

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

HATCHER MANAGEMENT  
HOLDINGS, LLC,

Plaintiff,

v.

ALSTON + BIRD LLP,

Defendant.

CIVIL ACTION FILE

NO. 2012CV214764

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED COMPLAINT

COMES NOW the Plaintiff, Hatcher Management Holdings, LLC, (the "Company") and submits this First Amended Complaint by amending the allegations of paragraphs 44, 54, 86, 88-89, 90, 96, 104-106, 109, and 113-114, and the "Wherefore" clause of the original Complaint filed on May 7, 2012 (the "Original Complaint") as stated below.

1.

The Company is entitled to recover damages against Defendant Alston + Bird LLP ("Defendant") for legal malpractice and breach of fiduciary duty arising out of its representation of the Company. Among other things, the Company shows that the Defendant breached the applicable standard of care and its fiduciary duties to the Company when it learned that the Company's Manager, Henry Maurice Hatcher III

("Maury Hatcher") intended to redeem his interest in the Company through actions that were illegal and fraudulent, and failed to disclose this information to the Company or its members. The Defendant further breached the applicable standard of care and its fiduciary duties by attempting to represent both the Company and Maury Hatcher, individually, under circumstances that created an irreconcilable conflict of interest. After Maury Hatcher completed the fraudulent transaction, the Defendant actively assisted Maury Hatcher in covering up the transaction, in denying the Company's lawful demands for access to the Company's records that would have disclosed the fraudulent transaction, and in otherwise representing Maury Hatcher adversely to the interests of the Company.

2.

The Company is a Georgia limited liability company created pursuant to the Georgia Limited Liability Company Act, O.C.G.A. §14-11-100, et seq. Its principal office is located at 12009 Orchid Lane, Alpharetta, Fulton County, Georgia 30009.

3.

Defendant may be served by service upon its managing partner, Richard R. Hays, at Defendant's offices located at Alston + Bird LLP, One Atlantic Center, 1201 West Peachtree Street, Atlanta, Georgia 30309-3424.

4.

This Court has personal jurisdiction over the Defendant and subject matter jurisdiction over this case.

6.

Venue is proper in this Court.

7.

John C. Sawyer ("Sawyer") is a partner of Defendant and is a member of Defendant's Wealth Management and Exempt Organizations practice group. He focuses on estate and tax planning, estate administration, fiduciary and tax litigation, and exempt organizations. He has been practicing law for over thirty years. Defendant is responsible for the acts of its partner Sawyer.

8.

The Defendant and Sawyer became familiar with Maury Hatcher through the latter's work as a financial consultant. Among other things, Maury Hatcher had worked as an expert witness in the area of business valuation on cases for the Defendant. The Defendant and Sawyer also were familiar with Maury Hatcher's father, Henry M. Hatcher, Jr. ("Mr. Hatcher") because he was a lawyer and a successful businessman who had amassed significant wealth. Defendant and Sawyer viewed Maury and his father as potential estate planning clients.

9.

In 1997, the eighty-year-old Mr. Hatcher suffered a debilitating stroke that left him unable to continue to manage his businesses. Maury Hatcher thereafter became primarily responsible for managing Mr. Hatcher's wealth and operating his businesses including: HMH Enterprises, LP; Mortgage Enterprises, Inc.; Mortgage Operations, Inc.; Mortgage Operations, LP; Briarwood Industrial Park, Inc.; and Briarwood Joint Venture (collectively referred to as the "Hatcher Family Businesses").

10.

In 1999, Maury Hatcher sought and obtained legal advice from Defendant, and specifically Sawyer, with respect to estate planning for his parents, and business succession planning for the Hatcher Family Businesses. Sawyer analyzed the various assets and businesses belonging to the Hatcher family, and recommended to Maury Hatcher that the Hatcher Family Businesses be consolidated into a single entity as a limited liability company. The purpose of the consolidation would be to make management of the businesses easier and to use the entity to achieve estate planning goals, including minority interest discounts for estate tax purposes. The ownership of the new entity could be arranged so that each member of Mr. Hatcher's family would receive shares in the new company in proportion to the interests they already owned separately in the Hatcher Family Businesses, as well as those Mr. Hatcher would have otherwise transferred to them from the Hatcher Family Businesses upon his death.

11.

In late 2000, Mr. Hatcher's health had declined to the point that Maury Hatcher decided he needed to act on the Defendant's legal advice. Accordingly, Maury Hatcher contacted Sawyer and asked him to proceed with the creation of a single entity for the Hatcher Family Businesses.

12.

At Maury Hatcher's request, Defendant, through Sawyer, prepared Articles of Organization for the Company and a draft Operating Agreement which would make Maury Hatcher the sole Manager of the Company. Defendant filed the Articles of Organization for the Company with the Georgia Secretary of State on December 13, 2000. A true and correct copy of the Articles of Organization for the Company is attached as Exhibit "A" to the Original Complaint.

13.

Defendant, while representing Maury Hatcher, drafted the Operating Agreement to provide Maury Hatcher with broad powers and discretion over the Company's operation. Defendant also limited the role that the members would have in managing the Company. Defendant knew that Maury Hatcher owed a fiduciary duty to the Company under the Operating Agreement and Georgia law. A true and correct copy of the Operating Agreement is attached as Exhibit "B" to the Original Complaint.

14.

The elder Mr. Hatcher died on March 9, 2001.

15.

Maury Hatcher invited Sawyer to a meeting with him and members of the Hatcher family who had an interest in Mr. Hatcher's Estate and in the Hatcher Family Businesses. They held the meeting at the Cherokee Town Club on March 18, 2001, the day after Mr. Hatcher's funeral. Maury Hatcher wanted to use the meeting to persuade the family that they should transfer their interests in the Hatcher Family Businesses to the Company. These interests included what they would receive by inheritance from Mr. Hatcher and any interests they already owned separately. Maury Hatcher argued in favor of consolidating the Hatcher Family Businesses in the Company, emphasizing the advantages of streamlined management and advantages for estate planning purposes. He asked for approval of the transfers to the Company and of himself serving as the Manager.

16.

Sawyer introduced himself to the Hatcher family as a partner of Defendant and as an expert in estate planning. Sawyer explained to the Hatcher family that he was acting as counsel to the Company and was there to answer legal questions about the Company and its management. Maury Hatcher and Sawyer distributed one or more copies of the proposed Operating Agreement Sawyer had prepared, and gave a general

description of its provisions. Maury Hatcher presented a single signature page that he asked the Hatcher family members to sign. Sawyer encouraged the Hatcher family members to transfer their interests in the Hatcher Family Businesses to the Company and to sign the Operating Agreement. He told them that as the Company's attorney, he would be consulting with Maury Hatcher regularly so that he could ensure that the Company was managed properly. Sawyer did not explain that he was representing Maury Hatcher. He also did not advise the Hatcher family members to obtain their own counsel to review the Operating Agreement and to advise them as to the merits of transferring their interests to the Company.

17.

As a result of this meeting, the Hatcher family members approved and signed the Operating Agreement, back-dating it to December 13, 2000 to coincide with the filing of the Articles of Organization. They further agreed to transfer their interests in the Hatcher Family Businesses to the Company.

18.

Thereafter, Maury Hatcher handled all aspects of the Company's operations. He continued to use the Defendant to provide him with individual legal advice and with advice regarding the operations of the Company.

19.

As the Manager of the Company, Maury Hatcher owed both contractual and fiduciary duties to the Company and its members.

20.

Among other things, the Company's Operating Agreement required that Maury Hatcher obtain the affirmative vote of members in the Company in order to set the amount of his compensation for serving as Manager.

21.

The Company's Operating Agreement required the Manager to provide the members with annual financial statements, including profit and loss statements, and balance sheets. The Operating Agreement further required that the Manager distribute a statement to members each quarter showing the amounts distributed to each member.

22.

As the Manager of the Company, Maury Hatcher was prohibited by law from engaging in transactions in which he had a conflict of interest with the Company or its members. As a fiduciary, Maury Hatcher was prohibited from engaging in any kind of self-dealing that would benefit himself at the expense of the Company and its members.

23.

Defendant was aware of each of the contractual and fiduciary obligations that Maury Hatcher had as Manager of the Company. Because he had created and designed



the Company as an estate planning tool, Sawyer knew the specifics of what the Operating Agreement required Maury Hatcher to do and knew the fiduciary duties that Maury Hatcher owed to the Company and its members.

24.

As attorneys for both Maury Hatcher and the Company, the Defendant had a duty to advise Maury Hatcher with respect to his contractual and fiduciary duties to the Company and its members. Defendant and Sawyer recognized this duty from the beginning of the representation when Sawyer told the Hatcher family at the initial meeting that he would oversee the proper management of the Company.

25.

Throughout the course of the Defendant's dual representation of Maury Hatcher and the Company, Maury Hatcher failed to comply with his contractual and fiduciary duties to the Company and its members.

26.

Maury Hatcher failed to provide the members with the annual financial statements required by the Operating Agreement.

27.

Maury Hatcher failed to provide quarterly statements of distributions to the members.

28.

Maury Hatcher set his own compensation and paid himself without disclosing the amount of his compensation as Manager to the members of the Company or without having that amount approved by the members as required by the Operating Agreement.

29.

The Defendant allowed Maury Hatcher to use its representation of the Company to defend his actions. The Defendant received copies of correspondence that Maury Hatcher wrote to the members of the Company that asserted his conduct as the Company's Manager was lawful and had been approved by the Defendant.

30.

Nevertheless, the members grew increasingly concerned about the lack of information they were receiving regarding the management and finances of the Company. Several of the Hatcher family members contacted Maury Hatcher and requested that he provide them with the Company's financial statements. He did not do so.

31.

In the spring of 2008, one of the Company's members, Jerry Hatcher, became concerned that Maury Hatcher was making distributions to members of the Company in an arbitrary fashion that appeared to bear no relationship to the amounts they would

be entitled to receive under the Operating Agreement. He confronted Maury Hatcher about the issue and demanded to see the Company's books.

32.

Jerry Hatcher's suspicions were entirely justified. At the time of his inquiry, Maury Hatcher had paid himself approximately \$875,000 in compensation from 2005 through 2008 without obtaining approval from the members of the Company. Maury Hatcher also had made approximately \$200,000 in excess distributions to himself and his immediate family.

33.

Maury Hatcher knew he had to keep Jerry Hatcher and other members from seeing the Company's books because it would show that he was taking compensation that had not been approved and that he was making distributions arbitrarily to himself and his immediate family and without regard to the requirements of the Operating Agreement and Georgia law.

34.

In an effort to justify his conduct as Manager and to protect himself from personal liability, Maury Hatcher asked Defendant, through Sawyer, to help him. Among other things, he asked Sawyer to write a letter that described the broad authority that the Operating Agreement gave the Manager regarding the operations of the Company.

35.

Sawyer wrote the letter as requested. In his letter dated May 30, 2008, Sawyer states, among other things: “[t]he authority of the Managers is broad and comprehensive,” “the Manager is given latitude in determining how much cash, if any, should be distributed . . .,” and “[y]ou are not required to submit every decision to a vote of the Members . . .” A true and correct copy of the letter is attached as Exhibit “C” to the Original Complaint.

36.

Although Sawyer’s letter did not address the specific issues that Jerry Hatcher had raised, its obvious purpose was to defend Maury Hatcher’s conduct as Manager of the Company and to satisfy the members that because the Defendant was involved in representing the Company, there was no need for further inquiry.

37.

At this point, Defendant knew or should have known that Maury Hatcher’s interests and the Company’s members’ interests were in conflict and becoming antagonistic. Defendant also knew or should have known that there were questions as to whether Maury Hatcher had complied with his fiduciary duty to the Company and whether he caused harm to the Company and its members.

38.

Defendant did not act in a way which was consistent with its role as counsel for the Company and did not protect the Company's interests by investigating whether Maury Hatcher had complied with the Operating Agreement or his fiduciary obligation. Instead, Defendant, through Sawyer, acted to protect Maury Hatcher's interests without regard to the Company's interests.

39.

In addition, Defendant did not inform the Company or any of its members of Defendant's own conflict of interest in representing both Maury Hatcher personally and the Company. If the Defendant had acted properly, the Company could have taken appropriate steps to ensure that its interests were protected.

40.

Jerry Hatcher again demanded to see the Company's books and records. Maury Hatcher took the position that because Defendant had overseen and advised him with regard to the management of the Company and its distributions to the members, neither Jerry Hatcher nor any of the other members had any need to see the Company's books.

41.

After some of the other members asked to see the Company's books and records, Maury Hatcher convened a meeting of the members to discuss the situation.

42.

Maury Hatcher contacted Sawyer before the meeting to obtain legal advice as to how he should respond to the members who were raising questions about his management of the Company.

43.

Maury Hatcher and Sawyer met with members of the Company on August 2, 2008 at the Company's office. At that meeting, the members seriously questioned Maury Hatcher's management of the Company. They complained of his failure to provide financial information, of his failure to use an independent accountant to compile, review, or audit the Company's financial information, and of what appeared to be arbitrary and unequal distributions to the members. They asked Sawyer if Maury Hatcher's actions were in compliance with the Operating Agreement.

44.

Sawyer defended Maury Hatcher's conduct to the members of the Company. He assured the members that he was the Company's attorney and was looking after the Company. He then described in general terms his experiences with family owned limited liability companies. To allay their concerns, Sawyer asserted that most such companies were "informally" managed, that he was confident that Maury had done everything properly, and there was no need to investigate Maury's management of the Company or his handling of its finances. Notwithstanding his assurances, Sawyer

made incorrect statements at the meeting about the members' rights in the Company, and failed to correct Maury's inaccurate statements made at the meeting.

45.

Based on the discussions at the meeting, Defendant again knew or should have known that Maury Hatcher's interests and the Company's interests were in conflict. Defendant still did not act in a way which was consistent with its role as the attorney for the Company, did not do anything to investigate whether Maury Hatcher had complied with his fiduciary obligations to the Company, and did not act in any way to protect the Company's interests. Likewise, Defendant did not disclose Maury Hatcher's actions or its own conflict of interest to the Company or its other members.

46.

Despite Defendant's and Sawyer's defense of his wrongful conduct, Maury Hatcher was concerned. Maury Hatcher was worried that the members would eventually discover that he had overpaid himself without their approval. He decided, therefore, to redeem his interests in the Company for cash and securities and to move to Florida.

47.

Because of the national economic recession that was particularly affecting real estate in general and the Company's real estate in particular, Maury Hatcher did not

want to receive any of the Company's illiquid real estate assets in the redemption.

Instead, he planned to redeem his interest for cash and marketable securities.

48.

On August 28, 2008, less than four weeks after the Company meeting on August 2, 2008, Maury Hatcher sought and received legal advice from Sawyer as to how he should redeem his interests in the Company. He told Sawyer that he planned to resign as Manager of the Company and that he intended to redeem his and his immediate family's interest in the Company in exchange for liquid assets held in the form of cash and marketable publicly traded securities. He asked Sawyer to set up a new limited liability company called "MCG Investments, LLC" so he could transfer the proceeds of the redemption to it. When Sawyer asked how he had determined the value of his interests for the purposes of the redemption, Maury Hatcher told him that he was doing it himself through his own wholly owned business valuation company, Hatcher/Johnson Valuation, Inc.

49.

Neither Sawyer nor any other lawyers with Defendant disclosed Maury Hatcher's plan to resign and to redeem his interests in the Company to any member of the Company. Again, neither Sawyer nor any of Defendant's other lawyers informed the Company of Defendant's conflict of interest in representing both Maury Hatcher and the Company.



50.

Maury Hatcher personally drafted the Purchase Agreement obligating the Company to purchase his and his immediate family's interests in the Company. A true and correct copy of the Purchase Agreement is attached as Exhibit "D" to the Original Complaint.

51.

Maury Hatcher wrote the Purchase Agreement to favor himself at the expense of the Company. Among other things, the Purchase Agreement purported to indemnify Maury Hatcher and his immediate family from "losses, costs and expenses and any and all other financial obligations" that might result from consummation of the transaction. It purported to cap any damages resulting from the overvaluation of Maury Hatcher's interests at \$275,000, regardless of the amount by which the purchase price exceeded fair market value. It purported to exculpate Maury Hatcher for all of his actions as Manager of the Company. It provided that all warranties and representations by the selling party, Maury Hatcher, would expire after 90 days from the date of the Agreement. Maury Hatcher dated the Purchase Agreement on October 1, 2008, before the contemplated redemption took place.

52.

Maury Hatcher provided the Defendant with a copy of the Purchase Agreement, and Defendant maintained the Purchase Agreement in its files for the Company.

53.

Sometime before the end of October 2008, Maury Hatcher redeemed his membership interests and those held by his immediate family members (i.e., his wife, two sons, and one son's wife) for a value approximately \$400,000 more than the fair market value of those interests. In addition to being over-valued, Maury Hatcher caused the Company to pay for the interests with cash and marketable securities. This transaction substantially damaged the Company's financial position.

54.

Using Defendant's legal counsel and advice concerning the redemption, Maury Hatcher conducted the closing of the transaction himself and represented both himself and the Company at the closing. The Operating Agreement's terms did not permit Maury Hatcher to personally conduct a closing for his own redemption or to conduct the redemption without member approval. It did not permit him to prepare a Purchase Agreement and enter into it on behalf of both himself and the Company for his own redemption. It did not authorize him to represent himself and the Company at the closing of his own redemption, or to select the assets to pay for his own redemption. These actions constituted further conflicts of interest and violations of Maury Hatcher's fiduciary duty to the Company and its members.

55.

Defendant did not appear on behalf of the Company at the closing.

56.

Maury Hatcher consummated the transaction favoring himself over the Company at a time when the American economy was in an historic economic crisis, the worst since the Great Depression of the 1930s. Credit markets were frozen, major banks had failed or were failing, and many major industries, including the American automobile manufacturing industry, were on the verge of bankruptcy. These circumstances made the Company's loss of cash and other liquid assets devastating.

57.

The redemption transaction that Maury Hatcher arranged was both illegal and fraudulent. It was illegal pursuant to the provisions of the Georgia Limited Liability Company Act because it constituted a "conflicting interest" transaction that was unfair to the Company in violation of O.C.G.A. §§ 14-11-101(3) and 14-11-307(c)-(d). It was fraudulent because it constituted an intentional breach of Maury Hatcher's fiduciary duties to the Company and its members.

58.

Maury Hatcher kept his actions secret from the members of the Company.

59.

None of the lawyers at Defendant, including Sawyer, disclosed to the members of the Company what Maury Hatcher had done.

60.

Defendant also did not act in the best interests of the Company. It did not protect the Company, or ensure that the closing and all other aspects of the redemption were conducted in accordance with Maury Hatcher's fiduciary duty and the Operating Agreement. Defendant already knew that Company members were concerned about the manner in which Maury Hatcher had been managing the Company, and it knew that Maury Hatcher's interests were in conflict with the Company's interests before the redemption. Accordingly, Defendant should have carefully scrutinized all aspects of the redemption.

61.

After the 90-day warranty period in the Purchase Agreement had expired, Maury Hatcher disclosed for the first time the fact that he had redeemed his interests to the members of the Company in a letter dated January 2, 2009. The letter did not, however, disclose the terms of the redemption. Maury Hatcher also advised them of his resignation as Manager of the Company to become effective January 31, 2009, stating:

Accordingly, at the end of October, we put our 18.77% interest to the business . . . . So officially at this time, I am only a hired Manager until the end of January with no financial interests or conflicts relative to anything I say in this letter. I discussed this with legal counsel of course before making our put to the LLC.

Thus, Maury Hatcher continued to use his representation by the Defendant to justify his actions as Manager and his redemption of his interests in the Company. A true and correct copy of this letter is attached as Exhibit "E" to the Original Complaint.

62.

The Defendant received a copy of Maury Hatcher's letter of January 2, 2009 and kept it in a file for the Company.

63.

On January 16, 2009, the Company's members voted to remove Maury Hatcher as Manager of the Company. The members voted for Maury Hatcher's brothers, Jerry Hatcher and Barry Hatcher, to act as Managers of the Company. The new Managers advised the Defendant of the Company's actions. They demanded to see the Company's books and records that were in the possession of Maury Hatcher and the Defendant.

64.

Although the Defendant was legal counsel for the Company, it ignored the request of its client to turn over the Company's books and records to its new Managers. Instead, the Defendant continued to provide legal advice to Maury Hatcher and took directions from him.

65.

Maury Hatcher contacted Nowell Berreth, a partner of Defendant and a colleague of Sawyer in Defendant's wealth planning practice group. Maury Hatcher

instructed Mr. Berreth to negotiate with the Company to obtain a release for Maury Hatcher of all liability in exchange for providing the Company's new Managers with the books and records of the Company.

66.

Maury Hatcher learned that the Company's Managers were contacting the Company's banks seeking financial information, and were contacting tenants of the Company's real estate holdings seeking payment of rent. He knew that he had cleaned out most of the Company's accounts and he did not want the Company or its Managers to have access to any funds to pursue an investigation of his conduct.

67.

In order to assist its client Maury Hatcher, Mr. Berreth sent a letter to the Company's Managers on Defendant's letterhead, dated February 2, 2009. In the letter, the Defendant stated that it represented the Company and it warned the Managers to stop acting on behalf of the Company. The letter accused the Managers of interfering with the Company's operations and demanded "that [they] cease and desist from any actions that might prove injurious to [the Company]." A true and correct copy of this letter is attached as Exhibit "F" to the Original Complaint.

68.

At the time Mr. Berreth sent the cease and desist letter to the Company's Managers, the Defendant knew that Maury Hatcher had resigned as the Company's

Manager, and that the recipients of the cease and desist letter, Jerry Hatcher and Barry Hatcher, were in fact the lawful Managers of the Company.

69.

The Defendant also knew that the reason its client Maury Hatcher had asked for the cease and desist letter was to deprive the Company of funds with which to operate so that they would be forced to sign the personal release he demanded. In an e-mail to the Defendant dated February 4, 2009, Maury Hatcher explained that "the more funding [the Company] can get, the more likelihood they will not want to settle anything." A true and correct copy of this e-mail is attached as Exhibit "G" to the Original Complaint.

70.

After sending its February 2, 2009 letter to the Company's Managers, the Defendant continued to advise and act on behalf of Maury Hatcher. It insisted that the Company and the Company's members provide a global release on behalf of Maury Hatcher as a condition of releasing the Company's financial records to its Managers.

71.

Even while continuing to act on behalf of Maury Hatcher, Mr. Berreth sent an e-mail to Sawyer questioning who the Defendant represented. Sawyer ignored the seriousness of the question and replied to the e-mail, assuring Mr. Berreth that Defendant would be paid by someone.

72.

The Defendant demanded that the Company pay the outstanding balance of its legal fees for their actions on behalf of Maury Hatcher.

73.

As a result of the Defendant's efforts on behalf of Maury Hatcher, the Company was denied its own financial information for a period of approximately four months. This delay provided Maury Hatcher with a critical head start in removing his ill-gotten gains from the State of Georgia and in attempting to make himself judgment proof.

74.

When the Company finally obtained its books and records from Maury Hatcher and the Defendant, its Managers learned that Maury Hatcher had compensated himself improperly, that he had made disproportionate distributions to himself and his family, and that the redemption transaction he arranged was both illegal and fraudulent. Accordingly, the Company hired new counsel and filed suit against Maury Hatcher in Fulton Superior Court on December 18, 2009. Among other things, the Complaint asserted claims for breach of contract and breach of fiduciary duty. A true and correct copy of that suit is attached as Exhibit "H" to the Original Complaint.

75.

In an Order dated July 18, 2011, the Superior Court of Fulton County granted partial summary judgment against Maury Hatcher, finding, among other things, that he



had compensated himself without required member approval, that he had breached his fiduciary duties to the Company and its members in his conduct as Manager, and most importantly, that the redemption transaction he secretly arranged violated the provisions of the Georgia Limited Liability Act and breached his fiduciary duties to the Company and its members. A true and correct copy of the Order is attached as Exhibit "T" to the Original Complaint.

76.

Maury Hatcher has now advised the Company's Managers that he no longer has assets sufficient to repay the Company for his improper redemption and mismanagement of Company assets.

**COUNT ONE: PROFESSIONAL MALPRACTICE**

77.

The Company incorporates the allegations of paragraphs 1 through 76 of this Complaint as if set forth fully herein.

78.

At all times relevant to the facts giving rise to the Complaint, the Defendant had an attorney-client relationship with the Company.

79.

The existence of the Company's attorney-client relationship with the Defendant is evidenced by, among other things, the following facts:

(a) The Defendant served as the Company's legal counsel with regard to the formation, management, operations, and governance of the Company;

(b) The Company asked for and received legal advice from the Defendant regarding its legal rights and obligations;

(c) The Defendant billed and collected funds from the Company for the legal services rendered on behalf of the Company; and

(d) At all times relevant to the facts giving rise to this Complaint, the Company had an objectively reasonable belief that the Defendant was acting as its lawyers.

80.

As attorneys for the Company, the Defendant was required to exercise ordinary care, skill, and diligence on behalf of the Company.

81.

The exercise of ordinary care, skill, and diligence includes the duty to comply with the Georgia Rules of Professional Conduct that applies to all attorneys admitted to the State Bar of Georgia.

82.

In the course of its representation of the Company, the Defendant violated one or more of the rules set forth in the Rules of Professional Conduct. Among other things, the Defendant was required to represent the Company competently. The Defendant

was required to avoid conflicts of interest between the Company and other clients, including Maury Hatcher, individually. Most importantly, the Defendant had a duty to disclose to the members that its client, Maury Hatcher, intended to engage in illegal and fraudulent acts so that their other client, the Company, could take appropriate action to prevent such acts.

83.

At all times relevant to the facts giving rise to the Complaint, the Defendant had an attorney-client relationship with Maury Hatcher.

84.

During the course of their representation of the Company and Maury Hatcher, the Defendant became aware of facts and circumstances giving rise to a conflict of interest between the Company and Maury Hatcher. These circumstances included the fact that Defendant became aware of the members' concerns about Maury Hatcher's management of the Company. They also included the fact that Maury Hatcher had violated the Operating Agreement for the Company by setting his compensation without approval of the members and by failing to provide the members with financial statements required by the Operating Agreement.

85.

The Defendant had a duty to inform the Company and the Company's members of the conflict and to resolve the conflict. However, the Defendant failed to notify the

Company and the Company's members of the conflict and failed act with ordinary care, skill, and diligence in resolving the conflict. In each case, the Defendant chose to defend the interests of its client Maury Hatcher adversely to the interests of the Company, which was also its client.

86.

In 2008, Defendant became aware of concerns Company members had regarding Maury Hatcher's management of the Company. The Defendant also became aware of Maury Hatcher's plan to resign as Manager and to redeem his (and his immediate family's) interests in the Company. In addition, at the August 2, 2018 meeting, Mr. Sawyer made incorrect statements about the Operating agreement, Maury Hatcher's obligations as manager, and members' legal rights in the Company. He similarly failed to correct Maury Hatcher's inaccurate statements made at the meeting related to those issues.

87.

The Defendant knew, or in the exercise of ordinary care, skill and diligence on behalf of the Company, should have known that Maury Hatcher had breached his fiduciary duty to the Company causing damage to the Company.

88.

The Defendant also knew, or in the exercise of ordinary care, skill and diligence on behalf of the Company, should have known, that the advice it had given the

Company was incorrect, and that the methods by which Maury Hatcher intended to accomplish the redemption were illegal and fraudulent.

89.

The Defendant knew, for example, that Maury Hatcher personally valued his interests. It knew that Maury Hatcher prepared the Purchase Agreement for the redemption transaction and that it constituted an illegal conflict of interest transaction because Maury Hatcher negotiated both sides of the transaction. It knew that the redemption required the approval of the Company's members. It knew that Maury Hatcher had selected certain assets to pay for is redemption and leave behind assets that were rapidly declining in value. It knew that the transaction would damage the Company's financial position. Thus, the Defendant knew that Maury Hatcher intended to consummate a transaction intentionally in breach of his fiduciary duties to the Company, making the transaction fraudulent as a matter of law. It also knew that this transaction was taking place during the country's most severe financial crisis since the Great Depression, which if anything, required that it be given more, rather than less scrutiny by the Company. It knew further that Maury Hatcher had not been providing timely financial reports or any other material information on the operation of the Company to the members of the Company.

90.

Defendant further knew that the Operating Agreement did not permit Maury Hatcher to breach his fiduciary duties to the Company and that Maury Hatcher was not permitted to engage in a conflict of interest transaction or redeem his membership interest without Company approval.

91.

Under these circumstances, the Georgia Rules of Professional Conduct required the Defendant to disclose Maury Hatcher's redemption transaction to the members of the Company so that they could take appropriate action to stop or modify it in the best interests of the Company.

92.

Rule 1.13(b) of Georgia's Rules of Professional Conduct provides that if a lawyer for an organization knows that an officer associated with the organization "is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization . . . and is likely to result in substantial injury to the organization," the lawyer is required to proceed "as is reasonably necessary in the best interest of the organization." Among other things, the lawyer has a duty under Rule 1.13(b) to counsel the officer to not engage in such actions, and to inform "the highest authority that can act in behalf of the organization" so that appropriate protective measures can be taken.

93.

Defendant had obligations to advise Maury Hatcher not to engage in the fraud and illegal activity and to disclose Maury Hatcher's intended conduct to the Company's highest authority above Maury Hatcher, which in this case are the members of the Company. Section 8.2 of the Operating Agreement and § 14-11-304 of the Georgia Limited Liability Company Act empower the membership to appoint and remove the Company's manager. Furthermore, Section 8.5 of the Operating Agreement prohibits the manager, without the consent of all members, from engaging in any act that contravenes the Operating Agreement. If Defendant had disclosed to the members that Maury Hatcher intended to engage in illegal and fraudulent activities, they would have taken appropriate actions to remove Maury Hatcher as Manager and to stop the redemption from occurring. The Members also would have taken appropriate steps to recover the assets that Maury had previously taken through his payment of improper compensation and distributions, and to use his membership interest to repay the Company for these previously-converted assets.

94.

Similarly, Rule 4.1 of Georgia's Rules of Professional Conduct provides that a lawyer shall not knowingly "fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act unless disclosure is prohibited by Rule 1.6." In this case, Rule 1.6 did not prohibit disclosure of the fraud

because, as between the Defendant's two clients, Maury Hatcher and the Company, the information was not confidential. Maury Hatcher had no reasonable expectation that his communications with the Defendant regarding the redemption of his interest in the Company would be kept confidential from the Company because he knew that the Defendant also represented the Company. Furthermore, even confidential information may be disclosed to third parties where it is necessary to prevent substantial financial harm, as was the case here.

95.

Pursuant to Rule 1.7 of the Georgia Rules of Professional Conduct, the Defendant also owed a duty of loyalty to the Company. It breached this duty of loyalty when it chose to favor the interests of its client, Maury Hatcher, over the interests of its other client, the Company. Among other things, the duty of loyalty as codified in Rule 1.7 required the Defendant to identify the conflict of interest, to disclose the conflict of interest to the Company and to obtain consent to continuing the representation in light of the conflict, and if consent was not or could not be given, to withdraw from the representation. The Defendant failed to comply with Rule 1.7.

96.

If Defendant had complied with this duty of loyalty and had disclosed its conflict of interest, and if it had provided the Company with competent legal advice, the Company would have taken actions to engage new counsel and to protect its interests,



both during the redemption and during periods when members were raising concerns about Maury Hatcher's management.

97.

After Maury Hatcher completed the illegal and fraudulent redemption of his interests in the Company, the Defendant continued to assist him in keeping the terms of the redemption secret from the members of the Company. It actively and willingly participated in Maury Hatcher's efforts to cover up the fraud even after Maury Hatcher resigned as Manager of the Company. It assisted Maury Hatcher in his effort to interfere with the operations of the Company by writing a cease and desist letter to the lawful Managers of the Company after Maury Hatcher had resigned.

98.

Defendant's conduct further allowed Maury Hatcher's conduct to remain hidden and prevented the Company from taking protective measures to recover what Maury had taken before he moved to Florida.

99.

The Defendant's conduct in this regard violated the Rules of Professional Conduct and breached its duty to exercise ordinary care, skill, and diligence on behalf of the Company.

100.

The Affidavit of Professor David Hricik, the original of which is attached to the Original Complaint as Exhibit "J," sets forth at least one act and omission on the part of the Defendant that constitutes professional negligence, in accordance with O.C.G.A. § 9-11-9.1.

101.

As a direct result of the Defendant's failure to exercise ordinary care, skill, and diligence in its representation of the Company, the Company has suffered damages in excess of \$1.5 million.

102.

The Company is entitled to recover actual damages against the Defendant in an amount to be proven at trial.

103.

The Defendant's conduct as described in this Count of the Complaint was willful, wanton, malicious, fraudulent, oppressive, or undertaken with conscious indifference to the consequences of the rights of the Company. Pursuant to O.C.G.A. § 51-12-5.1, the Company is entitled to recover punitive damages from the Defendant.

104.

The Defendant acted with specific intent to cause harm by deliberately providing misleading, inaccurate, and incompetent legal advice, deliberately withholding

information it was legally and ethically obligated to communicate to the Company and by deliberately choosing to represent Maury Hatcher adversely to the interests of the Company. Accordingly, there is no statutory limit on the amount of punitive damages the jury may impose for this conduct.

105.

The Defendant's conduct in the transactions giving rise to this Count of the Complaint was undertaken in bad faith, was stubbornly litigious, and has caused the Defendant unnecessary trouble and expense. Pursuant to the provisions of O.C.G.A. § 13-6-11, the Defendant is liable for the Company's expenses of litigation, including reasonable attorneys' fees, in an amount to be proven at trial.

**COUNT TWO: BREACH OF FIDUCIARY DUTY**

106.

The Company incorporates the allegations of paragraphs 1 through 105 of this Complaint as if set forth fully herein.

107.

At all times relevant to the facts giving rise to the Complaint, the Company had an attorney-client relationship with the Defendant.

108.

As attorneys for the Company, the Defendant stood in a confidential relationship with the Company and owed the Company and its members a fiduciary duty to exercise utmost good faith and loyalty.

109.

The Defendant breached its fiduciary duties to the Company by, among other things: (1) advising Maury Hatcher in the plan of redemption on terms detrimental to the interests of Company and its members, (2) deliberately withholding information in connection with the plan of redemption in order to protect Maury Hatcher's interests at the expense of the Company's interests, (3) actively undertaking efforts to shield Maury Hatcher from liability to the Company for his misconduct, (4) charging and receiving payment from the Company for services it had rendered solely for the benefit of Maury Hatcher, (5) failing to investigate concerns about Maury Hatcher's conduct raised by the members, (6) failing to advise the Company of Defendant's conflict of interest, and (7) providing the Company with incompetent legal advice both before and after Maury's redemption.

110.

The Company suffered damages as a direct result of the Defendant's breach of fiduciary duty.

111.

The Company is entitled to recover actual damages from the Defendant for breach of fiduciary duty in an amount to be proven at trial.

112.

The Defendant's conduct as described in this Count of the Complaint was willful, wanton, malicious, fraudulent, oppressive, or undertaken with conscious indifference to the consequences of the rights of the Company. Pursuant to O.C.G.A. § 51-12-5.1, the Company is entitled to recover punitive damages from the Defendant.

113.

The Defendant acted with specific intent to cause harm by deliberately providing misleading, inaccurate, and incompetent legal advice, deliberately withholding information they were obligated to communicate to the Company and its members, and by deliberately representing Maury Hatcher adversely to the interests of the Company. Accordingly, there is no statutory limit on the amount of punitive damages the jury may impose for this conduct.

114.

The Defendant's conduct in the transactions giving rise to this Count of the Complaint was undertaken in bad faith, was stubbornly litigious, and has caused the Defendant unnecessary trouble and expense. Pursuant to the provisions of O.C.G.A. §

13-6-11, the Defendant is liable for the Company's expenses of litigation, including reasonable attorneys' fees, in an amount to be proven at trial.

WHEREFORE, Plaintiff prays:

- (a) That the Complaint be filed and served according to law;
- (b) That all issues be tried before a jury;
- (c) That the Court enter judgment against the Defendant under Count One for actual and compensatory damages, prejudgment interest, expenses of litigation (including reasonable attorneys' fees), and punitive damages in an amount to be proven at trial;
- (d) That the Court enter judgment against the Defendant under Count Two for actual and compensatory damages, prejudgment interest, expenses of litigation (including reasonable attorneys' fees) and punitive damages in an amount to be proven at trial;
- (e) That all costs and expenses of this action, including reasonable attorneys' fees, be assessed against the Defendant; and
- (f) That the Court grant all such other and further relief as the Court deems just and proper.

Respectfully submitted, this 31st day of January, 2018.

CALDWELL, PROPST & DELOACH, LLC

/s/ Jeremy M. Moeser

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*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of "Plaintiff's First Amended Complaint" by email and by depositing a copy of same in the United States Mail in a properly addressed envelope with adequate postage thereon to insure delivery, addressed as follows:

Richard L. Robbins  
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This 31st day of January, 2018.

CALDWELL, PROPST & DeLOACH, LLP

s/ Jeremy M. Moeser

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