

87. The Baker Parties recently discovered that aside from the 1 Global litigation reported in BrokerCheck, in as early as July of 2018, the HFS parties (before the purported Agreement and Promissory Note were signed) wrote checks to other clients to whom he had sold 1 Global to secretly settle and suppress their claims. The Heafner Parties did not report this to the Baker Parties at any time.

88. The Heafner Parties knew, as early as August 2018, that events and omissions described above would later become public that would destroy Heafner's reputation and cause HFS to shut down, such that the Heafner Parties could not provide the bargained for goodwill and consulting services. Indeed, this was the reason for the Heafner Parties' rush to sell the Heafner Securities Business. However, they concealed these facts so that the Baker Parties would sign the Agreement and/or Promissory Note.

89. In or around February 22, 2019, the transferred assets purportedly reached their target goal of \$15,000,000 (which the Baker Parties dispute); more than 60 days later than the benchmark guaranteed by the Heafner Parties, and only after substantially more effort by the Baker Parties than the Heafner Parties said would be necessary. In an effort to comply with their verbal agreement, and because Heafner pressured them by stating that he would not pay his staff until he received the \$100,000, the Baker Parties made a \$100,000 payment to Heafner, payable to

HFS. Heafner, on behalf of the Heafner Parties, confirmed receipt of payment on the 22nd.

90. Shortly after receiving payment and notwithstanding his previous assurances, materially relied upon by the Baker Parties, that he would not retire for years and that he and HFS would remain in business to help the Baker Parties pursuant to the Agreement, Heafner wrote to his clients that he was immediately retiring.

91. Heafner received a subpoena from the SEC related to his involvement in 1 Global on or around February 27, 2019. In a further effort to cover up that he had lied to the Baker Parties during negotiations about the impact of 1 Global on Heafner and HFS, the status of the client list, and the reputation and goodwill of Heafner and HFS, Heafner never told Baker about the SEC subpoena.

92. Further damaging the Heafner Parties' reputation (and damaging the Heafner goodwill and, by association with the Heafner Parties, the Baker Parties' goodwill, as well as the Heafner client list and Heafner's value as a consultant), the SEC has started prosecuting parties that are similarly situated to the Heafner Parties. For example, on July 15, 2019, the SEC issued Litigation Release 24531, regarding *Securities and Exchange Commission v. Henry J. Wieniewitz*, No. 19-CV-6738 (S.D. Fla. Jul. 15, 2019), in which the SEC charged unregistered broker Wieniewitz and his company, Wieniewitz Financial, LLC for unlawfully selling 1 Global securities. Heafner and HFS are extremely similar: Heafner, also an unregistered broker, illegally sold a large volume of 1 Global securities. As such, the

SEC presumably will soon charge the Heafner Parties. Even if it does not charge them, the SEC's charging of 1 Global and a similar unregistered broker and his company entirely diminishes the Heafner Parties' goodwill and value as a consultant. The Heafner Parties knew, or should have known, of this risk before the Agreement and Promissory Note were signed in November and December 2018.

93. As yet another example of the Heafner Parties' lies about the quality and value of their goodwill, Heafner's consulting services, and the client list, the Baker Parties learned after the purported Agreement and Promissory Note were signed that Heafner and/or HFS had been sued by a client during or before February 2018 for a case involving faulty paperwork. The suit was not reported on BrokerCheck and was settled sometime in or around February 2018.

94. By on or around March 7, 2019, HFS was shut down.

95. Following the office shutdown, the Baker Parties discovered client files that had been withheld by the Heafner Parties. Upon discovery, it was immediately apparent that the Heafner Parties had a history of faulty paperwork, investments and an overall practice of non-compliance.

96. The Baker Parties are still attempting to sort through the numerous issues that have been discovered after obtaining the client files.

97. On or around March 19, 2019 notwithstanding his promises to provide consulting services and share his goodwill with the Baker Parties, Heafner publicly criticized BWM, emailing clients that "onboarding to BWM was horribly slow."

98. By March 22, 2019 and extending through an article on March 27, 2019, the *Charlotte Observer* was reporting Heafner's selling of fraudulent investments. WBTV reported on March 28, 2019 that Heafner faced claims of mismanaging investments.

99. During this March 2019 timeframe, Heafner fled Charlotte for Puerto Rico.

100. In May of 2019, Heafner transferred his own HFS investments from BWM.

101. The foregoing events – all based on actions the Heafner Parties took before the sale and either concealed or misrepresented the impact of to the Baker Parties – rendered the Heafner Parties' goodwill and reputation valueless. By March 2019 Heafner, having fled to the Caribbean, was not around to provide the years of consulting services and collaboration he had promised to the Baker Parties. However, even if Heafner had been around, his post-sale reputation had become so ruined by events that started before the purported closing and came to light after closing, Heafner's association harmed the Baker Parties' reputation.

102. The decline and fall of the Heafner Parties further rendered the client list less valuable as increasing numbers were "spooked" by the Baker Parties association with the Heafner Parties.

103. Although many of the clients have been transferred over, the assets under management have yet to meet the target goal of \$15,000,000 of the \$33,000,000 that the Heafner Parties promised the Baker Parties. Further, the holdings have

come to a grinding standstill and it is unlikely that the assets will ever meet the \$33,000,000 value that the Heafner Parties alleged they were worth.

104. Even for this amount, the Baker Parties had to do far more work than expected to transition clients, because the clients were concerned about having been misled by the Heafner Parties, had been sold complicated and unsuitable investment products by the Heafner Parties, and were concerned about the Heafner Parties' connection to 1 Global. As such, the Baker Parties had to spend substantial time and resources to get *any* benefit from the client list, and received *none* of the consulting services Heafner promised he would provide. Indeed, the client list was valueless because, since HFS was forced to shut down, all its clients would have had to leave anyway. HFS clearly hid its impending forced shutdown from the Baker Parties.

105. In similar fashion, the fact that the HFS files had significant compliance problems hidden by Heafner, that the HFS staff was not loyal and competent as represented by Heafner, that Heafner himself fled in the wake of the 1 Global SEC and DOJ investigation, and the other problems described above, caused the Baker Parties to get no benefit of the "goodwill" and "consulting services" for which they paid the Heafner Parties \$100,000.

FIRST CAUSE OF ACTION
(Fraud)

106. The Baker Parties repeat and reallege the preceding allegations as if fully set forth herein.

107. During negotiations for the purported Agreement and Promissory Note, Heafner made false representations and concealed past and existing material

facts, on behalf of all the Heafner Parties, including the above and following limited examples:

- a. Before the Agreement and Promissory Note were signed, Heafner told the Baker Parties that he had a positive reputation with clients on the client list, and in the community. However, he knew that he had already committed numerous improper acts with his clients, including having them invest in unsuitable annuities and other scams, including 1 Global. Heafner knew that his history of these improper acts caused clients to dislike him (and often sue, or threaten to sue him) and would harm his reputation in the community shortly after the documents were signed, rendering the client list, consulting services, and the Heafner Parties' goodwill valueless or worth substantially less than what the Baker Parties bargained for. HFS tried to cover up the disputes by secretly settling out of court so that they would not be reported or detected by the Baker Parties.
- b. Before the Agreement and Promissory Note were signed, Heafner told Baker that 1 Global's issues with the SEC and DOJ were not an issue that would affect the Baker Parties after the transaction, or the Heafner Parties' reputation or goodwill. Heafner also promised that no 1 Global clients would be included in the client list sold to the Baker Parties. Instead, the SEC and DOJ's 1 Global matters created significant reputational backlash and legal liability for the Heafner Parties.

Heafner was having secret meetings at HFS to prepare to deal with the fallout. This backlash affected the Baker Parties by tarnishing the Baker Parties' reputation through association with the now beleaguered Heafner Parties, making any goodwill purchased by the Baker Parties disappear, and diminishing the value of the client list. Despite the fact that the Heafner Parties guaranteed that no 1 Global clients would be included, the client list contained nearly \$3,000,000 in 1 Global holdings. The Baker Parties had to spend considerable time and effort explaining the Heafner Parties' actions to affected clients.

- c. Before the documents were signed, Heafner told the Baker Parties that he would continue to work and assist the Baker Parties, providing consulting and other services, for years. This included Heafner's statements that he would remain in Charlotte, keep HFS open, and had a competent and loyal staff. After the documents were signed, Heafner fled to Puerto Rico and closed HFS, but not before many of his staff defected. His staff, it turned out, were not even as Heafner represented in terms of training, experience, and quality. Alex Davis, for example, was presented as having a business degree from UNCC, but the national database includes no record of her graduation from UNCC.
- d. Before the documents were signed, Heafner told Baker that HFS was fully compliant with regulatory requirements. It emerged after the sale

that HFS was hardly compliant. The compliance violations are catalogued above.

- e. Before the documents were signed, the Heafner Parties assured that the transition of the clients and holding target would not take any longer than 30 days – in actuality it took over 90 days.

108. The Baker Parties relied on all these misrepresentations in signing the purported Agreement and Promissory Note and paying \$100,000 to Heafner per the separate oral agreement.

109. Heafner's false representations or concealment of past or existing material facts were reasonably calculated to deceive. Specifically, Heafner knew that by covering up compliance problems, lying about the impact of 1 Global and other unsuitable investments, stating his staff was loyal and qualified, representing that he had a strong reputation and happy clients, and convincing the Baker Parties that he and HFS would stick around for years as a business partner and benefit the Baker Parties by association (because of Heafner's goodwill and reputation), he could get the Baker Parties to buy his client list, goodwill, and consulting services, and do so at a greatly inflated value.

110. Heafner made the statements with intent to deceive. He knew about compliance and staff issues in his own firm, and he knew that – because of the developing 1 Global situation – he would need to jettison his business quickly at a groundlessly inflated price, jumping ship literally weeks or days before his reputation and business collapsed.

111. The Baker Parties were, in fact, deceived. They bought the Heafner Parties' goodwill, client list, and Heafner's consulting services only because of the foregoing misrepresentations and omissions: they believed Heafner and HFS had a strong reputation and the Baker Parties would benefit from the association; because they believed Heafner had a reputation that warranted the Baker Parties' paying for his consulting services; and because they believed the client list to be transitioned to BWM was populated by clients who did not have problems with the Heafner Parties. Had the Baker Parties known that the Heafner Parties were concealing compliance issues, 1 Global, and other landmines that would shortly come to light, the Baker Parties would never have signed any agreements with the Heafner Parties.

112. The Baker Parties reliance on the Heafner Parties' representations was reasonable, in that Heafner was acting as a representative for himself and HFS in the HFS sale related to the Agreement and Promissory Note, and undertook to answer the Baker Parties' questions.

113. Heafner's misrepresentations and omissions harmed the Baker Parties by, among other damages:

- a. Causing them to pay \$100,000 to Heafner and entities he controlled under false pretenses.
- b. Causing the Baker Parties to sign documents that the Heafner Parties now claim obligate them to pay \$500,000 to third parties.
- c. Damaging the Baker Parties' reputation in the community through association with Heafner and HFS.

- d. Causing the Baker Parties to lose substantial time and money trying to help and provide information to the many clients on the client list who Heafner and HFS had placed in unsuitable securities and/or 1 Global.

SECOND CAUSE OF ACTION
(Unfair and Deceptive Trade Practices)

114. The Baker Parties repeat and reallege the preceding allegations as if fully set forth herein.

115. In committing the acts described above, Heafner engaged in unfair, unethical and unscrupulous and/or deceptive conduct – for example, as noted above and in addition to the above, Heafner lied during negotiations about his reputation, staff, history or regulatory compliance, impact of SEC/DOJ actions, relationship with clients, and ongoing availability, among other deceptions intended to unfairly sell his business to the Baker Entities.

116. Heafner's actions were in and affecting commerce, which N.C. Gen. Stat. § 75-1.1(b) defines as "all business activities, however denominated."

117. Heafner's actions proximately caused actual injury to Baker and BWM, including groundlessly inducing them to remit \$100,000 to the Heafner entities under false pretenses, causing the Baker Parties to spend time and money rectifying the harm Heafner's recommendation of unsuitable investment products and other practices vested upon clients on the Heafner Parties' client list; and damage through association with Heafner, to Baker and BWM's good reputation.

118. All in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*

THIRD CAUSE OF ACTION
(Negligence)

119. The Baker Parties repeat and reallege the preceding allegations as if fully set forth herein.

120. Heafner owed the Baker Parties a duty to truthfully respond to questions the Baker Parties posed to Baker during the negotiations preceding signing of the purported Agreement and Promissory Note.

121. Heafner breached that duty by, in response to questions by Baker, individually and on behalf of BWM, telling Baker that HFS was compliant with all regulations, had a skilled and loyal staff, would remain in business, had a satisfied group of clients, had (and would have) a good reputation, recommended suitable investments to clients, and that Heafner would remain in Charlotte and not retire for several years while he provided consulting to the Baker Parties (which the Heafner Parties tricked the Baker Parties into thinking would be valuable), when all of those statements (as Heafner well knew) were false.

122. The foregoing negligence harmed the Baker Parties in an amount to be proven at trial, but in any event no less than \$25,000.

FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

123. The Baker Parties repeat and reallege the preceding allegations as if fully set forth herein.

124. In connection with the transaction in which Heafner had a financial interest, Heafner and HFS supplied information to the Baker Parties, including

representations that HFS was compliant with regulations, that HFS had a skilled and loyal staff, that 1 Global did not create problems for HFS, that clients on the HFS list were satisfied, that Heafner and HFS had placed clients in suitable investments, that Heafner was not retiring soon, that HFS would remain open for business, and other statements listed above. The Heafner Parties intended that the Baker Parties rely on this information for guidance in making any decisions associated with this transaction.

125. That information was false.

126. Heafner failed to use reasonable care in obtaining or communicating that information.

127. The Baker Parties relied on the information as a material reason for signing the Agreement, signing (BWM only) the Promissory Note, paying \$100,000 to Heafner, and taking on clients on the list.

128. The foregoing negligent misrepresentations proximately caused the Baker Parties actual injuries and harmed the Baker Parties in an amount to be proven at trial, but in any event no less than \$25,000.

FIFTH CAUSE OF ACTION **(Abuse of Process)**

129. The Baker Parties repeat and reallege the preceding allegations as if fully set forth herein.

130. The Heafner Parties caused HFS to file the Complaint and prosecute the instant action with an ulterior motive or purpose.

131. In particular, Defendants sent a demand letter to Heafner dated April 26, 2019, which notified Heafner that Defendants intended to hold him accountable for his fraud and other misconduct in connection with the purported Agreement and Note, as outlined in these Counterclaims and Third-Party Complaint.

132. Rather than communicate with Defendant outside of the litigation process, the Heafner Parties caused HFS to file the instant lawsuit for breach of the purported Agreement and Note.

133. As outlined in the Defendants' Motion to Dismiss, filed concurrently herewith, the Complaint is frivolous and sanctionable under N.C. R. Civ. P. 11, in that HFS – the only Plaintiff named in the Complaint – was neither a party to, nor listed in, either the purported Agreement or Promissory Note.

134. The Heafner Parties knew or should have known – because HFS attached the purported Agreement and Promissory Note to the Complaint – that HFS was not a real party in interest or proper Plaintiff.

135. In filing a Complaint with no real party in interest in response to Defendants' demand letter, Heafner committed an act in the use of the legal process that is not proper in the regular prosecution of the proceedings.

136. The Heafner Parties' willful abuse of the litigation process, namely causing a Complaint to be filed on behalf of an entity with no interest in the outcome of the dispute, which is not a real party in interest and facially lacks standing to prosecute the action, has cost Defendants a significant amount in legal fees and costs,

as well as reputational damage, and lost productivity and business, exceeding \$25,000.

SIXTH CAUSE OF ACTION
(Breach of Contract – In the Alternative)

137. The Baker Parties repeat and reallege the preceding allegations as if fully set forth herein.

138. If the purported Agreement or Promissory Note is deemed to be a contract, notwithstanding the fraudulent conduct of the plaintiff and all other defenses raised, the Heafner Parties breached said agreement or note by non-performance.

139. The Heafner Parties did not provide any consulting services during the transition, instead, the Baker Parties had to hire two full time employees in order to handle the fall-out from the client issues due to the Heafner Parties fraudulent conduct.

140. The Heafner Parties client list had significant compliance and investment problems, rendering many of the investments forever unserviceable by the Baker Parties.

141. The Baker Parties did not receive any of the marketing opportunities or connections promised by the Heafner Parties. Instead, the Baker Parties have had to invest significant time and energy into separating their business from any Heafner Party association.

142. The Baker Parties have lost a significant amount of good will with their own clients as a result of redirecting their time and resources to help the Heafner Party clients left desolate because of the Heafner Parties conduct.

143. The foregoing conduct has harmed the Baker Parties current business and future business in an amount to be proven at trial, but in any event no less than \$25,000.

PRAYER FOR RELIEF

WHEREFORE, Defendants BWM and Baker respectfully pray to the Court for the following relief:

1. That BWM and Baker have and recover damages from HFS in an amount exceeding \$25,000, to be proven at trial;
2. That BWM and Baker be awarded punitive damages in an amount to be determined by a jury pursuant to N.C. Gen. Stat. § 1D-15;
3. That BWM and Baker be awarded all damages, including treble damages, available under N.C. Gen. Stat. § 75-1.1;
4. That BWM and Baker be awarded costs and attorneys' fees as permitted by law;
5. That a trial by jury be had on all issues so triable; and
6. That the Court award such other and further relief as deems just and proper.

THIRD-PARTY COMPLAINT AGAINST DEFENDANT JAMES H. HEAFNER

Now come BWM and Baker, proceeding as Third-Party Plaintiffs, and say in their Third-Party Complaint:

1. The Baker Parties repeat and reallege the preceding allegations as if expressly set forth herein.

PARTIES

2. Without limitation, the entire Parties section from the Baker Parties' Counterclaim is incorporated by reference as if expressly set forth herein.

FACTS

3. Without limitation, the Facts section from the Baker Parties' Counterclaim is incorporated by reference as if expressly set forth herein.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over Heafner pursuant to N.C. Gen. Stat. §1-75.4 because Heafner is engaged in substantial activity within North Carolina and has sufficient minimum contacts within North Carolina to permit the exercise of personal jurisdiction.

5. Venue is proper in this judicial district pursuant to N.C. Gen. Stat. §1-79 and N.C. Gen. Stat. § 1-82 because Heafner resided in Mecklenburg County during the relevant time period and all material acts took place in Mecklenburg County.

FIRST CAUSE OF ACTION **(Fraud)**

6. The Baker Parties repeat and reallege the preceding allegations as if fully set forth herein.

7. During negotiations for the purported Agreement and Promissory Note, Heafner made false representations and concealed past and existing material facts, on behalf of all the Heafner Parties, including the above and following limited examples:

- a. Before the Agreement and Promissory Note were signed, Heafner told the Baker Parties that he had a positive reputation with clients on the client list, and in the community. However, he knew that he had already committed numerous improper acts with his clients, including having them invest in unsuitable annuities and other scams, including 1 Global. Heafner knew that his history of these improper acts caused clients to dislike him (and often sue, or threaten to sue him) and would harm his reputation in the community shortly after the documents were signed, rendering the client list and the Heafner Parties' goodwill valueless or worth substantially less than what the Baker Parties bargained for. Heafner tried to cover up the disputes by secretly settling out of court so that they would not be reported or detected by the Baker Parties.
- b. Before the Agreement and Promissory Note were signed, Heafner told Baker that 1 Global's issues with the SEC and DOJ were not an issue that would affect the Baker Parties after the transaction, or the Heafner Parties' reputation or goodwill. Heafner also promised that no 1 Global clients would be included in the client list sold to the Baker Parties. Instead, the SEC and DOJ's 1 Global matters created significant

reputational backlash and legal liability for the Heafner Parties. Heafner was having secret meetings at HFS to prepare to deal with the fallout. This backlash affected the Baker Parties by tarnishing the Baker Parties' reputation through association with the now beleaguered Heafner Parties, making any goodwill purchased by the Baker Parties disappear, and diminishing the value of the client list. Despite the fact that the Heafner Parties guaranteed that no 1 Global clients would be included, the client list contained nearly \$3,000,000 in 1 Global holdings. The Baker Parties had to spend considerable time and effort explaining the Heafner Parties' actions to affected clients.

- c. Before the documents were signed, Heafner told the Baker Parties that he would continue to work and assist the Baker Parties, providing consulting and other services, for years. This included Heafner statements that he would remain in Charlotte, keep HFS open, and had a competent and loyal staff. After the documents were signed, Heafner fled to Puerto Rico and closed HFS, but not before many of his staff defected. His staff, it turned out, were not even as Heafner represented in terms of training, experience, and quality. Alex Davis, for example, was presented as having a business degree from UNCC, but the national database includes no record of her graduation from UNCC.
- d. Before the documents were signed, Heafner told Baker that HFS was fully compliant with regulatory requirements. It emerged after the sale

that HFS was hardly compliant. The compliance violations are catalogued above.

- e. Before the documents were signed, the Heafner Parties assured that the transition of the clients and holding target would not take any longer than 30 days – in actuality it took over 90 days.

8. The Baker Parties relied on all these misrepresentations in signing the purported Agreement and Promissory Note and paying \$100,000 to Heafner per the separate oral agreement.

9. Heafner's false representations or concealment of past or existing material facts were reasonably calculated to deceive. Specifically, Heafner knew that by covering up compliance problems, lying about the impact of 1 Global and other unsuitable investments, stating his staff was loyal and qualified, representing that he had a strong reputation and happy clients, and convincing the Baker Parties that he and HFS would stick around for years as a business partner and benefit the Baker Parties by association (because of Heafner's goodwill and reputation), he could get the Baker Parties to buy his client list, goodwill, and consulting services, and do so at a greatly inflated value.

10. Heafner made the statements with intent to deceive. He knew about compliance and staff issues in his own firm, and he knew that – because of the developing 1 Global situation – he would need to jettison his business quickly at a groundlessly inflated price, jumping ship literally weeks or days before his reputation and business collapsed.

11. The Baker Parties were, in fact, deceived. They bought the Heafner Parties' goodwill, client list, and Heafner's consulting services only because of the foregoing misrepresentations and omissions: they believed Heafner and HFS had a strong reputation and the Baker Parties would benefit from the association; because they believed Heafner had a reputation that warranted the Baker Parties paying for his consulting services; and because they believed the client list to be transitioned to BWM was populated by clients who did not have problems with the Heafner Parties. Had the Baker Parties known that the Heafner Parties were concealing compliance issues, 1 Global, and other landmines that would shortly come to light, the Baker Parties would never have signed any agreements with the Heafner Parties.

12. The Baker Parties reliance on the Heafner Parties' representations was reasonable, in that Heafner was acting as a representative for himself and HFS in the HFS sale related to the Agreement and Promissory Note, and undertook to answer the Baker Parties' questions.

13. Heafner's misrepresentations and omissions harmed the Baker Parties by, among other damages:

- a. Causing them to pay \$100,000 to Heafner and entities he controlled under false pretenses.
- b. Causing the Baker Parties to sign documents that the Heafner Parties now claim obligate them to pay \$500,000 to third parties.
- c. Damaging the Baker Parties' reputation in the community through association with Heafner and HFS.

- d. Causing the baker Parties to lose substantial time and money trying to help and provide information to the many clients on the client list who Heafner and HFS had placed on unsuitable securities and/or 1 Global.

SECOND CAUSE OF ACTION
(Unfair and Deceptive Trade Practices)

14. The Baker Parties repeat and reallege the preceding allegations as if fully set forth herein.

15. In committing the acts described above, Heafner engaged in unfair, unethical and unscrupulous and/or deceptive conduct – for example, as noted above and in addition to the above, Heafner lied during negotiations about his reputation, staff, history or regulatory compliance, impact of SEC/DOJ actions, relationship with clients, and ongoing availability, among other deceptions intended to unfairly sell his business to the Baker Entities.

16. Heafner's actions were in and affecting commerce, which N.C. Gen. Stat. § 75-1.1(b) defines as "all business activities, however denominated."

17. Heafner's actions proximately caused actual injury to Baker and BWM, including groundlessly inducing them to remit \$100,000 to the Heafner entities on false pretenses, causing the Baker Parties to spend time and money rectifying the harm Heafner's recommendation of unsuitable investment products and other practices vested upon clients on the Heafner Parties' client list; and damage through association with Heafner, to Baker and BWM's good reputation.

18. All in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*

THIRD CAUSE OF ACTION
(Negligence)

19. The Baker Parties repeat and reallege the preceding allegations as if fully set forth herein.

20. Heafner owed the Baker Parties a duty to truthfully respond to questions the Baker Parties posed to Baker during the negotiations preceding signing of the purported Agreement and Promissory Note.

21. Heafner breached that duty by, in response to questions by Baker, individually and on behalf of BWM, telling Baker that HFS was compliant with all regulations, had a skilled and loyal staff, would remain in business, had a satisfied group of clients, had (and would have) a good reputation, recommended suitable investments to clients, and that Heafner would remain in Charlotte and not retire for several years while he provided consulting to the Baker Parties (which the Heafner Parties tricked the Baker Parties into thinking would be valuable), when all of those statements (as Heafner well knew) were false.

22. The foregoing negligence harmed the Baker Parties in an amount to be proven at trial, but in any event no less than \$25,000.

FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

23. The Baker Parties repeat and reallege the preceding allegations as if fully set forth herein.

24. In connection with the transaction in which Heafner had a financial interest, Heafner and HFS supplied information to the Baker Parties, including

representations that HFS was compliant with regulations, that HFS had a skilled and loyal staff, that 1 Global did not create problems for HFS, that clients on the HFS list were satisfied, that Heafner and HFS had placed clients in suitable investments, that Heafner was not retiring soon, that HFS would remain open for business, and other statements listed above. Heafner intended that the Baker Parties rely on this information for guidance in making any decisions associated with this transaction.

25. That information was false.

26. Heafner failed to use reasonable care in obtaining or communicating that information.

27. The Baker Parties relied on the information as a material reason for signing the Agreement, signing (BWM only) the Promissory Note, paying \$100,000 to Heafner, and taking on clients on the list.

28. The foregoing negligent misrepresentations proximately caused the Baker Parties actual injuries and harmed the Baker Parties in an amount to be proven at trial, but in any event no less than \$25,000.

FIFTH CAUSE OF ACTION **(Abuse of Process)**

29. The Baker Parties repeat and reallege the preceding allegations as if fully set forth herein.

30. The Heafner Parties caused HFS to file the Complaint and prosecute the instant action with an ulterior motive or purpose.

31. In particular, Defendants sent a demand letter to Heafner dated April 26, 2019, which notified Heafner that Defendants intended to hold him accountable

for his fraud and other misconduct in connection with the purported Agreement and Note, as outlined in these Counterclaims and Third Party Complaint.

32. Rather than communicate with Defendant outside of the litigation process, the Heafner Parties caused HFS to file the instant lawsuit for breach of the purported Agreement and Note.

33. As outlined in the Defendants' Motion to Dismiss, filed concurrently herewith, the Complaint is frivolous and sanctionable under N.C. R. Civ. P. 11, in that HFS – the only Plaintiff named in the Complaint – was neither a party to, nor listed in, either the purported Agreement or Note.

34. The Heafner Parties knew or should have known – because he attached the purported Agreement and Note to his Complaint – that HFS was not a real party in interest or proper Plaintiff.

35. In filing a Complaint with no real party in interest in response to Defendants' demand letter, Heafner committed an act in the use of the legal process that is not proper in the regular prosecution of the proceedings.

36. The Heafner Parties' willful abuse of the litigation process, namely causing a Complaint to be filed on behalf of an entity with no interest in the outcome of the dispute, which is not a real party in interest and facially lacks standing to prosecute the action, has cost Defendants a significant amount in legal fees and costs, as well as reputational damage, and lost productivity and business, exceeding \$25,000.

SIXTH CAUSE OF ACTION
(Breach of Contract – In the Alternative)

144. The Baker Parties repeat and reallege the preceding allegations as if fully set forth herein.

145. If the purported agreement or note is deemed to be a contract, notwithstanding the fraudulent conduct of the plaintiff and all other defenses raised, Heafner breached said agreement or note by non-performance.

146. Heafner did not provide any consulting services during the transition, instead, the Baker Parties had to hire two full time employees in order to handle the fall-out from the client issues due to the Heafner Parties fraudulent conduct.

147. The Baker Parties did not receive any of the marketing opportunities or connections promised by Heafner. Instead, the Baker Parties have had to invest significant time and energy into separating their business from any Heafner Party association.

148. The Baker Parties have lost a significant amount of good will with their own clients as a result of redirecting their time and resources to help the Heafner Party clients left desolate because of Heafner's conduct.

149. The foregoing conduct has harmed the Baker Parties current business and future business in an amount to be proven at trial, but in any event no less than \$25,000.

PRAYER FOR RELIEF

WHEREFORE, Defendants BWM and Baker respectfully pray to the Court for the following relief:

1. That BWM and Baker have and recover damages from Heafner in an amount exceeding \$25,000, to be proven at trial;
2. That BWM and Baker be awarded punitive damages in an amount to be determined by a jury pursuant to N.C. Gen. Stat. § 1D-15;
3. That BWM and Baker be awarded all damages, including treble damages, available under N.C. Gen. Stat. § 75-1.1.
4. That BWM and Baker be awarded costs and attorneys' fees as permitted by law;
5. That a trial by jury be had on all issues so triable; and
6. That the Court award such other and further relief as deems just and proper.

Respectfully submitted this 7th day of August, 2019.



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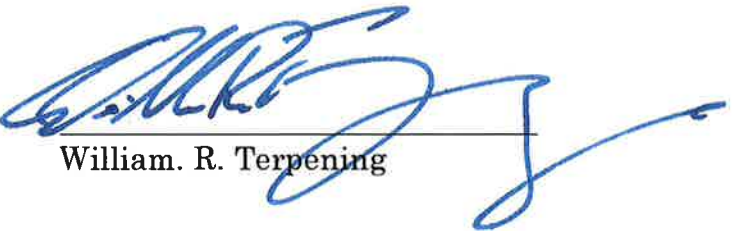
*Counsel for Defendants and
Counterclaim/Third-Party Plaintiffs
Baker Wealth Management, Inc.
and Jason M. Baker.*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **ANSWER, COUNTERCLAIM, & THIRD-PARTY COMPLAINT** was filed electronically and served on the following counsel of record:

Charlie Bridgmon
Bray and Long Law Firm
2820 Selwyn Avenue #400
Charlotte, North Carolina 28209

This the 7th day of August, 2019.



William. R. Terpening