EXHIBIT 1

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Frank George Rogers and Exodus Aircraft, LLC, *Plaintiffs*, v. Joshua Brett Kimbrell, Liliya Shcherba Robertson Kimbrell, Exodus Airways, LLC, Thomas Blake Whitaker, Pinnacle Bank, Richard A. Lackey, and Jere Davis, *Defendants*.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT Civil Action No. 2025-CP-23-04210 **SUPPLEMENTAL SUMMONS**

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Amended Complaint upon the subscribers at 206 Mills Avenue, Greenville, South Carolina, 29605 within fifteen (15) days after service hereof, exclusive of the day of such service, and if you fail to answer the Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in said Amended Complaint.

WILKINS DAVIS, LLC

/s/ W. Walter Wilkins, III
W. Walter Wilkins, III (SC Bar No. 16740)
Lane W. Davis (SC Bar No. 68796)
206 Mills Avenue
Greenville, SC 29605
Phone: (864)-263-3155
Walt@wilkinsdavis.com
Lane@wilkinsdavis.com

Attorneys for Plaintiffs

December 8, 2025
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Frank George Rogers and Exodus Aircraft, LLC, *Plaintiffs*, v. Joshua Brett Kimbrell, Liliya Shcherba Robertson Kimbrell, Exodus Airways, LLC, Thomas Blake Whitaker, Pinnacle Bank, Richard A. Lackey and Jere Davis, *Defendants*.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT Civil Action No. 2025-CP-23-04210 **AMENDED COMPLAINT** **(JURY TRIAL DEMANDED)**

Complaining of the Defendants, Plaintiffs Frank George Rogers ("Rogers") and Exodus Aircraft, LLC ("Exodus" or "Company"), would show the Court as follows:

INTRODUCTION

1. This lawsuit involves the unlawful diversion and conversion of millions of dollars in corporate funds by Joshua Brett Kimbrell ("Josh Kimbrell" or "Kimbrell"), while acting as manager and fiduciary of Exodus.

2. With assistance from his spouse, Lilya Shcherba Robertson Kimbrell ("Lilya"), and Pinnacle Bank ("Pinnacle"), acting through its agent and Kimbrell's personal banker, Thomas Blake Whitaker ("Whitaker"), Kimbrell orchestrated a series of complex financial transactions to siphon funds away from Exodus *Aircraft*, LLC into Exodus *Airways*, LLC ("Sham Exodus")—a bogus entity he secretly created to divert Exodus revenues by exploiting the confusion caused by the strikingly similar name.

3. Kimbrell's further known misdeeds include secretly and unlawfully: diverting Exodus corporate funds to support his political aspirations; diverting Exodus corporate funds for recreational and personal uses; diverting Exodus monies to an array of other corporate entities to

evade detection by Rogers; diverting Exodus funds to his Spouse, who has no *bona fide* affiliation with the entity whatsoever; misusing credit cards in Rogers' personal name for Kimbrell's personal benefit without Rogers' knowledge or consent; and converting Exodus assets and allocated funds for his personal use and the use of other entities under his control.

4. Whitaker and Liliya knowingly assisted Kimbrell in abandoning his fiduciary duties, thereby enabling his unlawful conduct. This conduct was systematic, prolonged, intentional, and carried out with complete and reckless disregard for the rights of Rogers and Exodus.

5. Richard A. Lackey ("Lackey") and Jere Davis ("Davis") also played key roles in the deception and fiduciary breaches perpetrated by Kimbrell, Liliya, and Whitaker. Their involvement included helping to create and sustain Kimbrell's false narrative about the role and purpose of Sham Exodus, designing schemes to siphon funds and divert corporate opportunities away from the legitimate Exodus and its stakeholders, and ultimately attempting to force a sale of Exodus without the knowledge or consent of Rogers, Kimbrell's 50/50 partner.

THE PARTIES

6. Rogers resides in the City of Greenville in Greenville County, South Carolina.

7. Exodus exists as a Delaware limited liability company with a principal place of business in Upstate South Carolina.

8. Kimbrell resides in the community of Boiling Springs in Spartanburg County, South Carolina.

9. Liliya resides in the community of Boiling Springs in Spartanburg County, South Carolina.

10. Sham Exodus exists as a South Carolina limited liability company and, upon information and belief, nowhere maintains a legitimate principal place of business.

11. Pinnacle exists as a Tennessee corporation with a principal place of business in the Upstate

of South Carolina.

12. Whitaker resides in the City of Simpsonville in Greenville County, South Carolina. At all relevant times, Whitaker was an employee, agent, servant, and/or legal representative of Pinnacle and was acting in the course and scope of his employment on behalf of his employer.

13. Defendant Lackey resides in Greenville County, South Carolina.

14. Defendant Davis resides in Greenville County, South Carolina.

VENUE & JURISDICTION

15. This Court has jurisdiction to hear this action pursuant to Article V, §11 of the South Carolina Constitution, S.C. Code § 14-1-80, and South Carolina common law.

16. Venue properly exists in this Court pursuant to S.C. Code § 15-7-30 because one or more Defendants reside in Greenville County, South Carolina.

17. The financial damages and corporate harms incurred by Exodus and Rogers, due to Defendants' acts and omissions, were predominantly sustained in Greenville County, South Carolina.

FACTUAL BACKGROUND

18. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

EXODUS

19. Exodus offers private aircraft charter services primarily for private businesses.

20. Prior to the Consent Order entered in this action on July 22, 2025, Rogers and Kimbrell each owned a 50% ownership interest in Exodus. Rogers now owns 100% of Exodus.

21. Rogers originally acquired his interest in Exodus after executing a Membership Interest Purchase Agreement ("MIPA"), dated October 25, 2022. (A copy of the MIPA is attached hereto and incorporated as **Exhibit 1**.)

22. Governed by South Carolina law, the MIPA constitutes the sole corporate document ever executed by Rogers in relation to his ownership interest in Exodus. Kimbrell never furnished or even asked Rogers to execute an Operating Agreement in relation to Exodus; Rogers never signed one as a result.

23. Over the ensuing two and a half years, Kimbrell served as manager of Exodus. Although Kimbrell assumed the fiduciary duties and obligations of the managing member of Exodus, Rogers possessed, among other powers, the right to participate in financial decisions concerning and impacting Company business operations.

24. As the managing member and fiduciary, Kimbrell maintained full operational control over Exodus, including access to and authority over all accounts maintained by Pinnacle. While Rogers provided substantial financial support to Exodus through capital contributions, personally servicing corporate debt, and guaranteeing loans and lines of credit, Kimbrell furnished virtually no (or no) financial backing to the Company. (*See* Affidavit of Frank Rogers, ¶ 4 (July 11, 2025), attached hereto as **Exhibit 2 (Exhibits to the Affidavit of Frank Rogers are intentionally omitted, but were previously filed on July 11, 2025 and are available in the court electronic record of the case.**

25. In his capacity as manager of Exodus, Kimbrell owed the following duties to both Exodus and Rogers:

a. a duty of loyalty and care;

b. a fiduciary duty to act in furtherance of Exodus's best interests;

c. a duty to avoid interested transactions;

d. a duty to avoid making decisions involving conflicts of interests;

e. a duty to maintain an arm's length relationship with Exodus;

f. a duty to ensure Exodus pays its own liabilities;

g. a duty to ensure the terms and conditions of all business transactions with Exodus's members, including himself, mirror terms generally available in comparable transactions;

h. a duty to correct any known misunderstanding regarding Exodus's separate identity from other entities such as Sham Exodus;

i. a duty to maintain adequate capital in light of Exodus's business purpose as an airline charter service;

j. a duty to refrain from competing in favor of a party with an adverse interest to Exodus;

k. a duty to make financial records readily available to Rogers so he could stay appraised of Exodus's financial condition;

l. a duty of good faith and fair dealing in relation to Exodus and Exodus's members;

m. a duty to refrain from competing against Exodus or assisting the Company's competitors;

n. a duty to avoid corporate waste.

26. For the reasons set forth below, Kimbrell violated virtually every duty he owed to Exodus and Rogers.

KIMBRELL'S MISDEEDS & SHAM EXODUS

27. The financial records and corporate documents of Exodus, once obtained even in abridged fashion, reflect Kimbrell's diversion of more than $2 Million Dollars from Exodus in approximately two and a half years.

28. A non-exhaustive list of Kimbrell's efforts to secrete Exodus funds, as confirmed by business records, includes the following:

a. The unauthorized expenditure of Exodus corporate funds to pay Kimbrell's political campaign expenses. From April 2020 through October 2024, Kimbrell

funneled $234,865.30 to Platform Strategies, LLC ("Platform Strategies")[1] using three sources: Frank Rogers's AmEx, Exodus's bank account via wire transfers, and the Exodus credit card. To date, Kimbrell has not even attempted to justify his surreptitious use of Exodus funds to finance his political aspirations.

b. The unauthorized use of credit cards in Rogers's name for Kimbrell's personal benefit and the diversion of Exodus corporate funds into PayPal accounts personally held by Kimbrell and his Spouse. For example, from August 2023 through May 2025, Liliya's personal credit cards were paid using accounts of Exodus and Sham Exodus in at least 49 transactions totaling $27,523.67. In the same period, Liliya received PayPal transfers in the approximate amount of $110,404 over 179 transactions from Exodus, Sham Exodus, or Exodus credit cards.

c. The unauthorized expenditure of Exodus proceeds to pay Kimbrell's personal credit cards. For example, from October of 2022 through July 14, 2025, Kimbrell transferred over $300,000 from the Exodus bank account to pay off his own personal credit card.

d. Between December 2018 and April 2025, Kimbrell—who also maintained control over a corporate American Express credit card issued in Rogers's name ("Rogers AmEx")—diverted more than $155,000 to Liliya's personal accounts. Liliya has never had any affiliation with Exodus.

29. Kimbrell's most ambitious diversion took flight through Sham Exodus (*i.e.*, Exodus Airways).

30. On April 30, 2024, Josh Kimbrell secretly formed Sham Exodus, which he and others actively concealed from Rogers.[2] He employed a simple but effective two-part scheme designed to reinforce this concealment: (1) he deliberately chose a strikingly similar name for the sham entity, i.e., Exodus *Airways* and (2) opened a sham bank account for Exodus Airways at Pinnacle—the same institution where the true Exodus maintained its account.

31. Exodus customers and other third parties were easily confused and falsely concluded that

[1] Platform Strategies is a political consulting company based in Lexington, South Carolina and owned by Dave Wilson. Wilson is also the campaign manager of Josh Kimbrell for Senate.

[2] On March 10, 2025, Lilya was added as a 50% owner of Sham Exodus. (*See* Amended Articles of Organization for Sham Exodus attached hereto as **Exhibit 3**.)

Exodus Airways and Exodus Aircraft were the same entity, allowing Kimbrell to divert funds meant for the true Exodus into the coffers of Sham Exodus.

PINNACLE AND WHITAKER

32. The formation of Sham Exodus and the fraudulent diversion of Exodus proceeds would not have been possible without the assistance of Pinnacle's agent, Whitaker, who had conveniently served as Rogers's personal banker.

33. Pinnacle provided banking services for Rogers and his various businesses for many years prior to the formation of Sham Exodus. At all relevant times, Whitaker was personally familiar with Rogers, acting as the primary banker for numerous business and personal accounts associated with Rogers.

34. Whitaker was the originating Pinnacle representative who initially opened the Exodus account. At that time, Kimbrell directly provided Whitaker with the corporate records for Exodus, including the Delaware incorporation filings, EIN, second amended operating agreement, and Exodus limited liability agreement. Kimbrell also informed Whitaker that the Embraer ERJ-145 aircraft ("Embraer")[3] owned by Exodus would be operated by FX Aviation Capital, LLC ("FX Aviation Capital"). FX Aviation Capital is a customer of Pinnacle and Whitaker.

35. Pinnacle, through its agent, Whitaker, was therefore familiar with the business, financials, and ownership of the true Exodus by virtue of receiving Exodus financial statements, corporate documents, and tax return materials.

36. In late 2022 and early 2023, Rogers, through his agent, communicated directly with Whitaker about adding Rogers to the Exodus account and requested related documents and

[3] The Embraer is a regional jet airliner manufactured by Brazilian aerospace corporation, Embraer S.A.

information. In these communications, Whitaker explicitly acknowledged Rogers's status as an Exodus member/partner yet, inexplicably, replied that he would need to speak with Kimbrell before responding about the addition of Rogers to the account and requested information.

37. In a March 9, 2023 email, Whitaker even wrote Kimbrell and Rogers, stating: "Josh, need your permission to add Frank to the Exodus account."

38. That afternoon, Whitaker sent a follow up email stating: "Hey Josh, Just wanted to follow up with you. Frank wants to sign the new resolution and signature card. I need your ok to add him, print new docs and get your and Frank's signatures."

39. Whitaker was, however, merely pretending that Kimbrell's "permission" was necessary (it was not) to ensure Rogers was denied visibility into Exodus finances.

40. Despite multiple requests to Whitaker and Pinnacle, and because of Kimbrell's influence, Rogers was never added to the Exodus account in any capacity other than signer, leaving Kimbrell in full control of the account, while blocking Rogers from information about money flow, wire transactions, and credit card usage.[4]

41. Since April 2022, Whitaker effectively operated as Kimbrell's exclusive Pinnacle banker and was familiar with Kimbrell's accounts, including Kimbrell's campaign account, personal account, money market account and, of course, the Sham Exodus account.

42. On July 16, 2024, in order to open Sham Exodus's Pinnacle account, Kimbrell transmitted directly to Whitaker the following corporate documents for Sham Exodus: Articles of Organization, EIN, IRS forms, and Certificate of Existence. (Email from Kimbrell to Whitaker enclosing these corporate documents for Sham Exodus, attached hereto as **Exhibit 4**).

[4] As referenced herein, Pinnacle and Whitaker did not hesitate, however, to expose Rogers to financial risk by adding him to Exodus loans and a credit card as guarantor.

43. Pinnacle, through Whitaker, also presented—and Kimbrell and his Spouse signed—a Certification of Beneficial Owners of Legal Entities ("CBO")[5] and Account Agreement for Sham Exodus. (Copies of the CBO and Account Agreement for Sham Exodus attached hereto as **Exhibits 5 & 6**, respectively).

44. On the Account Agreement, Whitaker and Kimbrell verified that Sham Exodus had the same address as Exodus and represented that the purpose of Sham Exodus was "[a]ircraft reservation services."

45. On the same day Kimbrell opened the Sham Exodus account at Pinnacle, Pinnacle generated a BizChex[6] report for Sham Exodus ("BizChex Report"), which contained several notable findings, including:

a. The business entity, i.e., Sham Exodus, was "not verified";

b. No Secretary of State record confirming the existence of Sham Exodus;

c. "Red Flag verify why SOS not found";

d. "UKNOWN BEHAVIORAL RISK FO RBUSINESS ENTITY";

e. "Nothing found to confirm existence of business";

f. Recommended Behavioral Risk Decision: Review;

g. BizChex Behavioral Risk Score: 9999

[5] The stated purpose of the CBO is to prevent the abuse of legal entities to disguise money laundering, tax evasion, corruption, fraud and other financial crimes.

[6] Upon information and belief, BizChex is a product of Chex Systems, Inc., a consumer reporting agency and indirect wholly owned subsidiary of Fidelity National Information Services, Inc. ("FIS"). According to FIS, BizChex is a business verification and risk assessment product primarily used by financial institutions during the onboarding of business clients to, among other things: (1) verify the business entity and its owners in real time; (2) assess behavioral risk based on account history, public records, and alternative data; (3) provide a decision recommendation for opening an account; and (4) prevent fraud. A copy of the BizChex Report is attached hereto as **Exhibit 7**.

46. Despite knowing that Kimbrell was the sole owner of Sham Exodus, Whitaker ignored these obvious red flags—recklessly, or perhaps intentionally—and initiated a $100 wire transfer from the Exodus account to fund the newly created Sham Exodus account.

47. Whitaker was well-acquainted with both Exodus and Sham Exodus—their business activities, ownership structure, and account transactions. Other Pinnacle employees also knew that Exodus was jointly owned by Rogers and Kimbrell and were aware of Kimbrell's secret Pinnacle account for Sham Exodus.

48. With Sham Exodus and its bogus account up and running, Kimbrell orchestrated a series of deceptive and fraudulent acts, including:

a. Altering Exodus Aircraft's contracts for private charts with customers to reflect the name-style, "Exodus Air," as the company offering the charters instead of Exodus Aircraft, in order to facilitate the diversion of funds to Sham Exodus, which held no assets let alone an actual plane. (*See* Agreements between Charter Carolina Air, LLC and Exodus Air, LLC[7] (December 15, 2023), Rick Ware Racing and Exodus Air, LLC (November 14, 2024), and Xfinity Racing and Exodus Air, LLC (January 27, 2025), collectively attached hereto as **Exhibit 8**.)

b. On at least seven occasions, upon receipt of a check from the vendor for the private charter services, Kimbrell deposited checks made out to "Exodus Air" into the Sham Exodus account and attempted to hide these payments from Rogers by having the check mailed to his home address. (*See* Email thread between Kimbrell and Rick Ware Racing attached hereto as **Exhibit 9**; Ex. 2, ¶ 9.)

c. On at least 17 occasions, Kimbrell provided wiring instructions to vendors/customers for the Sham Exodus account where such proceeds would be wired into the Sham Exodus account. (*Id*.); and

d. From at least October 31, 2024 until May 29, 2025 alone, Kimbrell diverted proceeds earned by and owed to Exodus into Sham Exodus in the amount of $1,152,675.68. (An itemization of certain funds transmitted to the Sham Exodus

[7] "Exodus Air, LLC" is not registered with the South Carolina Secretary of State and, upon information and belief, possesses no legal existence or capacity pertinent to this action. This is yet another instance of Kimbrell's deliberate use of misleading company names to confuse third parties into unwittingly directing money to Sham Exodus, when such money was meant for the legitimate Exodus.

account, which were meant for the legitimate Exodus, is attached hereto as **Exhibit 10**).

e. In or around January 2025, at Kimbrell's specific direction, Whitaker obtained documentation authorizing wire transfer capabilities for the Sham Exodus account. After that, at Kimbrell's specific direction, Whitaker facilitated multiple transfers of funds between Sham Exodus and Exodus (*See* January 2025 Email thread between Pinnacle/Whitaker and Kimbrell attached hereto as **Exhibit 11**). Whitaker and Kimbrell did so with full knowledge that Rogers then owned 50% of Exodus. Yet, neither disclosed the existence of Sham Exodus to Rogers, nor the diversion of Exodus's funds, at any point.

f. Kimbrell further carried out this ongoing fraudulent scheme by leveraging an aviation business management platform known as JetInsight.[8] Josh Kimbrell deliberately altered the wiring instructions within JetInsight to redirect payments to the Sham Exodus account. As a result, vendors (primarily private brokers) unwittingly wired payments for Exodus's Embraer charter flights directly into the Sham Exodus bank account through the JetInsight platform, based on the false wiring instructions Kimbrell had configured to divert those payments into the account held by Sham Exodus. (*See* ACC Aviation, Inc. Invoice (June 30, 2025) attached hereto as **Ex. 12**).

49. Whitaker, a senior bank officer and agent of Pinnacle, aided and enabled Kimbrell's conduct without protective oversight, and openly permitted Rogers's systematic exclusion from account access, financial planning, and banking communications.

50. At all relevant times, Whitaker had numerous duties to act, exercise his professional judgment, and provide his professional services for the benefit of Exodus and Frank Rogers.

51. Pinnacle and Whitaker are required to follow customary and usual banking practices in the conduct of Pinnacle's business, especially as it pertains to the establishment of accounts, and particularly small business or DBA accounts.

52. Pinnacle and Whitaker had a duty to obtain, verify and record information that identifies

[8] JetInsight is an aviation management software used by Exodus to manage its private aircraft charter operations. FAA regulations require charter companies to utilize an approved business management system. JetInsight meets those standards and enables the FAA to monitor flight activity and aircraft maintenance. Additionally, JetInsight facilitates vendor payments for charter services, which necessitates that the system's manager provides wiring instructions.

each person/entity controlling the small business or DBA accounts.

53. Generally, all banks, such as Pinnacle, are required to have written Customer Identification Program ("CIP") that includes specific requirements appropriate for individuals and businesses opening accounts.

54. The CIP must be incorporated into the bank's overall Anti-Money Laundering / Bank Secrecy Act ("AML/BSA") processes and subject to approval by the bank's board of directors.

55. Pinnacle is also required to utilize a "Know their Customers"-type protocol as well as conduct risk assessments of their client database using tools like RISK ID, Efund, and/or "OFAC checks," etc. Upon information and belief, Pinnacle failed to sufficiently meet this requirement with the Sham Exodus account and failed to respond appropriately or conduct an appropriate investigation after generating the BizChex Report.

56. Pinnacle is required to have in place "Anti-Money Laundering" policies and procedures in order to assist in complying with such laws as the USA Patriot Act or "Uniting and Strengthening America by Providing Appropriate Tools to Restrict, Intercept and Obstruct Terrorism" Act of 2001 and, upon information and belief, did not do so for the Sham Exodus account. Alternatively, if such policies and procedures were in place, Whitaker and Pinnacle failed to follow them.

57. Pinnacle is required to have in place policies and procedures to comply with the Bank Secrecy Act in order to assist in investigation of criminal activities such as tax evasion and money laundering, and, upon information and belief, did not do so for the Sham Exodus account.

58. Upon information and belief, Pinnacle did not conduct annual independent testing on the Sham Exodus account or have its Board-approved Bank Secrecy Officer inspect or monitor this account.

59. Upon information and belief, Pinnacle knew or should have known the transactions

diverting funds from Exodus or diverting funds meant for the true Exodus to the Sham Exodus account were made in breach of Kimbrell's fiduciary duties, and/or if Pinnacle failed to recognize this, it failed only through willful blindness and reckless disregard.

60. Pinnacle and Whitaker concealed critical financial information and activities from Rogers, including, but not limited to the following:

a. Kimbrell directing Pinnacle Bank to wire $1,500 and $15,000 from an account in the name of FX Aviation Capital[9] to Exodus. Whitaker executed the transfers. Rogers was not informed.

b. Kimbrell's private discussions with Whitaker regarding Exodus loan repayments. Rogers was not copied on such correspondence and was not advised of the transactions.

c. Kimbrell's 2024 application for a *personal* line of credit from Pinnacle, attaching an Exodus NASCAR contract in support of such application. Rogers was not copied on this correspondence and Whitaker did not advise him of the transaction.

d. Business credit applications for Exodus Aircraft listing Rogers as Guarantor #1 and including Rogers' personal data. Rogers did not consent to such applications, nor was he informed of them.

e. Communications between Pinnacle, through its agents Whitaker, and Kimbrell regarding a past due credit card statement of Exodus; Rogers, though a guarantor, was not copied or informed.

f. Communications between Pinnacle, through its agent Whitaker, concerning disputed Exodus credit card charges.

g. The existence of a 2025 "confidential" term sheet regarding the potential sale of the Embraer aircraft owned by Exodus and communications regarding the same.

61. In January 2025, Frank Rogers and his wife, Sonya Rogers, confronted Kimbrell about suspicious activity with Exodus's bank accounts, including the wiring of Exodus proceeds to an account held by the then-unknown Sham Exodus.

[9] Whitaker and Pinnacle were aware that Rogers was a partner in FX Aviation Capital as the company was a customer of Pinnacle and Whitaker.

62. On January 29, 2025, in furtherance of his efforts to conceal the existence of Sham Exodus and his diversion of Exodus's assets from Exodus and Frank Rogers, Kimbrell sent the following communication to Sonya Rogers:

> I had to check into that, I did not request that to be wired, that was an incoming deposit for a flight. They're reversing that. I have a consulting account, that I do FAA consulting with and they misunderstood and confused. Not related and they're reversing.

63. This was simply another one of Kimbrell's deliberate misrepresentations, carefully designed to coverup his secret Pinnacle bank account for Sham Exodus so he could continue to siphon away stolen funds for his own personal enrichment and political ambitions.

KIMBRELL AND LILIYA CONSPIRE WITH LACKEY AND DAVIS

64. Just months before Rogers invested in Exodus in 2022, Kimbrell began seeking financial assistance and advice regarding Exodus from Lackey and Davis. Thereafter, those individuals engaged in frequent discussions about Exodus and Rogers's involvement in the business.

65. Ultimately, however, they became dissatisfied with the management of Exodus and began conspiring to divert and convert Exodus assets for their own financial gain.

66. Beginning around December 2024, while discussing Exodus's financials with Lackey and Davis, Kimbrell disclosed the creation of Sham Exodus.

67. In a December 11, 2024 email to Lackey ("Lackey Secrecy Email"), Kimbrell explicitly stated that Sham Exodus *should not be confused with Exodus*, and described Sham Exodus as an asset protection company intended to shield Exodus assets (i.e., assets for which Rogers provided substantial funding and Kimbrell did not), which Kimbrell described to Lackey as "*our cash flow*." (A copy of the Lackey Secrecy Email is attached hereto as **Ex. 13**).[10]

[10] Kimbrell signed the email, "Honorable Joshua B. Kimbrell, *Exodus Air*-CEO, SC Senator District 11." (*Id.*) (emphasis added)).

68. In the Lackey Secrecy Email, Kimbrell outright admitted to concealing both Sham Exodus and its bank account from Rogers, instructed Lackey to maintain the account's secrecy to prevent Rogers from discovering its existence, and admitted to routing payments through his personal account and using Sham Exodus to pay vendors directly. The full email appears below:

From: Josh Kimbrell
To: Richard Lackey
Subject: Bank Statements for Exodus Airways
Date: Wednesday, December 11, 2024 2:21:19 PM
Attachments: Exodus Airways Nov 2024 Statement.pdf
Exodus Airways Oct 2024 Statement.pdf

Richard,
As promised, I am attaching the bank statements for Exodus Airways (not to be confused with Exodus Aircraft) where I have protected our cash flow since the beginning of October. There is a clear accounting here of all payments coming in that will be intercompany transferred for accounting to Exodus Aircraft, LLC and it is paying the expenses of Exodus Aircraft, LLC.

To continue to protect the secrecy of this account from any efforts by a certain someone and his adviser from becoming wise to the existence of this account, when I have needed funds in the Exodus Aircraft account I have paid them via my personal Joshua Kimbrell account as shown. These are only passthrough payments. Otherwise, I have paid vendors directly through Exodus Airways as you see here.

Please call me with any questions.
-Josh

Honorable Joshua B. Kimbrell
Exodus Air - CEO
SC Senator District 11
josh@exodusaircraft.com
864-553-0606

69. That same day, Lackey responded to Kimbrell and asked about, "copies of the regular bank statements that Frank is playing games with," and thus confirmed his understanding that the Sham Exodus bank accounts were *irregular*.

70. Kimbrell, Lackey, and Davis then crafted correspondence to Rogers, with the stated intent to "turn up the heat for Frank to accept purchase agreement."

71. The term "purchase agreement" refers to the proposed sale of the Embraer aircraft—a transaction Kimbrell had long coveted for his own financial gain, pursued in secrecy and without the knowledge or consent of Rogers, his equal 50/50 partner.

72. Between March 2024 and July 2025, multiple offers to purchase the Embraer aircraft were presented directly to Kimbrell. Throughout this period, Lackey and Davis played an active role, advising Kimbrell on these offers and other negotiations, all designed to advance Kimbrell's concealed objective of profiting from the sale of Exodus at the expense of Rogers.

73. In February 2024, Kimbrell engaged in negotiations with Priority One for the purchase Exodus. On December 19, 2024, Kimbrell introduced Davis to a Priority One executive as his friend and business colleague, stating: "*He has been instrumental in helping me create Exodus*, and will be a trusted advisor as we move toward an M&A opportunity." In December, Davis became more actively involved in these negotiations with Priority One.

74. On January 29, 2025, Davis emailed Kimbrell (with copy to Lackey) to circulate his proposed revisions to the offered commercial terms of the Priority One purchase agreement, designed to directly benefit Lackey and Davis.

75. In February 2025, Priority One made an offer to purchase Exodus Aircraft for $8 Million which included the following terms:

- Initial purchase amount is $4.8M
- Priority One gains 100% ownership of the aircraft
- Priority One gains 80% equity in Exodus Aircraft
- Upon closing, Exodus Aircraft will issue to "current equity owners" $2,960,000 in "preferred stock."
- The newly issued preferred equity has the right to promote 2 members to the Exodus Board of Directors.
- Kimbrell's retention as an executive of Exodus.

76. Thereafter, Kimbrell and Liliya attempted to secure personal lines of credit from three separate financial institutions by improperly using Exodus private invoices.

77. On March 11, 2025, Kimbrell emailed a loan officer with First Horizon Bank ("First Horizon"),[11] requested a $50,000 loan and attached Sham Exodus bank statements from December 2024 through February 2025.

78. In the email, Kimbrell claimed "*his*" company holds contracts with NASCAR and Xfinity, and that it earns brokerage fees through Sham Exodus based on a margin structure. The bank statements, however, reflect diverted income from the chartering of Exodus's Embraer aircraft (not brokerage fees). (*Id*) (emphasis added).

79. Meanwhile, Kimbrell, Lackey and Davis were preparing for a meeting with Rogers where they planned to "turn up the heat" on Rogers and coerce him into agreeing to sell Exodus.

80. On March 14, 2025, Rogers met with Kimbrell, Lackey, and Davis at Lackey's office. The details and specifics of the Priority One negotiations were not disclosed to Rogers, only a cursory admission by Kimbrell, Lackey, and Davis of a potential buyer.

81. On April 16, 2025, concerned that Rogers would not consent to the proposed sale that Kimbrell, Lackey, and Davis all stood to profit from, Kimbrell emailed the title escrow agent for the Priority One transaction.

82. In this communication, Kimbrell explicitly admitted that Rogers (his then 50/50 partner in Exodus) may request information on the Embraer and the proposed transaction. Kimbrell then emphasized that all communications pertaining to the transaction and Exodus should "*only go through me*," and stated "I am the managing member of Exodus Aircraft, LLC . . ." and that *nothing* was to be "*transferred, or released without my signature*." A complete copy of the email is below:

[11] According to email records, Lackey referred Kimbrell to First Horizon Bank. (A copy of the First Horizon email thread is attached as **Exhibit 14**).

Cc: Vanessa Kormylo <vkormylo@kormylolaw.com>; Chris Mylett <chris.mylett@gmail.com>
Subject: Exodus Aircraft

Sheila:
So good to talk with you the other day, ma'am. I will be looking forward to hearing back from you on the potential escrow deposit from the LOI - Fully Executed that I provided. I re-attached that Executed LOI here for your reference.

I also wanted to raise an issue that has been brought to my attention. A non-managing member of our LLC, Frank G. Rogers may have reached out to you or a member of your team requesting information on the aircraft, liens, or information on this transaction. I am, by way of this email, requesting that all communications and correspondence pertaining to this transaction and Exodus Aircraft, LLC to go only through me. This LOI is subject to an NDA between me, my attorney and paralegal (both copied here) and the buyer. Further, per our corporate governing documents, I am the managing member of Exodus Aircraft LLC per all pertinent documents with the Delaware Secretary of State and can provide you with that information if needed. Additionally, I am the only authorized agent with AIC - or should be - and am the Accountable Manager of the certificate with the Federal Aviation Administration.

No lien is to be agreed upon, search performed, or anything sold, transferred, or released without my signature.

I appreciate your help and attention to this matter. Please advise. I was serious about helping you get those NASCAR tickets when you are ready.
Best Regards,
Josh

Honorable Joshua B. Kimbrell
Exodus Air - CEO
SC Senator - District 11
864-553-0606

83. This demonstrates that Kimbrell was going above and beyond to actively conceal any information regarding the proposed sale of the Embraer from his business partner to whom he owed a number of fiduciary duties.

84. On March 17, 2025, Lackey emailed Kimbrell with copy to Davis and Liliya addressing the loan failure at First Horizon, stating: "I agree that we pursue other avenues for this new banking relationship going forward."

85. The same day, Kimbrell submitted a separate loan request to Coastal Carolina National Bank (CCNB"), enclosing financial records and invoices from Sham Exodus in support of the application, which again reflected income diverted from Exodus Aircraft. (A copy of the CCNB email thread is attached hereto as **Exhibit 15).** In this instance, Kimbrell also falsely identified

Lackey as a partner and[12] requested that Lackey be added as a signatory on the account. (*Id*).

86. Kimbrell subsequently made a third attempt to obtain financing, this time at Foothills Credit Union ("FCU"). In an email to FCU, Kimbrell again falsely represented Sham Exodus as a "brokerage firm" and once again attempted to use its bank statements, inflated with Exodus Aircraft's rightful revenues, as collateral to secure a loan. (A copy of the FCU Email thread is attached hereto as **Exhibit 15**).

87. The secretive negotiations for the sale of Exodus to various third-parties, the Lackey Secrecy Email and other communications referenced above, along with Kimbrell's efforts to use and misrepresent Exodus's financial records to support loan applications (again, involving Lackey and Davis), reveal that Kimbrell, Lackey, and Davis conspired to misappropriate Exodus's assets, and ultimately coerce Rogers into a sale of Exodus for the financial benefit of Kimbrell, Lackey, and Davis.

FIRST CAUSE OF ACTION[13]
(Negligence/Gross Negligence)

88. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

89. At all relevant times, Whitaker and Pinnacle owed duties to Rogers and Exodus, including those listed in paragraphs 50-59, as well as the duty to deal with Rogers and Exodus with the degree of care that similar professionals and banks or ordinary reason and prudence would exercise in the same circumstances.

[12] Lackey is only an investor in and debt holder of Exodus. He has never had any equity interest in Exodus.

[13] Plaintiffs have removed the original first cause of action from the initial complaint—for Temporary Restraining Order/Preliminary Injunction/Permanent Injunction—due to the terms of the Consent Order entered in this action. However, Plaintiffs reserve all rights to seek appropriate relief to the extent Defendants do not cease and desist from further violation of the Consent Order.

90. Whitaker and Pinnacle's breached such duties to Rogers and Exodus in many instances, including the examples referenced above, such as, permitting establishment of the Sham Exodus Account, failing to adequately and properly hire, train and supervise Pinnacle employees to perform their duties, permitting certain funds to be deposited into the Sham Exodus account, failing to identify fraudulent account activity and suspicious account activity as it relates to Sham Exodus.

91. As a direct and proximate result, Rogers and Exodus have suffered damages and continues to suffer damages and is entitled to recovery of damages in an amount to be determined by a jury.

92. As a result, Rogers and Exodus are respectively entitled to recover damages to compensate them for their damages, as well as punitive damages in an amount sufficient to impress upon Pinnacle and Whitaker the seriousness of their conduct and to deter such similar conduct in the future.

SECOND CAUSE OF ACTION
(Negligence Per Se)

93. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

94. Pinnacle's internal policies and procedures are designed and implemented to protect itself and its customers from fraud.

95. Additionally, Rogers and Exodus are intended third party beneficiaries of Pinnacle's internal policies, procedures, and self-imposed rules.

96. As described hereinabove, Pinnacle violated their own internal policies and procedures in dealing with the Exodus account and Sham Exodus account.

97. At all relevant times, Whitaker and Pinnacle owed duties to Rogers and Exodus, including those listed in paragraphs 50-59, as well as the duty to deal with Rogers and Exodus with the

degree of care that similar professionals and banks or ordinary reason and prudence would exercise in the same circumstances.

98. Pinnacle and Whitaker's actions regarding the Exodus account and Sham Exodus account were not reasonable.

99. Whitaker and Pinnacle's failed to abide by such duties and such failure constitutes negligence per se.

100. Whitaker and Pinnacle's negligence per se was the direct and proximate cause of the injury to Rogers and Exodus and it was foreseeable that their failure to abide by such duties would cause injury to Rogers and Exodus.

101. As a result, Rogers and Exodus are respectively entitled to recover actual or compensatory damages and punitive damages in an amount to be determined by a jury.

THIRD CAUSE OF ACTION
(South Carolina Unfair Trade Practices Act)

102. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

103. As set forth above, Pinnacle and Whitaker engaged in unfair or deceptive acts in the course of commerce in the State of South Carolina.

104. The acts of Pinnacle and Whitaker are capable of repetition and in fact have been repeated, certainly as to Rogers and Exodus, as it relates to the Exodus and Sham Exodus accounts and related transactions.

105. The conduct of Pinnacle and Whitaker impacts the public interest in that the integrity of the banking system is central and integral to consumer confidence and the health of the South Carolina economy itself.

106. Rogers and Exodus are entitled to damages against Pinnacle and Whitaker in a sum sufficient to compensate them for their damages.

107. Because the conduct of Whitaker and Pinnacle were willful, Rogers and Exodus are entitled to treble damages, as well as an award of attorneys' fees.

FOURTH CAUSE OF ACTION
(Vicarious Liability/ Respondeat Superior)

108. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

109. At all relevant times, Whitaker was acting in the course and scope of his employment as an employee of Pinnacle.

110. At all relevant times, Whitaker was an employee, agent, servant, and/or legal representative of Pinnacle and was acting in the course and scope of his employment on behalf of his employer.

111. At all relevant times, Pinnacle exercised control over the conduct of Whitaker and had the right to control the manner and method of Whitaker's work.

112. Whitaker was at all relevant times acting while in the service of Pinnacle and in furtherance of Pinnacle's business, and Pinnacle is therefore legally responsible for the tortious acts and misconduct committed by Whitaker which proximately caused damage to Exodus and Rogers.

113. Rogers and Exodus are entitled to judgment against Pinnacle for the damage described above, and for actual and punitive damages to be determined by a jury.

FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

114. The prior allegations, to the extent not inconsistent, are incorporated herein by

reference.

115. In his capacity as manager of Exodus, Kimbrell owed fiduciary duties to both Exodus and Rogers, including those set forth in paragraph 25 above.

116. Kimbrell breached those duties by undertaking the acts and omissions set forth in paragraphs 28, 48, 51, and 78 above.

117. Due to Kimbrell's breach of fiduciary duties, Exodus and Rogers were deprived of funds rightfully belonging to them and, therefore, are entitled to restitution of all funds diverted from them.

118. Alternatively, Exodus and Rogers sustained losses and are entitled to money damages from Kimbrell in amount to be determined by a jury, along with an award of punitive damages.

SIXTH CAUSE OF ACTION
(Aiding and Abetting Breach of Fiduciary Duty)

119. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

120. In his capacity as manager of Exodus, Kimbrell owed fiduciary duties to both Exodus and Rogers, including those set forth in paragraph 25 above.

121. Kimbrell breached those duties by undertaking the acts and omissions set forth in paragraphs 28, 48, 51, and 78 above.

122. At all relevant times, Liliya, Whitaker, Pinnacle, Lackey and Davis each had active knowledge of the fiduciary duties owed to both Exodus and Rogers by Kimbrell.

123. At all relevant times, Liliya, Whitaker, Pinnacle, Lackey and Davis aided and abetted Kimbrell by actively encouraging or assisting him in his breach of those fiduciary duties owed to both Exodus and Rogers. This active encouragement or assistance is evidenced by their

above-described conduct, including the instances where they participated in the diversion of Exodus corporate funds, assets, and opportunities, and the concealment of Kimbrell's misdeeds from Rogers.

124. Liliya, Whitaker, Pinnacle, Lackey, and Davis benefited in many ways from aiding and abetting Kimbrell's breach of his fiduciary duties to Rogers and Exodus. For example, Liliya benefited from the use of Exodus monies to pay her personal expenses and fund her husband's political aspirations. Whitaker benefited from the financial incentives attributable to originating to clients and accounts, i.e., Sham Exodus, and Pinnacle benefited from the fees associated with the improper transactions referenced above. Lackey and Davis benefited from the preferential treatment they were afforded by Kimbrell for assisting with the coercive tactics aimed towards Rogers in furtherance of their efforts to force a sale of Exodus. These examples are non-exclusive.

125. As a result of Liliya, Whitaker, Pinnacle, Lackey and Davis aiding and abetting Kimbrell's breach of fiduciary duties, Exodus and Rogers were deprived of funds rightfully belonging to them and, therefore, are entitled to restitution of all funds diverted from them.

SEVENTH CAUSE OF ACTION
(Conversion)

126. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

127. Kimbrell, Spouse, and Sham Exodus converted identifiable funds ("Converted Funds") from Plaintiffs that were allocated for specific purposes.

128. The use of such Converted Funds were without the permission of Exodus and Rogers.

129. Plaintiffs are entitled to recover actual damages from Kimbrell, Spouse, and Sham Exodus, along with legal interest from the respective dates of conversion. Because the conduct of

Kimbrell, Spouse, and Sham Exodus was intentional and conducted with a reckless disregard of Plaintiffs' rights, Exodus and Rogers are likewise entitled to recover punitive damages in an amount determined by a jury.

EIGHTH CAUSE OF ACTION
(Breach of Contract/Breach of Contract Accompanied by Fraud)

130. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

131. A valid and binding contract existed as between Rogers, Kimbrell, and Exodus concerning the operation of Exodus.

132. Consistent with that contract, the parties agreed Kimbrell would serve and did serve as manager of Exodus until he resigned.

133. Consistent with his role as manager, Kimbrell accepted certain duties and obligations including but not limited to fiduciary obligations.

134. Kimbrell breached his duties and obligations by diverting over $2M to himself, Sham Exodus, and his Spouse.

135. Kimbrell's breaches of such duties and obligations were in and of themselves fraudulent acts.

136. Moreover, Kimbrell acted fraudulently by actively concealing financial information from Rogers, despite having an affirmative duty to furnish such information.

137. Kimbrell likewise formed Sham Exodus in furtherance of his fraud and corresponding contractual breaches.

138. Kimbrell similarly made fraudulent statements to investors concerning Rogers blaming him for the operational problems his fraud created for Exodus all in an effort to conceal

his diversion of corporate funds, which was a breach of his contractual obligations to Rogers and Exodus in the first instance.

139. Exodus has sustained substantial damages as a result of Kimbrell's breaches and accompanying fraudulent acts.

140. Apart from the harms sustained by Exodus, Rogers has likewise sustained substantial individual damages as a result of Kimbrell's breaches and accompanying fraudulent acts.

141. Exodus and Rogers are respectively entitled to recover all actual, consequential, and special damages from Kimbrell, along with punitive damages.

NINTH CAUSE OF ACTION
(Civil Conspiracy)

142. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

143. Defendants Kimbrell, Pinnacle, Whitaker, Liliya, Lackey, Davis, and Sham Exodus combined together for the purpose of injuring Rogers and Exodus.

144. Their combination and concerted actions caused Plaintiffs to sustain special damages.

145. Kimbrell could not have diverted funds to Sham Exodus but for Whitaker's assistance inside of Pinnacle.

146. Kimbrell could not divert funds to Liliya but for her willingness to accept such funds by and through her Paypal account.

147. Kimbrell could not have negotiated secretly for the sale of Exodus to various third-parties, used and misrepresented Exodus's financial records to support loan applications, or attempted to coerce Rogers into a sale of Exodus without the willing assistance of Lackey and

Davis.

148. Sham Exodus could not receive diverted funds as a receptacle for the same but for Kimbrell's initiation of the diversion of those monies and Whitaker's assistance in transferring Exodus monies to Sham Exodus's account.

149. The special damages incurred are the loss of funds paid by Exodus' customers but diverted to Sham Exodus instead.

150. Plaintiffs are entitled to recover their losses along with punitive damages.

TENTH CAUSE OF ACTION
(Unjust Enrichment)

151. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

152. Plaintiffs conferred benefits upon Kimbrell and Liliya in the form of monies diverted by them by Kimbrell, as more fully described above ("Diverted Funds").

153. Kimbrell and Liliya realized such benefits in the form of Diverted Funds.

154. Under the circumstances described hereinabove, Kimbrell and Spouse's retention of such Diverted Funds would be inequitable for them to retain the same. Accordingly, Plaintiffs are entitled to restitution from Defendants.

ELEVENTH CAUSE OF ACTION
(Negligent Misrepresentation)

155. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

156. Kimbrell, Liliya, Whitaker, Lackey, and Davis made numerous false representations to Rogers and Exodus concerning the Exodus business, payments from customers and payments to vendors, loans and loan applications, and the potential sale of the Embraer aircraft.

157. Upon information and belief, Kimbrell, Liliya, Whitaker, Lackey, and Davis had a pecuniary interest in making these misrepresentations to Rogers and Exodus.

158. Kimbrell, Liliya, Whitaker, Lackey, and Davis had a duty to see that truthful and accurate information was communicated to Rogers and Exodus.

159. Kimbrell, Liliya, Whitaker, Lackey, and Davis breached their individual duties of care to Rogers and Exodus by failing to exercise due care.

160. Rogers and Exodus justifiably relied upon Kimbrell, Liliya, Whitaker, Lackey, and Davis to communicate truthful information and justifiably relied upon the representations of Kimbrell, Liliya, Whitaker, Lackey, and Davis.

161. As a direct and proximate result of Plaintiffs' reliance upon Kimbrell, Liliya, Whitaker, Lackey, and Davis's representations, Defendants have suffered a pecuniary loss.

162. Upon information and belief, the conduct of Kimbrell, Liliya, Whitaker, Lackey, and Davis was willful and so outrageous to warrant an award of punitive damages.

TWELFTH CAUSE OF ACTION
(Fraud)

163. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

164. Defendants Josh Kimbrell and Liliya Kimbrell created Sham Exodus and the Sham Exodus bank accounts and then, individually and by and through Sham Exodus, repeatedly represented that Sham Exodus was Exodus and that funds intended for Exodus belonged to Sham Exodus.

165. The representations Josh Kimbrell, Liliya Kimbrell, and Sham Exodus made were material.

166. Defendants Josh Kimbrell and Liliya Kimbrell, and Sham Exodus knew the

representations were false.

167. Defendants Josh Kimbrell, Liliya Kimbrell, and Sham Exodus made the representations with knowledge of their falsity and with a reckless, malicious, and wanton disregard for their falsity.

168. Defendants Josh Kimbrell, Liliya Kimbrell, and Sham Exodus intended that the representations be acted upon, including that these representations would induce customers, vendors, and lenders to direct funds and payments belonging to Exodus to Sham Exodus.

169. Plaintiffs, lenders, vendors and customers of Exodus, were ignorant of Josh Kimbrell, Liliya Kimbrell, and Sham Exodus's representations and the falsity of these representations and relied on the representations' truth.

170. Plaintiffs, as well as Plaintiffs' customers, vendors, and lenders were right to rely on the representations' truth.

171. As a consequent and proximate result of Defendants Josh Kimbrell, Liliya Kimbrell, and Sham Exodus's fraud, Plaintiffs have suffered a pecuniary loss in the form of actual, consequential and special damages, including, but not limited to the costs associated with bringing this action and attorney's fees, for which Plaintiffs hereby sue.

THIRTEENTH CAUSE OF ACTION
(Constructive Fraud)

172. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

173. While serving as an investor, manager, employee, and/or agent of Exodus, Defendants Josh Kimbrell, Liliya Kimbrell, represented that Sham Exodus was Exodus. Sham Exodus also represented that it was Exodus.

174. The representations Defendants Josh Kimbrell, Liliya Kimbrell, and Sham Exodus made regarding Sham Exodus were false.

175. Defendants Josh Kimbrell, Liliya Kimbrell, and Sham Exodus knew the representations were false.

176. The representations Defendants made were material.

177. Defendants intended that these false representations be acted upon.

178. Plaintiffs and the customers, vendors, and lenders of Plaintiffs were ignorant of the falsity of the representations Defendants Josh Kimbrell, Liliya Kimbrell, and Sham Exodus. Plaintiffs and the customers, vendors, and lenders of Plaintiffs relied upon the truth of Defendants' representations.

179. As a consequent and proximate result of Defendants Josh Kimbrell, Liliya Kimbrell, and Sham Exodus's constructive fraud, Plaintiffs have suffered a pecuniary loss in the form of actual, consequential and special injuries, including, but not limited to the costs associated with bringing this action and attorney's fees, for which Plaintiffs hereby sue.

FOURTEENTH CAUSE OF ACTION
(Aiding and Abetting Fraud/Aiding and Abetting Constructive Fraud)

180. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

181. Defendants Josh Kimbrell, Liliya Kimbrell, and Sham Exodus perpetrated fraud and/or constructive fraud on the Plaintiffs as set forth herein.

182. Upon information and belief, Defendants Whitaker, Pinnacle, Davis, and Lackey were aware of the fraud and/or constructive fraud being perpetrated on the Plaintiffs and Defendants Whitaker, Pinnacle, Davis, and Lackey knowingly provided substantial assistance in the perpetration of the fraud and/or constructive fraud perpetrated by Josh Kimbrell and Liliya

Kimbrell as set forth herein and in such other particulars as the evidence in this case may demonstrate with the intent of assisting Josh Kimbrell and Liliya Kimbrell in accomplishing their goal.

183. As a direct and proximate result of the conduct of Defendants Whitaker, Pinnacle, Davis, and Lackey, Plaintiffs have suffered damages and continue to suffer damages.

184. Plaintiffs are entitled to actual consequential, and punitive damages for the reckless, willful misconduct, bad faith, and/or misrepresentations and omissions, as well as costs, prejudgment interest, and any other such relief as is just, equitable, and proper.

FIFTEENTH CAUSE OF ACTION
(Constructive Trust)

185. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

186. Defendants Josh Kimbrell, Liliya Kimbrell, and Sham Exodus have secreted, diverted, collected, and retained funds that were intended for Exodus and Rogers.

187. It would be in bad faith, unconscionable, and entirely inequitable for Defendants Josh Kimbrell, Liliya Kimbrell, and Sham Exodus to continue to receive or hold these funds as the funds were obtained improperly.

188. This Court should impose a constructive trust over such funds until this lawsuit has been resolved.

SIXTEENTH CAUSE OF ACTION
(Accounting and Restoration)

189. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

190. Defendants Josh Kimbrell, Liliya Kimbrell, and Sham Exodus have engaged in

unfair trade practices, fraud, and conversion of assets and funds belonging to Plaintiffs.

191. Accordingly, Plaintiffs seek the decree of this Court requiring a full accounting by Defendants Josh Kimbrell, Liliya Kimbrell, and Sham Exodus and for judgment requiring restoration by Josh Kimbrell, Liliya Kimbrell, and Sham Exodus of all amounts improperly received by Kimbrell, Liliya, and/or Sham Exodus as a result of the improper acts alleged herein, such judgment to include interest, costs, and fees for Plaintiffs' attorneys and experts.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray to the Court for the following relief:

A. An award of all actual, consequential, and special damages in an amount to be determined by a jury;

C. An award of restitution;

D. An award of punitive damages in an amount to be determined by a jury;

E. An award of attorneys' fees and costs;

F. An award of pre-judgment interest;

G. An accounting;

H. The imposition of a constructive trust;

I. Such other relief as this Court deems just and proper.

WILKINS DAVIS, LLC

/s/ W. Walter Wilkins, III
W. Walter Wilkins, III (SC Bar No. 16740)
Lane W. Davis (SC Bar No. 68796)
206 Mills Avenue
Greenville, SC 29605
Phone: (864)-263-3155
Lane@WilkinsDavis.com
Walt@WilkinsDavis.com

GALLIVAN, WHITE & BOYD, P.A.

/s/ Carter R. Massingill
Carter R. Massingill (SC Bar No. 101802)
Ioannis (Ian) G. Conits (SC Bar No. 102675)
55 Beattie Place, Suite 1200
Post Office Box 10589
Greenville, South Carolina 29201
(864) 271-9580
cmassingill@gwblawfirm.com
iconits@gwblawfirm.com

Attorneys for Plaintiffs

December 8, 2025