Daedong-USA, Inc. v. KI Finance, Inc., 2026 NCBC 78.

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV016862-910

DAEDONG-USA, INC.,

Plaintiff,

v.

KI FINANCE, INCORPORATED; PETER DONGKYUN KIM; DAE YOON KIM; YUNG KI PARK and ANNA KIM,

Defendants.

ORDER AND OPINION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT [PUBLIC][1]

THIS MATTER is before the Court on Plaintiff Daedong-USA, Inc.'s Motion for Summary Judgment (ECF No. 206); Defendants KI Finance, Inc. and Dae Yoon Kim's Motion for Summary Judgment and to Exclude Evidence of Unpled Special Damages (ECF No. 208); and Defendants Peter Dongkyun Kim, Yung Ki Park, and Anna Kim's Motion for Summary Judgment (ECF No. 215) (together, "Motions for Summary Judgment" or the "Motions").

The Court, having considered the Motions, the briefs and submissions of the parties, the arguments of counsel, the applicable law, and all appropriate matters of record, concludes that Defendants' Motions for Summary Judgment should each be **GRANTED in part** and **DENIED in part** and Plaintiff's Motion for Summary Judgment should be **DENIED** for the reasons set forth below.

Alston & Bird LLP, by Megan Byrd, Ryan Ethridge, Michael Kaeding, Matthew McGuire, Gabrielle Schust, Thomas Walker, and David

[1] The Court elected to file this Opinion under seal on 8 September 2026 and permitted the parties an opportunity to propose redactions to the public version of this document. Since that time, the parties have agreed that no portions of this Opinion are required to be placed under seal. Accordingly, the Court now files the fully unredacted Opinion publicly.

Woodlief; Hunton Andrews Kurth LLP, by Kathleen Perkins, Meghan Podolny, and Susan Shin; and Tharrington Smith, LLP, by Felix Allen and Colin Shive, for Plaintiff Daedong-USA, Inc.

Morningstar Law Group, by Christopher Graebe; and Smith Debnam Narron Drake Saintsing & Myers, LLP, by Byron Saintsing and Landon Van Winkle, for Defendants KI Finance, Inc. and Dae Yoon Kim.

Parry Law, by Valentin Bruder, Ed Eldred, Jonah Garson, Carl Newman, Alan Parry, and Neil Riemann, for Defendants Peter Dongkyun Kim, Yung Ki Park, and Anna Kim.

Davis, Judge.

INTRODUCTION

1. The present action arises from allegations that an agricultural equipment manufacturer's top-level executives used their control and influence over the company to enter into self-dealing transactions at a cost of millions of dollars to the company. After a lengthy discovery period, the parties have submitted thousands of pages of exhibits from which the Court must now determine whether—and to what extent—any of the parties' claims require the resolution of disputed facts by a jury at trial.

FACTUAL AND PROCEDURAL BACKGROUND

2. "The Court does not make findings of fact on motions for summary judgment; rather, the Court summarizes material facts it considers to be uncontested." *McGuire v. LORD Corp.*, 2021 NCBC LEXIS 4, at *1–2 (N.C. Super. Ct. Jan. 19, 2021) (cleaned up).

I. The Parties

3. Plaintiff Daedong-USA, Inc. ("Daedong") is a North Carolina corporation that maintains its principal place of business in Wendell, North Carolina. (Second

Am. Compl. ("SAC"), ECF No. 70, ¶ 11; C-Suite Defs.' Answer, ECF No. 80, ¶ 11; KIF and Dae's Answer, ECF No. 81, ¶ 11.) Daedong is a wholly owned subsidiary of Daedong Corporation ("Daedong Korea"), which is incorporated under the laws of the country of South Korea. (Ex. O, ECF No. 211.16 [sealed], at 4; *see also* Jun Sik Kim Dep. Tr., ECF No. 221.39 [sealed], at 199.)

4. Daedong is primarily in the business of manufacturing and distributing agricultural equipment, including tractors, utility vehicles, and zero-turn mowers. (SAC ¶ 1; C-Suite Defs.' Answer ¶ 1; KIF and Dae's Answer ¶ 1.) Daedong's products are distributed through various independent dealerships under the brand name KIOTI. (SAC ¶ 1; C-Suite Defs.' Answer ¶ 1; KIF and Dae's Answer ¶ 1.)

5. Defendant Peter Dongkyun Kim ("Peter")[2] is a citizen of the State of North Carolina. (SAC ¶ 13; C-Suite Defs.' Answer ¶ 13.) Peter served as Daedong's Chief Executive Officer ("CEO") from 2010 until 1 February 2024. (SAC ¶ 13; C-Suite Defs.' Answer ¶ 13.)

6. Defendant Yung Ki Park ("Yung") is a citizen of the State of North Carolina. (SAC ¶ 16; C-Suite Defs.' Answer ¶ 16.) Yung served as Daedong's Chief Financial Officer ("CFO") from February 2015 until 31 December 2023. (SAC ¶ 16; C-Suite Defs.' Answer ¶ 16.)

7. Defendant Anna Kim ("Anna" and together with Peter and Yung, the "C-Suite Defendants") is a citizen of the State of North Carolina. (SAC ¶ 15; C-Suite

[2] Because of the commonality of the last names of several of the key individuals in this case, for ease of reading, the Court will refer to them by their first names.

Defs.' Answer ¶ 15.) Anna served as Daedong's Chief Operations Officer ("COO") from February 2015 until 31 December 2023. (SAC ¶ 15; C-Suite Defs.' Answer ¶ 15.)

8. Defendant KI Finance, Inc. ("KIF") is a North Carolina corporation that maintains its principal place of business in Raleigh, North Carolina. (SAC ¶ 12; KIF and Dae's Answer ¶ 12.)

9. Defendant Yoon Dae Kim ("Dae" and together with the C-Suite Defendants, the "Individual Defendants") is a citizen of the State of North Carolina. (SAC ¶ 14; KIF and Dae's Answer ¶ 14.) Dae has previously served in various roles as an employee of Daedong, including, most recently, as the head of its finance department. (SAC ¶ 14; KIF and Dae's Answer ¶ 13.) Dae is also the founder—and currently serves as the President of—KIF. (SAC ¶ 14; KIF and Dae's Answer ¶ 14.)

II. In-House Financing

10. To analyze the issues in this case, it is helpful to understand the process through which distributors (also known as "dealers") in the agricultural equipment industry purchase inventory from manufacturers that they ultimately sell to consumers.

11. Generally, equipment manufacturers (such as Daedong) sell their products to dealers through a wholesale financing or "floor plan financing" program. (Dae Kim Decl., ECF No. 209, at 4.) Through wholesale financing, dealers are given a revolving line-of-credit that they can use to purchase equipment directly from the manufacturer with the equipment itself serving as collateral. (Dae Kim Decl., ECF No. 209, at 4.)

12. However, to facilitate these transactions, manufacturers have historically "outsourced" this process to third-party financial institutions that are able to provide the necessary funding, servicing, underwriting, auditing, and administration. (Dae Kim Decl., ECF No. 209, at 4.)

13. The end-result of this wholesale financing process is that (1) the dealer and the third-party financial institution are in a direct contractual relationship; (2) the third-party financial institution is responsible for making payments to the manufacturer for the cost of the equipment; and (3) the dealer is responsible for making payments to the third-party financial institution. (Dae Kim Decl., ECF No. 209, at 4.)

14. As an alternative to relying on third-party financial institutions to provide funding, servicing, underwriting, auditing, and administration services to dealers, some manufacturers offer dealers a direct "in-house" wholesale financing program. (Dae Kim Decl., ECF No. 209, at 4.)

15. Through in-house financing, the manufacturers enter into direct loan agreements with their dealers whereby the dealers are responsible for making repayments directly to the manufacturers. (Dae Kim Decl., ECF No. 209, at 4.)

16. Between 2015 and 2016, only the two largest agricultural equipment manufacturers in the United States—John Deere and Kubota—were offering in-house wholesale financing to their dealerships. (Dae Kim Dep. Tr., ECF No. 207.3, at 88–90; Yung Park Dep. Tr., ECF No. 207.4, at 23–24.)

17. Seeing this as an opportunity to gain market share by offering a service that was not otherwise available to dealers, Daedong began planning to transition away from its existing third-party wholesale financing program toward a fully in-house financing program. (Yung Park Dep. Tr., at 21–22, 26–27; Dae Kim Dep. Tr., at 19, 22–23; *see also* Simon Kalemba Dep. Tr., ECF No. 207.21, at 29.)

18. To build the in-house financing program, Yung recruited and hired Dae to serve as Daedong's finance manager. (Yung Park Dep. Tr., at 21–22; Dae Kim Dep. Tr., at 19, 22–23.)

19. Under Yung's direction, Dae helped to establish an initial credit facility to fund the in-house financing program, hired and trained finance team members, and established Daedong's internal processes and systems for working with dealers. (Dae Kim Dep. Tr., at 28–33.)

20. To help build Daedong's internal processes and systems, beginning in 2016, Yung caused Daedong to enter into contracts with a company called DataScan for the use of its "Wholesale Intelligence" software. (DataScan R. 30(b)(6) Dep. Tr., ECF No. 207.5, at 14, 22–24, 42–43; *see also* Yung Park Dep. Tr., at 27–28; Dae Kim Dep. Tr., at 63–64.)

21. Through the use of DataScan's software, Daedong was able to maintain a "portal" interface that dealers could use to communicate with Daedong, view billing statements and up-to-date interest calculations, and make payments on outstanding loan agreements. (DataScan R. 30(b)(6) Dep. Tr., at 15; *see also* Dae Kim Dep. Tr., at 243.)

22. As a result of the successful creation and implementation of an in-housing financing program, Daedong began capturing a larger share of the agricultural equipment market. (Chiwhan Yoon Dep. Tr., ECF No. 221.41 [sealed], at 39, 60; Jong Baek Park Dep. Tr., ECF No. 265.3 [sealed], at 100; Peter Kim Dep. Tr., ECF No. 207.2, at 75–76.)

III. Services Agreement and DataScan Assignments

23. After years spent building Daedong's in-house financing program, in early 2022, Dae informed Yung that he planned on resigning to pursue a higher paying position at Subaru. (Yung Park Dep. Tr., at 165–66; Dae Kim Dep. Tr., at 65–67; *see also* Quentin Mimms Dep. Tr., ECF No. 265.5 [sealed], at 124–25; Anna Kim Dep. Tr., ECF No. 207.18, at 53–54.)

24. Despite Yung's efforts to convince Daedong of Dae's importance to the in-house financing program, Daedong's human resources department refused to raise Dae's salary to be competitive with Subaru's offer. (Yung Park Dep. Tr., at 231; *see also* Dae Kim Dep. Tr., at 64–65.)

25. However, believing that Daedong's finance department would suffer as a result of Dae's departure and that other finance team members would also resign from their positions, Yung continued talking with Dae about how Daedong could continue to benefit from his experience and knowledge. (Yung Park Dep. Tr., at 166–67; Dae Kim Dep. Tr., at 64–65.) Through these conversations, Dae raised the possibility of establishing an independent company to which Daedong could

"outsource" its in-house financing services. (Yung Park Dep. Tr., at 165; Dae Kim Dep. Tr., at 64–65; *see also* Peter Kim Dep. Tr., at 147–49.)

26. Throughout the summer of 2022, Dae and Yung began crafting a plan whereby an independent company controlled by Dae would be formed for the purpose of contracting with Daedong to provide the services that up until that point had been performed by Daedong's internal finance department. (Yung Park Dep. Tr., at 165–66; Dae Kim Dep. Tr., at 78–80; *see also* Peter Kim Dep. Tr., at 147–49.)

27. In furtherance of their plan to "outsource" Daedong's in-house financing program, throughout May and June 2022, Dae exchanged various email communications with his attorney and Yung concerning the formation of KIF. (*See* John Finch Decl., ECF No. 210, at 1–2; *see generally* John Finch Decl. Ex. 1, ECF No. 210.2; John Finch Decl. Ex. 2, ECF No. 210.3; John Finch Decl. Ex. 3, ECF No. 210.4.)

28. KIF was formally incorporated on 21 June 2022 when Dae filed its Articles of Incorporation with the North Carolina Secretary of State. (SAC Ex. B, ECF No. 70.3, at 1; *see also* John Finch Decl., at 2.) In its Articles of Incorporation, Dae was listed as KIF's sole officer and sole shareholder. (SAC Ex. B; *see also* John Finch Decl., at 2.)

29. After consulting with Yung, in early July 2022, Dae submitted a formal proposal to Yung and Anna that was titled "KIOTI Wholesale Finance Service Proposal." (Anna Kim Dep. Ex. 8, ECF No. 211.3; *see also* Yung Park Dep. Tr., at 172–74; Dae Kim Dep. Tr., at 81–84; Anna Kim Dep. Tr., at 132–33.) In the proposal, Dae suggested that KIF and Daedong enter into a three-year contract, with automatic

renewal, whereby KIF would service all of Daedong's then-existing dealer financing programs. (Anna Kim Dep. Ex. 8, at 2–3.)

30. Thereafter, Anna contacted Daedong's external corporate counsel, Deana Labriola, an attorney with Fox Rothschild LLP ("Fox Rothschild"), to request that an agreement be drafted consistent with the terms of Dae's proposal. (Anna Kim Dep. Ex. 9, ECF No. 211.3; *see also* Anna Kim Dep. Tr., at 131–33.) Labriola provided Anna with an initial draft of the agreement on 28 July 2022 but noted that there were certain aspects of the agreement as to which she "was not certain [she] had complete information[ ] or had open questions[ ]" about. (Anna Kim Dep. Ex. 9, at 1; *see also* Anna Kim Dep. Tr., at 144–45; Daedong R. 30(b)(6) Dep. Tr., ECF No. 265.6 [sealed], at 44–45.)

31. Though Anna was responsible for communicating with Labriola regarding the form of the agreement between Daedong and KIF, Anna did not negotiate or otherwise inquire into the propriety of its substantive terms. (*See* Anna Dep. Tr., at 86–87, 146–49, 163–66.) Rather, Yung—on behalf of Daedong—and Dae—on behalf of KIF—were solely responsible for negotiating the agreement's substantive terms. (Yung Park Dep. Tr., at 218–19; Anna Kim Dep. Tr., at 147–48; Peter Kim Dep. Tr., at 177–78; Dae Kim Dep. Tr., at 226–27.)

32. One of the key terms that Yung and Dae actively negotiated was the "management fee" that KIF was to charge Daedong. (Yung Park Dep. Tr., at 217–18; Dae Kim Dep. Tr., at 226–28.)

33. Originally, Dae proposed that KIF would charge Daedong a monthly fee of roughly four percent (or 1.35 percent plus the SOFR (secured overnight financing rate)) of the value of all outstanding financing agreements being serviced. (Dae Kim Dep. Tr., at 118–19; Yung Park Dep. Tr., at 217–18; *see also* Anna Kim Dep. Ex. 8, at 2.) However, Yung proposed that the management fee instead be two or two-and-a-half percent of the value of all outstanding financing agreements being serviced. (Yung Park Dep. Tr., at 217–18; Dae Kim Dep. Tr., at 119.)

34. After working together to prepare a cost analysis, Yung and Dae ultimately agreed that KIF would charge Daedong a monthly fee of three percent of the value of all outstanding financing agreements being serviced by KIF plus a flat monthly fee of $5,000. (SAC Ex. D, ECF No. 70.5, at 5; *see also* Yung Park Dep. Tr., at 217–19; Dae Kim Dep. Tr., at 119, 227–28.)

35. On 10 August 2022, as Yung and Dae were negotiating the terms of the agreement (the "Services Agreement"), Yung emailed a spreadsheet titled "KI Finance Structure – Wholesales only (version 1) (002) (version 1)" to Dae. (Ex. A – 003, ECF No. 213.2; *see also* Dae Kim Dep. Tr., at 125–26; Yung Park Dep. Tr., at 182–83.) That spreadsheet contained a page titled "Shareholder structure" that contained the following chart:

Shareholder	# of share	Share%	Funding	
Y Park	41,000	41%	300,000	300,000
D Kim	10,0000	10%	-	-
Peter Kim	9,000	9%	200,000	200,000
Employee	13,000	13%	-	-
Fund 1	9,000	9%	-	500,000
Fund 2	9,000	9%	-	500,000
Fund 3	9,000	9%	-	500,000
Total	100,000	100%	500,000	2,000,000

(Ex. A – 003, at 5.)

36. The next day, Peter approached Yung and provided him with a personal check—made payable to KIF—in the amount of $200,000. (Peter Kim Dep. Tr., at 165–67; Yung Park Dep. Tr., at 214; Dae Kim Dep. Tr., at 183.) Peter's only instruction to Yung was that he provide the check to Dae and that KIF should refrain from working with Daedong's competitors. (Peter Kim Dep. Tr., at 170; Yung Park Dep. Tr., at 214–15; Dae Kim Dep. Tr., at 184.)

37. After receiving Peter's check from Yung, Dae deposited the $200,000 into KIF's bank account and logged the payment in KIF's financial ledger as "equity." (*See* Ex. C – 003, ECF No. 221.23 [sealed], at 1; Ex. C – 005, ECF No. 218.1, at 3, 15; *see also* Dae Kim Dep. Tr., at 197.)

38. Over time, Peter's payment of $200,000 continued to be accounted for in KIF's various other financial documents as stockholder equity, including in: (1) KIF's 2022 income statement (Ex. C – 005, at 2); (2) KIF's 2022 balance sheet (Ex. I, ECF No. 233.10, at 3); (3) KIF's 2022 federal income tax return (Ex. L, ECF No. ECF No.

233.13 [sealed], at 2); and (4) draft copies of KIF's 2023 federal income tax return (Ex. N, ECF No. 233.15 [sealed], at 2).

39. On 1 September 2022, Dae (on behalf of KIF) and Peter (on behalf of Daedong) executed the Services Agreement, which stated in relevant part as follows:

> Services Generally. Company hereby engages Servicer to provide financial management, accounting, and other services as more specifically set forth on Schedule A (collectively, the "Services"). In addition, Company hereby engages Servicer to be the exclusive provider of certain wholesale finance programs (the "Programs") offered to the current dealers of Company's products ("Dealers") and end-user customers of the Company ("Customers"), which such Programs are more fully described on Schedule B hereto. Servicer shall exercise commercially reasonable judgment in providing its Services hereunder. Servicer shall, in accordance with the terms and conditions hereof, have the power and authority to take any and all actions reasonably necessary or advisable to provide the Services. . . .
>
> . . .
>
> Term. The term of this Agreement shall commence as of September 1, 2022, and shall continue in full force and effect for an initial term of three (3) years, unless Servicer or Company gives no less than ninety (90) days' notice of nonrenewal to Company prior to the expiration of the then-current term. Such initial term shall automatically renew for successive two (2) year terms, unless earlier terminated as provided herein.
>
> Termination upon Breach. Upon sixty (60) days' prior written notice, either party shall have the right to terminate this Agreement for a material breach of this Agreement by the other party. Such notice of default shall describe in detail the basis upon which a party believes such termination for breach is justified. Upon receipt of such notice, the allegedly breaching party shall have sixty (60) days to cure any such alleged breach under this Agreement, and upon such cure being effected, the rights of the party claiming breach to terminate shall cease and this Agreement will continue in full force and effect. If such cure has not occurred within such 60-day period, the party alleging the breach may terminate this Agreement upon formal written notice to the other party after the expiration of the 60-day cure period; provided, however, that in cases where a party has diligently and in good faith attempted to effect such a cure within such sixty (60) day period, but cannot complete

such cure because of the failure of a third party (such as a governmental agency, but excluding a subcontractor to Servicer) to act within such period, then the alleged breaching party shall have reasonable time beyond such sixty (60) day period to complete its cure of the alleged breach.

. . .

Duties upon Termination. Upon termination of this Agreement, each party's obligations hereunder shall cease, provided that: (i) Company shall owe Servicer the full amount of any fees and other obligations owing and/or earned or accrued pursuant to the terms hereof, up through and including the date of termination, and any sums of money owed by Company to Servicer, including expenses reimbursable hereunder, shall be paid within thirty (30) days of Company's receipt of an invoice therefore (unless other terms are mutually agreed upon); (ii) the parties shall abide by all obligations that expressly survive termination of this Agreement, and (iii) Company and Servicer shall perform such reasonable tasks as are necessary to wind up their activities under this Agreement in an orderly manner, including but not limited to: (a) Servicer shall use commercially reasonable efforts to cooperate with Company for the appropriate transfer of Services as Company directs; (b) Servicer and Company shall cooperate for the appropriate transfer of financial, operational and other necessary records; (c) Servicer and Company shall cooperate in connection with the termination or assignment of contracts, as needed; (d) Servicer and Company shall cooperate in connection with an investigation by any governmental, regulatory or other entity; and (e) Servicer and Company shall cooperate in the preparation of final financial statements and the calculation of management fees and reimbursable expenses due under this Agreement through the date of termination, or as otherwise agreed by the parties.

. . .

Compensation for Services. For the Services rendered hereunder, Company shall pay Servicer a fee (the "Service Fee") equal to: 3.00% multiplied by sum of products of the daily remaining invoice amount or, if applicable, the daily remaining invoice amount for the specific item of invoice outstanding on each day of the calendar month. In addition, sum of $5,000 per month for Consultation Fee as described on Schedule C.

Payment of Service Fee. The Service Fee, plus any Reimbursable Expenses (described below) shall be calculated and invoiced by Servicer on a monthly basis, and Servicer is hereby authorized to receive

> payment of any undisputed invoice no later than fifteen (15) days after Company's receipt thereof. Servicer shall provide a calculation of the Service Fee and an itemized breakdown of all of Reimbursable Expenses (plus any reasonable backup evidence of such Reimbursable Expenses) with any invoice.

(SAC Ex. D, at 1–5.)

40. While Peter was ultimately responsible for executing the Services Agreement on behalf of Daedong, Peter neither fully read the agreement nor was he involved in its negotiation or creation. (Peter Kim Dep. Tr., at 178.)

41. Thereafter, on 7 September 2022, Dae (on behalf of KIF) and Yung (on behalf of Daedong) executed the DataScan Assignments, assigning all of Daedong's rights, interests, and obligations under its contracts with DataScan to KIF. (Ex. A – 020, ECF No. 213.2; Ex. A – 042, ECF No. 213.2; *see also* Yung Park Dep. Tr., at 272–73.)

42. Once the Services Agreement and DataScan Assignments had been executed, from September to November 2022, the Individual Defendants oversaw a gradual transfer of employees from Daedong's finance department to KIF. (Dae Kim Dep. Tr., at 233–37; Logan White Dep. Tr., ECF No. 207.16, at 37–38, 43; Matthew Welborn Dep. Tr., ECF No. 207.15, at 19, 28.)

43. Though their employment with Daedong had been technically terminated, each of the former members of Daedong's finance department continued to retain access to their Daedong email accounts, continued to work out of Daedong's Raleigh office space, and continued to perform the same services and job duties. (Matthew Welborn Dep. Tr., at 114–15; Logan White Dep. Tr., at 45; Matthew

Smigelski Dep. Tr., ECF No. 207.14, at 76–77; Lauren Smith Dep. Tr., ECF No. 207.9, at 38; Dae Kim Dep. Tr., at 241; *see also* Ex. A – 022, ECF No. 213.2.)

44. Beginning in August 2023, Daedong concluded that to continue operating its in-house financing program, it would need to secure a larger line of credit with an outside financial institution. (Daedong R. 30(b)(6) Dep. Tr., at 111; Chiwhan Yoon Dep. Tr., at 61–62.)

45. To facilitate this project, the Individual Defendants decided that it would be necessary for Daedong to rehire Dae and the other former members of its finance department that were—at that time—employed by KIF. (Dae Kim Dep. Tr., at 176, 269–70; Yung Park Dep. Tr., at 234–35.)

46. Thereafter, through November 2023, KIF's service obligations under the Services Agreement were effectively performed by Daedong's internal finance team while the Individual Defendants focused their efforts on establishing a new line of credit with Huntington Bank. (Dae Kim Dep. Tr., at 272; Matthew Welborn Dep. Tr., at 114–15; Logan White Dep. Tr., at 45; Matthew Smigelski Dep. Tr., at 76–77; Lauren Smith Dep. Tr., at 38.)

IV. C-Suite Defendants' Resignations

47. After successfully negotiating an increased line of credit with Huntington Bank, in December 2023, each of the C-Suite Defendants submitted their letters of resignation to Daedong. (Anna Kim Dep. Tr., at 318–19; Yung Park Dep. Tr., at 83–85; Peter Kim Dep. Tr., at 74–77; Dae Kim Dep. Tr., at 284.)

48. Unbeknownst to Daedong, however, around the same time that Anna had submitted her notice of resignation, she had begun downloading Daedong's confidential information to a USB thumb drive and an external drive that she had instructed Daedong's technology department to purchase for her. (Danny Spell Aff., ECF No. 219, at 2–3; Danny Spell Dep. Tr., ECF No. 207.20, at 144–47.)

49. Following the C-Suite Defendants' respective resignations, Daedong's new management team began conducting an internal investigation into the circumstances surrounding the Services Agreement and DataScan Assignments. (Chiwhan Yoon Dep. Tr., at 171–72; *see also* Ex. I, ECF No. 221.38 [sealed], at 19.) As a result of that investigation, Daedong concluded that the Services Agreement and DataScan Assignments had not been properly authorized and, in April 2024, Daedong sent a letter to KIF purporting to "rescind" those agreements. (*See generally* Ex. C – 024, ECF No. 218.1.)

50. In response to Daedong's purported rescission of the Services Agreement, on 1 May 2024, KIF—through counsel—sent a letter to Daedong declaring that Daedong had breached the Services Agreement and demanding that Daedong pay KIF the outstanding balance owed under the terms of the agreement. (Ex. I, ECF No. 211.10, at 2–5.)

51. Thereafter, in a series of email exchanges concerning planned updates to the DataScan software, on 23 May 2024, Dae advised Daedong that KIF would be ceasing its performance under the Services Agreement on 25 May 2024 and that, as

a result, KIF would suspend Daedong's access to the DataScan software. (Ex. C – 025, at 1.)

52. KIF subsequently did, in fact, suspend Daedong's access, which effectively blocked Daedong's ability to accept and process payments from its vendors. (Matthew Welborn Dep. Tr., at 121, 124, 132; Alyssa Prince Dep. Tr., ECF No. 207.19, at 115–16.)

V. Procedural History

53. Daedong initiated this action by filing a Verified Complaint and Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 3) in Wake County Superior Court on 30 May 2024, asserting various claims against KIF, Peter, Dae, and Yung.

54. The following day, this matter was designated as a mandatory complex business case and assigned to the undersigned. (ECF Nos. 1–2.)

55. Daedong filed a First Amended Complaint on 31 July 2024.

56. After obtaining leave from the Court, on 1 November 2024, Daedong filed its Second Amended Complaint, which is currently its operative pleading. (*See* ECF No. 69.) In the Second Amended Complaint, Daedong has asserted the following claims: (1) misappropriation of corporate funds against the Individual Defendants; (2) conspiracy to misappropriate corporate funds against the Individual Defendants; (3) declaratory judgment against all Defendants; (4) constructive fraud against the Individual Defendants; (5) conspiracy to commit constructive fraud against the Individual Defendants; (6) breach of fiduciary duty against the Individual

Defendants; (7) unjust enrichment against all Defendants; (8) unfair or deceptive trade practices ("UDTP") against all Defendants; and (9) conversion against Anna.

57. On 2 December 2024, the C-Suite Defendants filed an Answer to Second Amended Complaint and Counterclaims. In their Counterclaims, the C-Suite Defendants asserted claims against Daedong for (1) declaratory judgment; and (2) breach of express and implied contractual indemnification rights.

58. Shortly thereafter, on 18 December 2024, Defendants KIF and Dae filed an Answer to Second Amended Complaint, Affirmative Defenses, and KIF's Counterclaims. Through its Counterclaims, KIF has asserted claims against Daedong for (1) breach of contract; (2) unjust enrichment (in the alternative); and (3) breach of implied contract (in the alternative).

59. On 27 February 2026, the parties filed the present Motions for Summary Judgment.

60. This matter came on for a hearing before the Court on 4 June 2026, at which all parties were represented by counsel. (*See* ECF No. 262.)

61. Following the 4 June hearing on the present Motions, the Court directed the parties to submit supplemental briefing on certain specified issues. (*See* ECF No. 272.)

62. On 16 June 2026, Daedong filed a Motion for Leave to File Third Amended Complaint. ("Motion to Amend," ECF No. 276.)

63. The Court entered an Order denying the Motion to Amend on 4 August 2026. *See Daedong-USA, Inc. v. KI Fin., Inc.*, 2026 NCBC LEXIS 161 (N.C. Super. Ct. Aug. 4, 2026).

64. The Motions are now ripe for resolution.

LEGAL STANDARD

65. It is well established that "[s]ummary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.' " *Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 680 (2018) (quoting N.C. R. Civ. P. 56(c)). "[A] genuine issue is one which can be maintained by substantial evidence." *Kessing v. Nat'l Mortg. Corp.*, 278 N.C. 523, 534 (1971). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and means more than a scintilla or a permissible inference." *Daughtridge v. Tanager Land, LLC*, 373 N.C. 182, 187 (2019) (cleaned up).

66. On a motion for summary judgment, "[t]he evidence must be considered 'in a light most favorable to the non-moving party.' " *McCutchen v. McCutchen*, 360 N.C. 280, 286 (2006) (quoting *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 470 (2004)). "[T]he party moving for summary judgment ultimately has the burden of establishing the lack of any triable issue of fact." *Pembee Mfg. Corp. v. Cape Fear Constr. Co.*, 313 N.C. 488, 491 (1985).

67. The party moving for summary judgment may satisfy its burden by proving that "an essential element of the opposing party's claim does not exist, cannot be proven at trial, or would be barred by an affirmative defense . . . or by showing through discovery that the opposing party cannot produce evidence to support an essential element of [the] claim[.]" *Dobson v. Harris*, 352 N.C. 77, 83 (2000). "If the moving party satisfies its burden of proof, then the burden shifts to the non-moving party to 'set forth specific facts showing that there is a genuine issue for trial.' " *Lowe v. Bradford*, 305 N.C. 366, 369–70 (1982) (quoting N.C. R. Civ. P. 56(e)). If the nonmoving party does not satisfy its burden, then "summary judgment, if appropriate, shall be entered against [the nonmovant]." *United Cmty. Bank (Ga.) v. Wolfe*, 369 N.C. 555, 558 (2017) (quoting N.C. R. Civ. P. 56(e)).

68. When a party requests offensive summary judgment on its own claims for relief, "a greater burden must be met." *Brooks v. Mt. Airy Rainbow Farms Ctr., Inc.*, 48 N.C. App. 726, 728 (1980). The moving party "must show that there are no genuine issues of fact, that there are no gaps in his proof, that no inferences inconsistent with his recovery arise from the evidence, and that there is no standard that must be applied to the facts by the jury." *Parks Chevrolet, Inc. v. Watkins*, 74 N.C. App. 719, 721 (1985). For that reason, it is "rarely . . . proper to enter summary judgment in favor of the party having the burden of proof." *Blackwell v. Massey*, 69 N.C. App. 240, 243 (1984).

ANALYSIS

69. Presently before the Court are three cross-Motions for Summary Judgment—one by Daedong, one by the C-Suite Defendants, and one by KIF and Dae.

70. The Court will first address the Motions as they relate to Daedong's claims before turning to the portions of the Motions relating to the counterclaims asserted by the C-Suite Defendants and KIF.

I. Daedong's Claims

71. In their respective Motions, the C-Suite Defendants and KIF and Dae have requested that the Court enter summary judgment in their favor as to each of the claims asserted against them by Daedong in its Second Amended Complaint.

72. At the same time, through its own Motion, Daedong has requested that the Court grant offensive summary judgment in its favor with respect to its claims for declaratory relief, breach of fiduciary duty, constructive fraud, and misappropriation of corporate funds.

73. Because of the significant overlap between the arguments made by the parties in connection with the present cross-Motions, the Court elects to address their arguments as to Daedong's claims together. *See Xchange Tech. Rentals LLC v. UK Atlanta Holdings, LLC*, 2026 NCBC LEXIS 91, at *23 (N.C. Super. Ct. Apr. 10, 2026).

A. Declaratory Judgment

74. North Carolina's Declaratory Judgment Act authorizes the Court "to declare rights, status, and other legal relations[ ]" in cases involving actual disputes between adverse parties. N.C.G.S. § 1-253; *see Adams v. N.C. Dep't of Nat. & Econ.*

Res., 295 N.C. 683, 703 (1978). Our Supreme Court has explained that "[a]n actual controversy between the parties is a jurisdictional prerequisite for a proceeding under the Declaratory Judgment Act in order to 'preserve inviolate the ancient and sound juridic concept that the inherent function of judicial tribunals is to adjudicate genuine controversies between antagonistic litigants with respect to their rights, status, or other legal relations.' " *Adams*, 295 N.C. at 703 (quoting *Lide v. Mears*, 231 N.C. 111, 118 (1949)). Thus, the "Court has jurisdiction to render a declaratory judgment only when the pleadings and evidence disclose the existence of a genuine controversy between the parties to the action, arising out of conflicting contentions as to their respective legal rights and liabilities under a deed, will, contract, statute, ordinance, or franchise." *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 287 (1964) (cleaned up).

75. Nonetheless, "a trial court [may], in the exercise of its discretion, [ ] decline a request for declaratory relief when (1) the requested declaration will serve no useful purpose in clarifying or settling the legal relations at issue; or (2) the requested declaration will not terminate or afford relief from the uncertainty, insecurity, or controversy giving rise to the proceeding." *Augur v. Augur*, 356 N.C. 582, 588–89 (2002).

76. Through its declaratory judgment claim, Daedong seeks a judicial declaration that the Services Agreement and DataScan Assignments are voidable contracts based on Peter's status as a conflicted director.

77. North Carolina's Business Corporations Act provides, in relevant part, as follows:

> (a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:
>
> > (1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee or subcommittee of the board of directors and the board of directors, or the committee or subcommittee of the board of directors, authorized, approved, or ratified the transaction.
> >
> > (2) The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction.
> >
> > (3) The transaction was fair to the corporation.
>
> (b) For purposes of this section, a director of the corporation has an indirect interest in a transaction if either of the following is true:
>
> > (1) Another entity in which the director has a material financial interest or in which the director is a general partner is a party to the transaction.
> >
> > (2) Another entity of which the director is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

N.C.G.S. § 55-8-31(a)–(b).

78. As an initial matter, the parties agree that Peter did not have a *direct* interest in those transactions.

79. The parties further agree that Peter did not have an indirect interest pursuant to N.C.G.S. § 55-8-31(b)(2) because he has never served as a director, officer, or trustee of KIF.

80. Instead, the parties dispute whether Peter had a "material financial interest" in KIF that gave rise to an indirect interest in the transactions pursuant to N.C.G.S. § 55-8-31(b)(1).

81. North Carolina's Business Corporations Act does not specifically define the phrase "material financial interest" as it appears in N.C.G.S. § 55-8-31(b)(1).

82. In their brief, Defendants attempt to frame the issue as whether the $200,000 payment from Peter to KIF is properly characterized as a loan or an equity investment in KIF. If it was merely a loan, Defendants argue, it would not give rise to a "material financial interest" based on the theory that only an actual ownership interest in KIF would qualify for purposes of section 55-8-31(b)(1). This is so, according to Defendants, based on their contention that only a director's possession of an actual ownership interest in the company involved in the transaction can ever constitute a "material financial interest."

83. Even if Defendants' interpretation of N.C.G.S. § 55-8-31(b)(1) were correct, the Court would be unable to resolve this factual dispute at the summary judgment stage.

84. Although Peter contends this payment was purely a loan for the purpose of helping KIF get started as a company, Daedong has presented more than a scintilla

of evidence that would enable a jury to find that Peter's $200,000 payment to KIF was intended to be treated—and ultimately was treated—as an equity investment.

85. Indeed, the evidence of record—when viewed in the light most favorable to Daedong—reflects that on 10 August 2022, less than two months after KIF's incorporation, Yung emailed a spreadsheet titled "KI Finance Structure – Wholesales only (version 1) (002) (version 1)" to Dae. (Ex. A – 003, at 1; *see also* Dae Kim Dep. Tr., at 103–10; Yung Park Dep. Tr., at 182–88.) That spreadsheet contained a page titled "Shareholder structure," which stated that Peter would receive 9,000 shares—reflecting a nine percent ownership interest—in KIF in exchange for a $200,000 capital contribution. (Ex. A – 003, at 5.)

86. The next day, on 11 August 2022, Peter wrote a check from his personal checking account payable to KIF in that precise amount ($200,000), which he provided to Yung for the purpose of delivering it to Dae. (Ex. C – 002, ECF No. 218.1, at 1; Peter Kim Dep. Tr., at 167; Dae Kim Dep. Tr., at 183; Yung Park Dep. Tr., at 214.)

87. Thereafter, in KIF's internal financial documents, original 2022 federal tax return, and draft 2023 federal tax return, KIF classified the $200,000 payment from Peter as an "equity" investment in exchange for the issuance of common stock. (*See* Ex. C – 003, at 1; Ex. C – 005, at 7, 15; Ex. I, ECF No. 233.10, at 3; Ex. L, at 2; Ex. N, , at 2; *see also* Dae Kim Dep. Tr., at 197.)

88. Furthermore, on 11 July 2023, eleven months after Peter's payment to KIF, Yung created and emailed to Dae another spreadsheet—titled "KI Finance

6month review"—which contained a "Shareholder structure" page that continued to list Peter as holding 9,000 shares (and a nine percent ownership interest) in KIF in exchange for a $200,000 capital contribution. (Ex. A – 005, ECF No. 213.2, at 1, 3, 6; *see also* Dae Kim Dep. Tr., at 130–39; Yung Park Dep. Tr., at 188–201.)

89. Although Defendants have put forth evidence seeking to show that the $200,000 payment was instead merely a loan, the evidence as a whole—when viewed in the light most favorable to Daedong—raises a genuine issue of material fact as to whether Peter's payment of $200,000 to KIF was intended to be (and was subsequently treated as) an equity investment in KIF. (*See* Ex. 26, ECF No. 235.5, at 2; Ex. 27, ECF No. 235.6, at 4, 6; KIF R. 30(b)(6) Dep. Tr., ECF No. 270.1 [sealed], at 190; Dae Kim Dep. Tr., at 182–86; Peter Kim Dep. Tr., at 165, 170–71.)

90. More fundamentally, however, the Court does not agree with Defendants' interpretation of N.C.G.S. § 55-8-31(b)(1).

91. Although Defendants vigorously argue that the phrase "material financial interest" should be deemed to encompass *only* actual ownership interests, the Court notes that the General Assembly could have (but did not) use the phrase "material *ownership* interest" in the statute. The Court must assume that our Legislature intentionally omitted the word "ownership" and used instead the broader term "financial" to encompass other types of interests that could give rise to a "material financial interest." As a result, the Court is unable to conclude that the Legislature intended for N.C.G.S. § 55-8-31(b)(1) to be limited to self-interested transactions involving directors with an ownership interest in the other company to

the transaction at issue—to the exclusion of all other types of financial interests that might implicate the director's duty of loyalty.

92. In interpreting the phrase "material financial interest," the Court finds persuasive the American Bar Association's most recent Model Business Corporations Act, which expressly defines the term "material financial interest" as "a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction." Model Bus. Corp. Act § 8.60 (2016) (A.B.A., amended 2026); *see also Potts v. KEL, LLC*, 2021 NCBC LEXIS 100, at *54–55 (N.C. Super. Ct. Nov. 5, 2021) (treating the Model Business Corporation Act as persuasive authority when interpreting portions of the North Carolina Business Corporation Act).

93. Indeed, such a definition is not only consistent with the express statutory language used in N.C.G.S. § 55-8-31(b)(1) but also reflects the broad scope of the fiduciary duties owed by corporate directors embodied in N.C.G.S. § 55-8-30. *See, e.g.*, N.C.G.S. § 55-8-30(a)(3) (requiring that corporate directors act "[i]n a manner the director reasonably believes to be in the best interests of the corporation[ ]").

94. In applying this definition, the Court finds that there is a genuine issue of material fact as to whether Peter's payment of $200,000 to KIF (whether characterized as a loan or an equity investment) would have reasonably been expected to impair his judgment and objectivity when authorizing Daedong to enter into the Services Agreement and DataScan Assignments with KIF.

95. However, this does not end the Court's inquiry. As noted above, under N.C.G.S. § 55-8-31(a), a conflicted transaction is not voidable where (1) the material facts of the transaction and the conflicted director's interests were disclosed to—or known by—the disinterested members of the board of directors or the company's voting shareholders, who then authorized, approved, or ratified the transaction; or (2) the transaction was fair to the company. *See* N.C.G.S. § 55-8-31(a)(1).

96. With respect to the authorization, approval, or ratification of a conflict transaction, N.C.G.S. § 55-8-31(c) provides, in relevant part, as follows:

> [A] conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee or subcommittee) who have no direct or indirect interest in the transaction. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subdivision (a)(1) of this section if the transaction is otherwise authorized, approved, or ratified as provided in that subdivision.

N.C.G.S. § 55-8-31(c).

97. Defendants assert that even if the Services Agreement and DataScan Assignments were conflict-of-interest transactions under N.C.G.S. § 55-8-31, they are not voidable because Daedong's board of directors executed a written consent on 14 February 2023, which stated as follows:

> WHEREAS, the board of directors has reviewed the operation of the corporation and the actions of the officers of the corporation over the previous year and desires to approve, ratify and confirm same.
>
> NOW, THEREFORE, BE IT HEREBY RESOLVED, that the operation of the corporation and the legal actions of the officers of the corporation

> during the previous year be, and they hereby are, approved, ratified and confirmed.

(Ex. R, ECF No. 211.19 [sealed], at 2.)

98. Although Defendants have proffered this written consent as evidence that Daedong's board of directors retroactively ratified the Services Agreement and DataScan Assignments, the evidence of record does not reflect that a majority of the disinterested board of directors (or Daedong's shareholder) were informed of—or otherwise knew—the material facts relating to those agreements. (*See* Jong Baek Park Dep. Tr., at 56–58; Jun Sik Kim Dep. Tr., at 135; Daedong R. 30(b)(6) Dep. Tr., at 135–36; *see also* Ex. 23, ECF No. 235.2, at 3.)

99. Nothing in the record indicates that—prior to the initiation of this lawsuit—Peter ever disclosed to Daedong's board of directors or to Daedong Korea (its sole shareholder) that he had made a $200,000 payment to KIF less than a month before the Services Agreement and the DataScan Assignments were executed. (*See* Dae Kim Dep. Tr., at 232–33.) Nor does it appear that the other members of Daedong's board of directors were even informed about the existence of the Services Agreement or DataScan Assignments prior to this purported ratification.

100. Therefore, the Court cannot conclude, as a matter of law, that the Services Agreement and DataScan Assignments were ratified by a majority of Daedong's disinterested directors or by its sole shareholder. *See Leiber v. Arboretum Joint Venture, LLC*, 208 N.C. App. 336, 347 (2010) (concluding that summary judgment on the issue of ratification was inappropriate where "there [was] no evidence that [p]laintiff was aware of . . . all material facts[ ]"); *Anderson v. Brokers,*

Inc. (In re Brokers, Inc.), 363 B.R. 458, 472 (Bankr. M.D.N.C. 2007) (denying summary judgment where the corporate director failed to disclose facts that were "certainly material to the approval" of the challenged transactions); *see also Holland v. Warren*, 2020 NCBC LEXIS 146, at *27 (N.C. Super. Ct. Dec. 15, 2020) (concluding that although the board of directors passed a resolution to "ratif[y] all actions" of its board members, there was a genuine issue of material fact where the "record[ ] d[id] not reflect any [board] member's knowledge of" the conflicted director's interest in the transaction).

101. Even if not authorized, approved, or ratified by a majority of the company's disinterested directors or shareholders, however, N.C.G.S. § 55-8-31(a) further provides that a conflict-of-interest transaction is not voidable due to a director's conflict of interest where "[t]he transaction was fair to the corporation." N.C.G.S. § 55-8-31(a)(3). Therefore, the final portion of the analysis of Daedong's claim under N.C.G.S. § 55-8-31 concerns whether the evidence of record shows, as a matter of law, that the execution of the Services Agreement and DataScan Assignments were fair to Daedong.

102. Generally, "determining whether an agreement is fair requires assessing both the process by which it was entered and its terms[.]" *Ehmann v. Medflow, Inc.*, 2017 NCBC LEXIS 88, at *54 (N.C. Super. Ct. Sept. 26, 2017) (cleaned up). Moreover, "[t]he fairness of a transaction . . . should be evaluated on the basis of the facts and circumstances as they were known or should have been known at the time the transaction was entered into. For example, the terms of a transaction . . .

should normally be deemed 'fair' if they are within the range that might have been entered into at arm's-length by disinterested persons." N.C.G.S. § 55-8-31 off. cmt. 4.

103. The burden of proof is upon the party seeking to sustain the challenged transaction to show that "the subject transaction [was] just and reasonable" to the corporation. *Schwartzbach v. Apple Baking Co.*, 109 N.C. App. 216, 221 (1993); *see also F-L Legacy Owner, LLC v. Legacy at Jordan Lake Homeowners Ass'n*, 2023 NCBC LEXIS 55, at *12 (N.C. Super. Ct. Apr. 3, 2023) ("Where, as here, the party challenging the transaction pleads that it was approved by interested directors, the burden of proof as to the transaction's entire fairness lies with the party seeking to sustain the transaction[.]" (cleaned up)).

104. Here, Daedong asserts that Defendants cannot sustain their burden of proof on this issue because these agreements were, in fact, patently unfair.

105. In support of this argument, Daedong contends that the relevant financial records show that (1) Daedong paid KIF $7,796,605 pursuant to the Services Agreement (Ex. H, ECF No. 221.37 [sealed], at 104–05); (2) the Services Agreement simply required KIF to perform the same services that had previously been provided by Daedong's in-house financing department (Matthew Welborn Dep. Tr., at 114–15; Logan White Dep. Tr., at 45; Matthew Smigelski Dep. Tr., at 76–77; Lauren Smith Dep. Tr., at 38; Dae Kim Dep. Tr., at 241; *see also* Ex. A – 022); and (3) these services were, in fact, performed by those same employees who were simply redesignated for a certain period of time as KIF employees (rather than Daedong employees)—albeit at a 253% increased cost to Daedong (Dae Kim Dep. Tr., at 241; Matthew Welborn

Dep. Tr., at 114–15; Logan White Dep. Tr., at 45; Matthew Smigelski Dep. Tr., at 76–77; Lauren Smith Dep. Tr., at 38).

106. With regard to the DataScan Assignments, Daedong asserts that the assignments gave KIF unilateral control over software critical to Daedong's finance operations—which allowed KIF to undermine Daedong's financing program. (Ex. I, ECF No. 228.31 [sealed], at 35–36.)

107. The record is clear that from November 2022 through July 2023, KIF was staffed exclusively by former members of Daedong's own in-house finance department, who were performing the same job functions and providing the same services as when they were Daedong's employees. (Matthew Welborn Dep. Tr., at 114–15; Logan White Dep. Tr., at 45; Matthew Smigelski Dep. Tr., at 76–77; Lauren Smith Dep. Tr., at 38; Dae Kim Dep. Tr., at 241; *see also* Ex. A – 022.) Furthermore, beginning in July 2023, after Daedong had rehired Dae and the former members of its finance department, Daedong continued paying KIF for these same services under the Services Agreement (albeit at a reduced rate) despite the fact, according to Daedong, that virtually all of KIF's duties under the Services Agreement were being performed by Daedong's own employees. (Dae Kim Dep. Tr., at 241; Matthew Welborn Dep. Tr., at 114–15; Logan White Dep. Tr., at 45; Matthew Smigelski Dep. Tr., at 76–77; Lauren Smith Dep. Tr., at 38.)

108. Daedong further notes that prior to the execution of the Services Agreement, neither Peter nor Yung solicited competing bids from other firms, compared the costs of the Services Agreement to maintaining Daedong's in-house

finance department, or compared the costs of the Services Agreement to a third-party wholesale financing arrangement. (Peter Kim Dep. Tr., at 178, 222–23; Yung Dep. Tr., at 59–60, 190–91.)

109. In response, Defendants make several arguments as to why these agreements were fair to Daedong.

110. With respect to the Services Agreement, Defendants contend that the unique circumstances and sense of urgency that Daedong was facing—due to Dae's impending departure—made other options impracticable if they wanted to maintain the appearance to third parties that it was able to continue offering in-house financing. (Yung Dep. Tr., at 224 ("At the time, it was kind of an urgent situation, . . . We had to decide on the in-housing financing, the survivability of in-house financing, which affected the momentum of our growth."); *see generally* Ex. O, ECF No. 233.16.)

111. Furthermore, Defendants note that before the Services Agreement was executed, Yung requested (and subsequently reviewed) cost projections comparing Daedong's anticipated costs under the Services Agreement with what they saw as their alternative options. (Yung Dep. Tr., at 190–96.) Defendants also point to negotiations that Yung engaged in with Dae and KIF whereby Yung was able to reduce the "management fee" charged by KIF under the Services Agreement from four percent to three percent as evidence of the agreements being commercially reasonable and the result of arms-length negotiations. (Dae Kim Dep. Tr., at 222–30; Yung Park Dep. Tr., at 217–18.)

112. As it relates to the DataScan Assignments, Defendants note that as a result of KIF assuming Daedong's licensing rights to the DataScan platform, KIF—rather than Daedong—assumed responsibility (1) for making the monthly licensing payments to DataScan (Dae Kim Decl., ECF No. 232, at 4); and (2) paying DataScan's cancellation fee if the decision was made to stop using the DataScan software (Dae Kim Dep. Tr., at 296–97).

113. Nevertheless, despite making these arguments, Defendants appear to concede that a factual dispute exists as to the fairness prong under N.C.G.S. § 55-8-31(a)(3). (*See* ECF No. 233 [sealed], at 30–37.)

114. The Court agrees that there is a genuine issue of material fact as to the fairness of the Services Agreement and DataScan Assignments. *See John Boyle & Co., Inc. v. Fasano*, 2006 U.S. Dist. LEXIS 13008, at *20–21 (W.D.N.C. Mar. 3, 2026) (denying summary judgment under N.C.G.S. § 55-8-31(a)(3) and finding a genuine issue of material fact as to whether the challenged transaction was "detriment[al] [to] the company and its shareholders[ ]" or whether it was "completely consistent with company policy and precedent[ ]"); *In re U-Fill'Er Up, Inc.*, 1996 U.S. Dist. LEXIS 3280, at *11–12 (M.D.N.C. Mar. 1, 1996) (finding a genuine dispute of material fact as to whether the challenged transaction was fair).

115. For all of these reasons, the cross-Motions for Summary Judgment are **DENIED** with respect to Daedong's claim for declaratory judgment.

B. Breach of Fiduciary Duty

116. It is well-settled that "[t]o establish a claim for breach of fiduciary duty, a plaintiff must show that: (1) the defendant owed the plaintiff a fiduciary duty; (2) the defendant breached that fiduciary duty; and (3) the breach of fiduciary duty was a proximate cause of the injury to the plaintiff." *Sykes v. Health Network Sols., Inc.*, 372 N.C. 326, 339 (2019) (cleaned up). Thus, "to make out a claim for breach of a fiduciary duty, plaintiff[ ] must first allege facts that, taken as true, demonstrate that a fiduciary relationship existed between the parties." *Id.* at 339–40. Once the plaintiff has established "a prima facie case of the existence of a fiduciary duty, and its breach, the burden shifts to the defendant to prove he acted in an open, fair, and honest manner, so that no breach of fiduciary duty occurred." *Collier v. Bryant*, 216 N.C. App. 419, 432 (2011) (cleaned up).

117. Daedong has asserted its breach of fiduciary claim against each of the Individual Defendants.

(1) Peter

118. It is undisputed that as both an officer and director of Daedong, Peter owed a fiduciary duty to Daedong.

119. Daedong has asserted two separate theories in support of its claim that Peter breached his fiduciary duty owed to Daedong. The first theory concerns the events discussed above—that is, Peter's role relating to KIF, the Services Agreement, and the DataScan Assignments. The second theory is based on a completely unrelated event—namely, Peter's use of Daedong funds to pay $11,728 in attorneys'

fees owed by a limited liability company he co-owned with regard to the purchase of a Duck Donuts franchise.[3] The Court will address each theory in turn.

120. With regard to his actions relating to KIF, the Services Agreement, and the DataScan Assignments, Peter claims that he is immunized from liability by the business judgment rule.

121. The business judgment rule protects a company's officers and directors from individual liability relating to "(1) an advertent business decision (2) made by disinterested directors (3) within the scope of their authority (4) in good faith (5) with reasonable care and (6) not for their own self-interests." *Lee v. McDowell*, 2022 NCBC LEXIS 51, at *34 (N.C. Super. Ct. May 26, 2022) (cleaned up).

122. This Court has previously held that

> [i]n North Carolina, the business judgment rule creates, first, an evidentiary presumption that in making a decision, the managers acted on an informed basis and in good faith in the honest belief that their decision was in the best interest of the [corporation], and second, absent rebuttal of the initial presumption, the rule creates a powerful substantive presumption that a decision by a loyal and informed manager will not be overturned by a court unless it cannot be attributed to any rational business purpose.

Emrich Enters., LLC v. Hornwood, Inc., 2022 NCBC LEXIS 19, at *45 (N.C. Super. Ct. Feb. 15, 2022) (cleaned up).

123. However, it is well recognized that the "protection afforded by the business judgment rule is not unlimited[.]" *Blythe v. Bell*, 2013 NCBC LEXIS 7, at *38 (N.C. Super. Ct. Feb. 4, 2013) (cleaned up). A plaintiff may overcome the business

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[3] As discussed more fully below, the issue concerning the Duck Donuts legal fees is relevant to several other claims asserted by Daedong in this case.

judgment rule with proof that the defendant "failed to act (1) in good faith, (2) in the honest belief that the action taken was in the best interest of the company, or (3) on an informed basis." *Cone v. Blue Gem, Inc.*, 2023 NCBC LEXIS 127, at *19 n.6 (N.C. Super. Ct. Oct. 13, 2023) (cleaned up).

124. Based on the conflicting evidence of record, the Court concludes that there is a genuine dispute of material fact as to whether Peter breached his fiduciary duties by causing Daedong to enter into the Services Agreement and DataScan Assignments—despite his knowledge that those agreements were not in Daedong's best interests and were with a company in which he may have had a material financial interest.

125. As such, the resolution of these issues—namely, whether Peter's conduct is protected by the business judgment rule and whether he breached his fiduciary duty to Daedong—must be decided by a jury at trial, and the cross-Motions for Summary Judgment are **DENIED**. *See Bronson v. Burnham*, 2026 NCBC LEXIS 104, at *31 (N.C. Super. Ct. Apr. 29, 2026) (denying cross-motions for summary judgment where "a jury could reasonably find that a number of the transactions that form the bases for the breach of fiduciary duty claim" were not protected by the business judgment rule); *Norment v. Rabon*, 2022 NCBC LEXIS 73, at *33 (N.C. Super. Ct. July 7, 2022) (concluding that "clearly material factual disputes render[ed] summary judgment inappropriate on the basis of the business judgment rule[ ]" based on disputed evidence indicating that the defendants "engaged in self-dealing by improperly making substantial payments from company assets to themselves[ ]");

Lee, 2022 NCBC LEXIS 51, at *32 (declining to apply the business judgment rule at the summary judgment stage where there was a dispute of material fact as to whether the directors "engaged in a rational [decision-making] process" or "unreasonably permitted the waste of [the company's] corporate assets[ ]" (cleaned up)); *Kixsports, LLC v. Munn*, 2021 NCBC LEXIS 32, at *18 (N.C. Super. Ct. Apr. 1, 2021) (concluding that "[a] jury must decide . . . whether [defendant] acted in good faith and in the best interests of the company[ ]"); *see also FDIC v. Rippy*, 799 F.3d 301, 314 (4th Cir. 2015) (observing that the entry of summary judgment is inappropriate where "there is sufficient evidence to rebut the initial evidentiary presumption of the North Carolina business judgment rule[ ]").

126. The second theory of liability is based on Peter's use of Daedong's funds to pay the legal expenses relating to one of his personal business ventures.

127. In 2022, Peter invested between $200,000 and $300,000 in franchising and opening a Duck Donuts restaurant in Virginia. (Peter Kim Dep. Tr., at 202–03; *see generally* Ex. C – 035, ECF No. 218.1; Ex. C – 036, ECF No. 218.1.) In connection with that venture, Fox Rothschild provided representation to Peter regarding the negotiation and drafting of the Duck Donuts lease agreement. (Peter Kim Dep. Tr., at 204; Anna Kim Dep. Tr., at 203–05; *see generally* Ex. A – 038, ECF No. 213.2.) In total, Fox Rothschild invoiced Peter for $11,728 for services rendered. (Ex. A – 039, ECF No. 213.2; Ex. A – 040, ECF No. 213.2; *see also* Ex. H, at 38–41.)

128. After receiving Fox Rothschild's invoice for services, Peter communicated with Anna—via email and telephone—to explain that although this

invoice was for personal legal expenses, Peter wanted her to have it paid by Daedong. (Peter Kim Dep. Tr., at 210–12; Anna Kim Dep. Tr., at 209–10.) Thereafter, Anna complied with Peter's request and caused Daedong to pay the expenses charged to Peter by Fox Rothschild. (Peter Kim Dep. Tr., at 211; Anna Kim Dep. Tr., at 210–11; *see also* Ex. H, at 38–41.)

129. With regard to this theory, Defendants' only real argument is that Daedong routinely allowed its officers to charge personal expenses to the company. (Peter Kim Dep. Tr., at 212–15.) Because the record is not entirely clear on this issue, the Court finds that this theory of liability also must be resolved by a jury. *See Bradson Mercantile, Inc. v. Vanderbilt Indus. Contracting Corp.*, 883 F. Supp. 37, 56–57 (W.D.N.C. 1995) (denying summary judgment because "the facts concerning the [d]efendants' knowledge and conduct, and the circumstances in which they existed, as well as any determinations of how they relate to the legal standard of corporate fiduciary responsibility are best left for resolution by the trier of the facts at trial[ ]" (cleaned up)).

130. Therefore, the cross-Motions for Summary Judgment are **DENIED** with respect to the breach of fiduciary duty claim against Peter.

(2) Yung

131. Yung—like Peter—does not dispute the fact that he owed a fiduciary duty to Daedong by virtue of his status as the company's CFO and (later) by virtue of his service on Daedong's board of directors.

132. There is evidence in the record that—when taken in the light most favorable to Daedong—would allow a jury to find that Yung played an instrumental role in the creation of KIF, the negotiations concerning the terms of the Services Agreement, and the process by which Daedong ultimately agreed to the agreement—despite his awareness that the transaction was grossly unfavorable to Daedong.

133. As discussed more fully above, the evidence shows that (1) Yung was the first person at Daedong that Dae approached with the idea of "outsourcing" Daedong's in-house financing program to KIF (Yung Park Dep. Tr., at 165; Dae Kim Dep. Tr., at 64–65); (2) Yung was copied on emails between Dae and his attorney regarding KIF's incorporation (John Finch Decl. Ex. 1, at 1; John Finch Decl. Ex. 2, at 1–3); and (3) Yung independently prepared the spreadsheets containing detailed information such as KIF's proposed shareholder structure, employee salaries, and financial projections (Yung Park Dep. Tr., at 182–88; Dae Kim Dep. Tr., at 103–10; *see also* Ex. A – 003, at 1).

134. Yung was also responsible for raising the possibility of "outsourcing" Daedong's in-house financing program to KIF with Peter and then negotiating the terms of the Services Agreement and DataScan Assignments—including KIF's management fee—on behalf of Daedong. (Yung Park Dep. Tr., at 218–19; Anna Kim Dep. Tr., at 148–50; Peter Kim Dep. Tr., at 176–78; Dae Kim Dep. Tr., at 222–30.)

135. As part of this process, Yung personally solicited—and helped provide Dae with guidance on creating—a formal proposal outlining the nature and scope of Daedong's contracts with KIF. (Yung Park Dep. Tr., at 172–74; Dae Kim Dep. Tr., at

81–84; Anna Kim Dep. Tr., at 132–33; *see also* Ex. B, ECF No. 211.3, at 24–27.) After receiving Dae's finalized proposal, Yung recommended to Peter that Daedong enter into the Services Agreement and instructed Anna to have Daedong's external general counsel draft the necessary documents. (Anna Kim Dep. Tr., at 131–33.)

136. Around that same time, on 11 August 2022, Yung accepted—and subsequently delivered to Dae—a personal check from Peter in the amount of $200,000 payable to KIF. (Peter Kim Dep. Tr., at 165–67; Yung Park Dep. Tr., at 214; Dae Kim Dep. Tr., at 183.)

137. Thereafter, Yung presented the Services Agreement to Peter for his approval on 1 September 2022 and personally executed the DataScan Assignments on behalf of Daedong on 7 September 2022. (Daedong R. 30(b)(6) Dep. Tr., at 91–92; *see also* Ex. A – 020; Ex. A – 042.)

138. For these reasons, Daedong contends that Yung breached his fiduciary duty to the company by causing it to enter into a transaction that he knew was not only commercially unreasonable but would also result in the extensive corporate waste of Daedong's funds.

139. Although Defendants once again seek to invoke the business judgment rule on behalf of Yung, the arguments asserted by the two sides simply rehash the same fundamental factual dispute that permeates this entire case—whether the Services Agreement was a reasonable mechanism that would enable Daedong to continue receiving the services of Dae and maintain the perception to the outside world that it offered in-house financing (as Defendants argue) or rather a deliberate

scheme to cause the expenditure of millions of dollars by Daedong and receive virtually nothing in return (as argued by Daedong). The Court concludes that this issue must be resolved by a jury. *See, e.g., Bronson*, 2026 NCBC LEXIS 104, at *31.

140. Therefore, the cross-Motions for Summary Judgment are **DENIED** with respect to the breach of fiduciary duty claim against Yung.

(3) Anna

141. Anna also does not dispute that she owed a fiduciary duty to Daedong during the time period in which she served as Daedong's COO.

142. In addition to Daedong's breach of fiduciary duty theory against Anna based on her involvement in the circumstances leading up to the execution of the Services Agreement, Daedong has also asserted a separate and independent theory of breach of fiduciary duty against Anna based on her alleged use of Daedong's resources to form a competing business—Advanced Earth Machine Components, Inc. ("Advanced Earth")—during the period of time in which she still owed a fiduciary duty to Daedong.[4]

143. North Carolina courts have recognized that "merely making plans to compete with an employer before leaving the company, without more, does not necessarily constitute a breach of fiduciary duty." *RoundPoint Mortg. Co. v. Florez*,

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[4] Although the C-Suite Defendants have argued—both in their briefing in connection with the present Motions and at the 4 June hearing—that this theory was not pled in the Second Amended Complaint, the Court disagrees. The facts underlying this theory of liability were alleged in several places, including in paragraphs 110 and 111 of that pleading. (*See* SAC ¶¶ 110–11.) As such, the Court is satisfied that this is not a "new" claim or theory of liability and that the Second Amended Complaint sufficiently put Defendants on notice of its existence.

2016 NCBC LEXIS 18, at *25 (N.C. Super. Ct. Feb. 18, 2016) (cleaned up). Instead, the Court's inquiry must focus on the "actions taken in furtherance of such a plan to compete . . . rather than [mere] preparations to compete[.]" *Sunbelt Rentals, Inc. v. Head & Engquist Equip., LLC*, 2002 NCBC LEXIS 2, at *25 (N.C. Super. Ct. July 10, 2002) (emphasis omitted); *see also Fogartie v. Edrington*, 2017 NCBC LEXIS 106, at *15 (N.C. Super. Ct. Nov. 17, 2017) ("[T]he crucial question is whether the individual took improper actions in furtherance of a plan to compete, or was only engaged in the planning to compete in the future." (cleaned up)).

144. Daedong contends that Anna's conduct went beyond mere preparation to compete with Daedong in two primary ways: (1) downloading Daedong's confidential information for use by Advanced Earth; and (2) using Daedong's resources to create financial forecasts and meet with potential customers on behalf of Advanced Earth.

145. With respect to Anna's downloading of Daedong's confidential information, Daedong has presented evidence that on 20 December 2023 (the same day that Anna emailed Peter to inform him of her forthcoming resignation from the company) she exported confidential information from Daedong's internal network to a USB flash drive. (Danny Spell Aff., at 2–3; *see also* Danny Spell Dep. Tr., at 144–47.) That same day, she also instructed a member of Daedong's information technology department, Danny Spell, to purchase an external drive that Anna subsequently used throughout December 2023 to download additional confidential

information from Daedong's internal network.[5] (Danny Spell Aff., at 2–3; *see also* Danny Spell Dep. Tr., at 144–47.)

146. With regard to Anna's use of Daedong's resources to create financial forecasts and meet with potential customers for Advanced Earth, Daedong has presented evidence that between 8 December and 14 December 2023 Anna exchanged various emails with Yung and another Daedong employee, Tim Phillips. (Ex. C – 026, ECF No. 218.1, at 1–2.) In those emails, Anna requested—and Phillips provided to her—a forecast of financial projections for an agricultural attachment business (such as Advanced Earth). (Ex. C – 026, at 1–2.) Anna also requested that Yung review those projections in advance of a meeting with a "Vendor" that was to take place on 18 December 2023. (Ex. C – 026, at 1–2.)

147. Taken together, Daedong has presented sufficient evidence to create a genuine issue of material fact as to whether Anna acted in contravention of her fiduciary duties by using Daedong's own resources to actively compete against it while still serving as its COO. *See RoundPoint Mortg. Co.*, 2016 NCBC LEXIS 18, at *26 (denying summary judgment where "the evidence, viewed most favorably to [plaintiff], would allow a finding that actions [defendant] took while he was subject to a fiduciary duty transcended mere preparation, and that the competing positions

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[5] While Daedong has also presented evidence that Anna continued downloading Daedong's confidential information throughout January 2024, the Court notes that Anna effectively resigned from her position as Daedong's COO on 31 December 2023. (Anna Kim Dep. Tr., at 318–19.) As such, her fiduciary duty to Daedong terminated on that date and any of the subsequent acts by her upon which Daedong relies cannot serve as the basis for Daedong's breach of fiduciary duty claim.

must be resolved by a jury[ ]"); *Glover Constr. Co. v. Sequoia Servs., LLC*, 2020 NCBC LEXIS 76, at *33 (N.C. Super. Ct. June 18, 2020) (concluding that summary judgment was inappropriate where "there [was] contradictory evidence in the record, creating a fact dispute," as to whether the corporate officer defendant actively competed with the corporation).

148. Though Anna maintains that she did not actively take steps—on behalf of Advanced Earth—to compete against Daedong during the time period in which she was serving as Daedong's COO, it will be up to a jury to assess the validity of this argument. *See Kinesis Advert., Inc. v. Hill*, 187 N.C. App. 1, 16 (2007) (recognizing that issues regarding the propriety of the defendant's actions as a fiduciary of the plaintiff presented "question[s] of fact for the jury to decide[ ]").

149. Therefore, the cross-Motions for Summary Judgment are **DENIED** with respect to the breach of fiduciary duty claim against Anna.

(4) Dae

150. Unlike the C-Suite Defendants, Dae never served either as one of Daedong's corporate officers or as a member of its board of directors. Thus, the parties agree that Dae did not owe a *de jure* fiduciary duty to Daedong. *See Epes Logistics Servs., Inc. v. De Piante*, 2025 NCBC LEXIS 25, at *38–39 (N.C. Super. Ct. Mar. 11, 2025) (recognizing that the fiduciary duties owed by corporate directors and officers "arise by operation of law (de jure)[ ]" (cleaned up)).

151. Nevertheless, because of Dae's importance to the in-house financing program and his status as the head of the company's finance department, Daedong asserts that he owed a *de facto* fiduciary duty to Daedong.

152. "The standard for finding a *de facto* fiduciary relationship is a demanding one: [o]nly when one party figuratively holds all the cards—all the financial power or technical information, for example—have North Carolina courts found that the special circumstances of a fiduciary relationship has arisen." *Lockerman v. S. River Elec. Membership Corp.*, 250 N.C. App. 631, 636–37 (2016) (cleaned up).

153. "A fiduciary relationship does not arise between an employee and his or her employer by operation of law, and only in rare circumstances does such a duty arise from the particular facts of an employment relationship." *Langley v. Autocraft, Inc.*, 2023 NCBC LEXIS 95, at *10–11 (N.C. Super. Ct. Aug. 7, 2023) (cleaned up); *see also Sandhills Home Care, L.L.C. v. Companion Home Care-Unimed, Inc.*, 2016 NCBC LEXIS 61, at *55 (N.C. Super. Ct. Aug. 1, 2016) ("North Carolina courts have held a typical employer/employee relationship insufficient to establish a fiduciary duty." (cleaned up)). Only where the employer is "somehow subjugated to the improper influences or domination of [the] employee[ ]" have North Carolina courts found that an employee owed fiduciary duties to its employer. *Dalton v. Camp*, 353 N.C. 647, 652 (2001).

154. Although the evidence demonstrates that Dae was a valuable employee, that evidence is insufficient—even when viewed in the light most favorable to

Daedong—to establish that Dae essentially dominated or exercised control over the entire company. *See Reichold Chems., Inc v. Goel*, 146 N.C. App. 137, 155 (2001) ("A managerial position alone does not demonstrate the requisite 'domination and influence on the other' required to create a fiduciary obligation." (cleaned up)).

155. While Dae led Daedong's in-house financing department, he did not exercise significant influence or control over the other key areas of Daedong's business. Indeed, testimony in the record makes clear that Dae had very limited contact with Peter, was actively supervised by Yung, lacked the authority to enter into contracts on Daedong's behalf without the approval of Peter or Yung, and had no direct contact with the other members of Daedong's board of directors. (Yung Park Dep. Tr., at 165; Anna Kim Dep. Tr., at 58; Peter Kim Dep. Tr., at 149; KIF R. 30(b)(6) Dep. Tr., at 111.)

156. Thus, there is insufficient evidence from which a jury could reasonably conclude that Dae exercised such a high degree of domination and control over Daedong as to give rise to a *de facto* fiduciary duty. *See Austin Main. & Constr., Inc. v. Crowder Constr. Co.*, 224 N.C. App. 401, 410 (2012) (holding that a construction foreman owed no fiduciary duty to his employer when he "exercised little or no control over [p]laintiff's overall operations"); *Am. Air Filter Co. v. Price*, 2017 NCBC LEXIS 55, at *25 (N.C. Super. Ct. June 26, 2017) (noting that the employee did not exercise domination or control over the employer where the employer had "unfettered authority to terminate [the employee] at-will, change his territory and customers, and change his compensation[ ]" (cleaned up)).

157. Accordingly, Dae's Motion for Summary Judgment is **GRANTED** as to Daedong's breach of fiduciary duty claim against him, and Daedong's Motion for Summary Judgment is **DENIED**.

C. Constructive Fraud

158. Our Supreme Court has recognized that the elements of a constructive fraud claim largely overlap with the elements of a claim for breach of fiduciary duty. *See Chisum v. Campagna*, 376 N.C. 680, 706–07 (2021). The elements for constructive fraud are: "(1) a relationship of trust and confidence, (2) that the defendant took advantage of that position of trust in order to benefit himself, and (3) that plaintiff was, as a result, injured." *White v. Consol. Planning Inc.*, 166 N.C. App. 283, 294 (2004) (cleaned up). "The primary difference between pleading a claim for constructive fraud and one for breach of fiduciary duty is the constructive fraud requirement that the defendant benefit himself." *Id.*

159. Although this claim was pled in the Second Amended Complaint against all of the Individual Defendants, at the 4 June hearing, counsel for Daedong informed the Court that Daedong is not pursuing this claim against Anna. (Hearing Tr., at 78.)

160. Accordingly, summary judgment is **GRANTED** in favor of Anna with respect to this claim.

161. With regard to Peter, as discussed above, Daedong has presented evidence that he received a personal benefit from Daedong's payment of attorneys' fees incurred in connection with the purchase of a Duck Donuts franchise.

162. Therefore, at a minimum, Daedong is entitled to proceed on its constructive fraud claim against Peter on this theory, and as a result the cross-Motions are **DENIED** as to him on this claim. *See Brady v. Prince*, 2015 NCBC LEXIS 5, at *28 (N.C. Super. Ct. Jan. 7, 2015) (denying summary judgment because there was a question of fact as to "whether [corporate funds] w[ere] spent on behalf of the corporation[ ] or w[ere] used for improper purposes").

163. As for Dae, because the existence of a fiduciary relationship is a necessary prerequisite to a claim for constructive fraud and the Court has now concluded that Dae did not owe a fiduciary duty to Daedong, Daedong's claim for constructive fraud against Dae cannot survive. *See Hale v. MacLeod*, 294 N.C. App. 318, 332 (2024) (noting that "[i]f no fiduciary relationship exists, then no further analysis is required for a claim of constructive fraud[ ]" (cleaned up)); *McCarron v. Howell*, 2024 NCBC LEXIS 144, at *14 (N.C. Super. Ct. Nov. 19, 2024) (finding that "for the same reason that [plaintiff's] breach of fiduciary duty claim . . . fails as a matter of law, so too is his constructive fraud claim . . . legally deficient[ ]").

164. Therefore, Dae's Motion is **GRANTED**, and summary judgment is entered in his favor with respect to Daedong's claim for constructive fraud against him.

165. Finally, with respect to Yung, the Court has already ruled that a question of fact exists as to whether he breached his fiduciary duty to Daedong. This means that the only remaining question for purposes of the constructive fraud claim

against him is whether there is sufficient evidence that he received a personal benefit as a result of his allegedly improper actions in this regard.

166. Daedong asserts that in exchange for causing Daedong to enter into the Services Agreement, Yung received from KIF $38,000 in reimbursement for his personal travel expenses along with a Lexus automobile.

167. In response, Defendants contend that KIF's payment of Yung's travel expenses was a "gift" that was simply designed to maintain the relationship between KIF and Daedong. (Dae Kim Dep. Tr., at 366; Yung Park Dep. Tr., at 277.) Furthermore, Defendants assert that the Lexus received by Yung was given to him by Dae in satisfaction of a personal debt that he owed to Yung. (Dae Kim Dep. Tr., at 365; *see also* Ex. M, ECF No. 207.10, at 9; Ex. 30, ECF No. 235.10, at 6–7.)

168. The Court finds that summary judgment is inappropriate and that a genuine dispute of material fact exists as to whether these benefits were received by Yung in exchange for his assistance in causing Daedong to enter into the Services Agreement.

169. Therefore, the cross-Motions for Summary Judgment are **DENIED** with respect to the constructive fraud claim against Yung.

D. Conspiracy to Commit Constructive Fraud

170. Daedong has also asserted a claim against all of the Individual Defendants for conspiracy to commit constructive fraud.

171. In order to state a valid claim for conspiracy, a plaintiff must allege: "(1) an agreement between two or more individuals; (2) to do an unlawful act or to do a

lawful act in an unlawful way; (3) resulting in injury to plaintiff inflicted by one or more of the conspirators; and (4) pursuant to a common scheme." *Piraino Bros. v. Atl. Fin. Grp., Inc.*, 211 N.C. App. 343, 350 (2011) (cleaned up).

172. Notably, "[c]ivil conspiracy is not an independent cause of action in North Carolina. Rather, liability for civil conspiracy must be alleged in conjunction with an underlying claim for unlawful conduct." *McCarron*, 2024 NCBC LEXIS 144, at *17 (cleaned up); *see also Toomer v. Garrett*, 155 N.C. App. 462, 483 (2002) (holding that "[o]nly where there is an underlying claim for unlawful conduct can a plaintiff state a claim for civil conspiracy by also alleging the agreement of two or more parties to carry out the conduct and injury resulting from that agreement").

173. In light of the Court's ruling that Daedong is permitted to go forward (at least in part) on its claims for constructive fraud and based on evidence in the record that—when taken in the light most favorable to Daedong—suggests the Individual Defendants all acted in furtherance of a common scheme, the Court deems it inappropriate to grant any party summary judgment on this issue.

174. Therefore, the cross-Motions for Summary Judgment are **DENIED** with respect to Daedong's claim for conspiracy to commit constructive fraud.

E. Misappropriation of Corporate Funds

175. With respect to Daedong's claim against the Individual Defendants for misappropriation of corporate funds, N.C.G.S. § 1-538.2 provides, in pertinent part, that "[a]ny person . . . who commits an act that is punishable under . . . N.C.G.S. §

14-90 . . . is liable for civil damages to the owner of the property." N.C.G.S. § 1-538.2(a).

176. In briefing the cross-Motions, Daedong has clarified that its claim for misappropriation of corporate funds is predicated on the theory that the Individual Defendants embezzled Daedong's property by (1) causing Daedong to make payments to KIF pursuant to the terms of the Services Agreement; and (2) causing Daedong to pay for Peter's personal legal expenses concerning the Duck Donuts franchise.

177. Pursuant to N.C.G.S. § 14-90, a person is guilty of embezzlement if they do any of the following:

> (1) Embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or
>
> (2) Take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use,
>
> any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever that (i) belongs to any other person or corporation, unincorporated association or organization or (ii) are closing funds as defined in N.C.G.S. § 45A-3, which shall have come into his possession or under his care[.]

N.C.G.S. § 14-90(b).

178. "Embezzlement is simply a fraudulent breach of trust by misapplying the property entrusted to [the defendant] to the use either of himself or another, when done with a fraudulent intent." *State v. Hutson*, 10 N.C. App. 653, 657–58 (1971) (cleaned up). "The intent necessary to convict on a charge of embezzlement is an intent of the agent to embezzle or otherwise willfully and corruptly use or misapply

the property of the principal for purposes for which the property is not held." *N.C. State Bar v. Simmons*, 233 N.C. App. 669, 675 (2014) (cleaned up).

(1) Services Agreement

179. In support of Daedong's first theory of misappropriation of corporate funds, Daedong asserts that each of the Individual Defendants violated N.C.G.S. § 14-90(b) by using their respective positions at Daedong to cause the company to make payments to KIF under the terms of the Services Agreement.

180. However, this theory does not fit within the enumerated elements of embezzlement under N.C.G.S. § 14-90(b).

181. The evidence appears to be undisputed that at the time each of the challenged payments were made to KIF, they were made pursuant to invoices for services that KIF generated in accordance with the terms of the Services Agreement.

182. Neither Daedong's briefs nor the Court's independent research have identified any cases from North Carolina's courts finding a violation of N.C.G.S. §§ 1-538.2 or 14-90 in that context.

183. Accordingly, Defendants' Motions for Summary Judgment on behalf of the Individual Defendants are each **GRANTED** with respect to Daedong's claim for misappropriation of corporate funds in connection with payments made to KIF pursuant to the Services Agreement, and summary judgment is entered in their favor as to that theory of liability.

(2) Duck Donuts Legal Fees

184. With respect to Daedong's second theory of misappropriation of corporate funds, as discussed above, the undisputed record of evidence reveals that Peter directed Daedong to pay invoices—totaling $11,728—from Fox Rothschild in connection with Peter's personal ownership of a Duck Donuts franchise. (Peter Kim Dep. Tr., at 211; Anna Kim Dep. Tr., at 210–11; *see also* Ex. H, at 38–41.)

185. This evidence is sufficient to establish two of the three elements of a claim for embezzlement. *See State v. Renkosiak*, 226 N.C. App. 377, 378 (2013) ("The essential elements of embezzlement are: (1) the defendant . . . acted as an agent or fiduciary for his principal, (2) he received money or valuable property of his principal in the course of his employment and through his fiduciary relationship, and (3) he fraudulently or knowingly and willfully misapplied or converted to his own use the money of his principal[.]" (cleaned up)).

186. However, with respect to the third element—that the defendant "fraudulently or knowingly and willfully misapplied or converted to his own use the money of his principal"—the Court concludes that there is a genuine issue of material fact as to Peter's intent such that summary judgment on this claim is inappropriate.

187. As noted above, the record is unclear as to Daedong's policy on allowing its executives to invoice the company for payment of personal expenses. As a result, the Court cannot conclude, as a matter of law, that Peter acted with the requisite intent so as to satisfy the elements of embezzlement. *See, e.g., Craddock v. Craddock*,

188 N.C. App. 806, 812 (2008) ("Summary judgment is rarely proper when a state of mind such as intent or knowledge is at issue." (cleaned up)).

188. Therefore, the cross-Motions for Summary Judgment are **DENIED** with respect to the misappropriation of corporate funds claim against Peter in connection with the Duck Donuts-related legal expenses.

F. Conspiracy to Misappropriate Corporate Funds

189. As noted above, in order to state a valid claim for conspiracy, a plaintiff must allege: "(1) an agreement between two or more individuals; (2) to do an unlawful act or to do a lawful act in an unlawful way; (3) resulting in injury to plaintiff inflicted by one or more of the conspirators; and (4) pursuant to a common scheme." *Piraino Bros.*, 211 N.C. App. at 350 (cleaned up).

190. Because Daedong's claim for misappropriation of corporate funds based on payments made to KIF pursuant to the terms of the Services Agreement fails, so too does its claim for conspiracy to misappropriate corporate funds based on that same conduct. *See Williams v. United Cmty. Bank*, 218 N.C. App. 361, 371 (2012) (affirming entry of summary judgment in favor of the defendants with respect to plaintiff's civil conspiracy claim based on the trial court's entry of summary judgment in favor of the defendants "on their underlying tort claims[ ]"); *see also In re Fifth Third Bank, N.A.*, 217 N.C. App. 199, 214 (2011) ("As a result of the fact that we have already concluded that Defendant is not liable to Plaintiffs for engaging in unfair and deceptive trade practices, we reject Plaintiffs' claim that Defendant participated in a civil conspiracy to engage in such unlawful practices as well.").

191. Accordingly, Defendants' Motions for Summary Judgment are each **GRANTED** with respect to that portion of Daedong's conspiracy claim.

192. However, to the extent that the conspiracy claim is based on the misappropriation of corporate funds relating to Peter's use of Daedong's funds to pay for his personal legal expenses, the Court finds that summary judgment should be **DENIED** as to Peter and Anna.

193. With regard to Anna, although there is no suggestion that she received any of the funds herself, the evidence shows that she was involved in processing the $11,728 invoice from Fox Rothschild and paying the invoice using Daedong funds. (Anna Kim Dep. Tr., at 209–11; Peter Kim Dep. Tr., at 210–12.)

194. As such, the Court concludes that a genuine issue of material fact exists as to whether Anna entered into an agreement with Peter to unlawfully misappropriate Daedong's corporate funds for the purpose of paying the legal expenses associated with the Duck Donuts franchise.

195. However, the Court concludes that there is no evidence in the record suggesting that Yung or Dae participated in any such conspiracy. *See Tuck v. Turoci*, 2008 N.C. App. LEXIS 175, at *17 (N.C. Ct. App. Feb. 5, 2008) (unpublished) (affirming summary judgment in favor of defendants on a claim for civil conspiracy where the plaintiff did "not forecast sufficient evidence of an agreement between [defendants] to perform an unlawful act or to perform a lawful act in an unlawful way[ ]").

196. Accordingly, Defendants' Motions for Summary Judgment are **GRANTED** on that theory of liability as to Yung and Dae.

G. Unjust Enrichment

197. Daedong has also asserted a claim for unjust enrichment against all Defendants, including KIF.

198. Under North Carolina law, "to recover on a claim of unjust enrichment, a party must prove that it conferred a benefit on another party, that the other party consciously accepted the benefit, and that the benefit was not conferred gratuitously or by an interference in the affairs of the other party." *Se. Shelter Corp. v. BTU, Inc.*, 154 N.C. App. 321, 331 (2002) (citing *Booe v. Shadrick*, 322 N.C. 567, 570 (1988)).

199. "However, since an action for unjust enrichment is quasi-contractual in nature, it may not be brought in the face of an express contract. For that reason, if there is a contract between the parties, the contract governs the claim and the law will not imply a contract." *SciGrip, Inc. v. Osae*, 373 N.C. 409, 432 (2020) (cleaned up); *see also Catoe v. Helms Constr. & Concrete Co.*, 91 N.C. App. 492, 498 (1988) (holding that a plaintiff cannot sustain a claim for unjust enrichment "when an express contract has been proved").

200. Once again, Daedong's claim is based on two separate theories—that is, one based on the payments made to KIF pursuant to the Services Agreement and the other based on Peter's Duck Donuts-related legal expenses.

(1) Services Agreement

201. Daedong's unjust enrichment claim against Defendants premised on this theory is for all practical purposes asserted solely against KIF. After all, the "benefit" Daedong claims it conferred under the Services Agreement was paid to KIF. *See Lucas v. Hopper*, 2026 NCBC LEXIS 93, at *13–14 (N.C. Super. Ct. Apr. 23, 2026) (noting that that "only defendant who directly received payments from [plaintiffs] for the work done on the projects[ ]" was the proper defendant to an unjust enrichment claim).

202. Pursuant to this theory, Daedong asserts that KIF unjustly enriched itself by accepting millions of dollars in payments from Daedong while Daedong's financing program continued to essentially be managed in-house by its own employees (who were simply reclassified as KIF employees for a period of months after the Services Agreement was executed).

203. KIF argues that an unjust enrichment claim cannot exist under these circumstances given that the payments at issue were made pursuant to an ongoing contractual relationship between itself and Daedong. As a result, KIF argues, Daedong could only seek to recover damages pursuant to a breach of contract claim, which it has not asserted in this case.

204. However, given that the Court has now held that a genuine issue of material fact exists as to whether the Services Agreement was a voidable transaction, the Court concludes KIF's Motion for Summary Judgment should be **DENIED** on this

ground. Summary judgment is, however, **GRANTED** as to Yung, Anna, and Dae on this claim.

(2) Duck Donuts Legal Fees

205. In its second unjust enrichment theory, Daedong asserts that Peter has been unjustly enriched by virtue of Daedong conferring a $11,728 benefit upon him through its payment of his personal legal expenses incurred by Fox Rothschild in connection with his personal business venture.

206. As discussed more fully above, there is a factual dispute as to whether Peter's use of Daedong's funds for his personal business ventures was consistent with Daedong's practices and policies for its executives. As such, it will be the role of the jury at trial to determine whether the payment of Peter's legal expenses was improper and resulted in Peter being unjustly enriched.

207. Therefore, summary judgment is **DENIED** with respect to the unjust enrichment claim against Peter.

H. UDTP

208. Daedong has also asserted a claim for UDTP against all Defendants.

209. "To prevail on a claim of unfair and deceptive trade practices a plaintiff must show (1) an unfair or deceptive act or practice, or an unfair method of competition, (2) in or affecting commerce, (3) which proximately caused actual injury to the plaintiff or to his business." *Spartan Leasing Inc. v. Pollard*, 101 N.C. App. 450, 460 (1991) (cleaned up).

(1) Peter, Yung, Anna, and Dae

210. By virtue of the Court's rulings above, the Court concludes that the denial of summary judgment is proper as to each of the Individual Defendants with regard to Daedong's claim for UDTP.

211. It is clear under North Carolina law that UDTP liability can exist based on a predicate finding of breach of fiduciary duty, constructive fraud, or participation in a conspiracy to breach fiduciary duties or commit constructive fraud. *See Compton v. Kirby*, 157 N.C. App. 1, 20 (2003) ("North Carolina case law has held that conduct which constitutes a breach of fiduciary duty and constructive fraud is sufficient to support a UDTP claim." (cleaned up)); *New Friendship Used Clothing Collection, LLC v. Katz*, 2017 NCBC LEXIS 72, at *50–51 (N.C. Super. Ct. Aug. 18, 2017) (denying dismissal of a UDTP claim based on validly pled claims for "aiding and abetting a breach of fiduciary duty, aiding and abetting constructive fraud, and civil conspiracy[ ]"); *Food Lion, Inc. v. Cap. Cities/ABC, Inc.*, 951 F. Supp. 1224, 1232 (M.D.N.C. 1996) (denying summary judgment on a UDTP claim where there was evidence that the defendant participated in a conspiracy to defraud plaintiff); *see also Highlights Healthcare, LLC v. Abell*, 2026 NCBC LEXIS 147, at *77 (N.C. Super. Ct. July 23, 2026) (finding allegations that the defendants actively "participat[ed] in a civil conspiracy" sufficient to state a claim for UDTP (cleaned up)); *Sandhills Home Care, L.L.C.*, 2016 NCBC LEXIS 61, at *50 (concluding that the defendants "secretly conspir[ing] . . . to solicit and entice [p]laintiff's employees" and customers was "unfair and deceptive behavior that offends public policy[ ]").

212. Here, the Court has held that a jury question exists as to whether Peter, Anna, and Yung are liable for breach of fiduciary duty and/or constructive fraud and as to whether Dae is liable for conspiracy to commit constructive fraud. Therefore, the cross-Motions for Summary Judgment are **DENIED** with respect to the UDTP claim against Peter, Yung, Anna, and Dae.

(2) KIF

213. With respect to KIF, Daedong asserts that KIF engaged in unfair and deceptive trade practices by leveraging its control over the DataScan portal to "extort further payments" from Daedong and to disrupt Daedong's relationships with its dealers.

214. Specifically, Daedong contends that after Daedong provided written notice to KIF that the Services Agreement was being rescinded, on 1 May 2024, KIF—through counsel—sent a letter to Daedong declaring that it had breached the Services Agreement and demanding that Daedong pay KIF $2,249,460.29 for services already rendered. (Ex. I, ECF No. 211.10, at 2–5.)

215. Thereafter, on 20 May 2024, in response to an email from KIF's director of business development regarding a planned system update to the DataScan software, Daedong reiterated its position that the agreements with KIF had been rescinded and that Daedong would not authorize KIF to update the DataScan software or contact Daedong's dealers. (Ex. C – 025, at 1–2.)

216. On 23 May 2024, Dae replied to Daedong's email and advised that KIF would be ceasing its performance under the Services Agreement on 25 May 2024 and

that, as a result, KIF would suspend Daedong's access to the DataScan software. (Ex. C – 025, at 1.) Dae further warned that Daedong should "ma[k]e alternative provisions for" processing dealer payments because of the "profound impact" that the loss of the DataScan portal would have. (Ex. C – 025, at 1.)

217. Thereafter, KIF suspended Daedong's access to the DataScan software, after which Daedong's ability to accept and process payments from its vendors was compromised until Daedong was able to restore its access through a new agreement with DataScan in July 2024.

218. These facts—even when viewed in the light most favorable to Daedong—at most reflect that KIF intentionally breached its obligations to return control of the DataScan software to Daedong following the termination of the Services Agreement while knowing that such a breach would impair Daedong's ability to process vendor payments.

219. North Carolina courts have repeatedly held that "[a]ctions for [UDTP] are distinct from actions for breach of contract, and a mere breach of contract, even if intentional, is not sufficiently unfair or deceptive to sustain an action under N.C.G.S. § 75-1.1." *McDonald v. Bank of N.Y. Mellon Tr. Co.*, 259 N.C. App. 582, 589 (2018) (cleaned up).

220. "When a [claimant] alleges a UDTP violation based upon a breach of contract, the [claimant] must show substantive aggravating circumstances attending the breach." *Dan King Plumbing Heating & Air Conditioning, LLC v. Harrison*, 281 N.C. App. 312, 320 (2022) (cleaned up). "It is not enough to allege [the] aggravating

or egregious results of a breach. If that were the case, then any contract dispute that results in serious losses could present a valid UDTPA claim, a result North Carolina courts have repeatedly rejected." *Edwards v. Genex Coop., Inc.*, 777 Fed. Appx. 613, 623 (4th Cir. 2019) (cleaned up), *cert. denied*, 140 S. Ct. 853 (2020).

221. Proof of substantial aggravating circumstances after contract formation typically requires "(1) the forgery or destruction of documents; (2) concealment of a breach coupled with conduct designed to deter investigation into the breach; or (3) intentional deception designed to allow the defendant to receive the benefits of the contract." *Pathos Ethos, Inc. v. Braintap Inc.*, 2024 NCBC LEXIS 154, at *25 (N.C. Super. Ct. Dec. 9, 2024) (cleaned up); *see also Post v. Avita Drugs, LLC*, 2017 NCBC LEXIS 95, at *5 (N.C. Super. Ct. Oct. 11, 2017) (noting that "[i]t is far more difficult to allege and prove egregious circumstances after the formation of the contract[ ]" and that such claims are "best resolved by simply determining whether the parties properly fulfilled their contractual duties[ ]" (cleaned up)).

222. After carefully considering the parties' arguments and the evidence of record, the Court concludes that Daedong has failed to demonstrate the existence of substantial aggravating circumstances so as to show a genuine issue of material fact with respect to whether KIF engaged in an unfair or deceptive act or an unfair manner of competition. *See D.G. II, LLC v. Nix*, 213 N.C. App. 220, 231 (2011) (affirming the grant of summary judgment in favor of defendants because "while the facts . . . clearly support[ed] plaintiff's claim for breach of contract, they [were] not sufficiently 'egregious or aggravating' to support a claim for UD[T]P"); *Eastover*

Ridge, L.L.C. v. Metric Constructors, Inc., 139 N.C. App. 360, 369 (2000) (affirming the trial court's entry of summary judgment in connection with a UDTP claim because evidence that the defendant "failed and refused to perform its obligations under the [a]greement" did not demonstrate "sufficient aggravating circumstances to establish a claim for [UDTP]"); *Branch Banking & Tr. Co. v. Thompson*, 107 N.C. App. 53, 62 (1992) (affirming summary judgment where the plaintiffs "failed to allege any acts beyond that of breach of contract, much less rising to the level of unfair or deceptive[ ]"); *W&W Partners, Inc. v. Ferrell Land Co., LLC*, 2019 NCBC LEXIS 104, at *15 (N.C. Super. Ct. Dec. 6, 2019) (holding that the "defendant's knowing and intentional overbilling of the plaintiff . . . during the performance of the contract [was] not substantial[ly] aggravating" to give rise to a UDTP claim (cleaned up)); *Hamm v. Blue Cross & Blue Shield of N.C.*, 2010 NCBC LEXIS 17, at *37 (N.C. Super. Ct. Aug. 27, 2010) (noting that the facts supporting "a breach of contract do[ ] not by [themselves] establish an unfair or deceptive trade practice[ ]").

223. To the extent that Daedong has also offered other bases for UDTP liability against KIF, the Court likewise finds them to be insufficient to survive KIF's Motion for Summary Judgment.

224. Accordingly, summary judgment is **GRANTED** in favor of KIF with respect to Daedong's claim for UDTP against it.

I. Conversion

225. Although the Second Amended Complaint purported to state a claim for conversion against Anna, at the 4 June hearing counsel for Daedong confirmed that

Daedong has abandoned this claim. (Hearing Tr., at 10 ("We are not pursuing that claim as a conversion claim[.]").)

226. Accordingly, summary judgment is **GRANTED** in favor of Anna with respect to Daedong's claim for conversion.

J. Unpled Damages

227. Defendants also seek summary judgment as to several categories of damages recognized by Daedong's putative expert witness, John Delponti, Jr., on the ground that they constitute "special damages" that were required to be affirmatively pled but were not.

228. "General damages are such as might accrue to any person similarly injured, while special damages are such as did in fact accrue to the particular individual by reason of the particular circumstances of the case." *Maynard v. Crook*, 289 N.C. App. 357, 361 (2023) (cleaned up). "Special damages are usually synonymous with pecuniary loss, and are those which are the actual, but not the necessary, result of the injury complained of, and which in fact follow it as a natural and proximate consequence in the particular case, that is, by reason of special circumstances or conditions." *Kingsdown, Inc. v. Hinshaw*, 2016 NCBC LEXIS 15, at *68 (N.C. Super. Ct. Feb. 17, 2016) (cleaned up).

229. Our Court of Appeals has observed the following regarding the differences between general damages and special damages:

> The distinction between general and special damages is principally important with regard to the pleadings and quantum of proof. General damages are the natural and necessary result of the wrong, are implied by law, and may be recovered under a general allegation of damages.

> *But special damages, those which do not necessarily result from the wrong, must be ple[d], and the facts giving rise to the special damages must be alleged so as to fairly inform the defendant of the scope of plaintiff's demand.*

Rodd v. W. H. King Drug Co., 30 N.C. App. 564, 568 (1976) (cleaned up and emphasis added); *see also* N.C. R. Civ. P. 9(g) ("When items of special damage are claimed each shall be averred.").

230. Specifically, Defendants contend that the following four categories of damages constitute special damages that Daedong was required—but failed—to plead in the Second Amended Complaint: (1) lost profits from its failed joint venture with an entity called DLL; (2) "default" interest penalties imposed upon Daedong by Huntington Bank; (3) lost profits resulting from interest fee "waivers" granted to Daedong's dealers; and (4) lost profits from dealers who terminated their agreements with Daedong. With regard to each of these categories, Defendants request that the Court exclude Daedong's evidence of these alleged damages and prevent Daedong from seeking to recover them at trial.

231. While not conceding that all four of these categories do, in fact, constitute special damages, Daedong argues that even if they are so characterized, they should not be excluded regardless of whether they were expressly pled in the Second Amended Complaint. Daedong asserts that Defendants have been on notice of these categories of damages for some time and have had a chance to conduct discovery on them.

232. While it is true that Defendants participated in some discovery concerning Daedong's unpled damages—including taking the oral deposition of

Delponti—the Court is not satisfied that Defendants have waived Daedong's compliance with the applicable pleading requirements. It is likely that Defendants would have conducted discovery differently by potentially seeking additional third-party discovery, deposing different witnesses, or asking different questions to witnesses at their depositions if Daedong had pled these categories of damages with the specificity required by Rule 9(g). *See Taylor v. Gillespie*, 66 N.C. App. 302, 305 (1984) (noting that Courts will not allow the trial of unpled issues "by implied consent" where the opposing party may be prejudiced).

233. This Court addressed a similar argument in *Hopkins v. MWR Management Co.*, 2017 NCBC LEXIS 92 (N.C. Super. Ct. Oct. 3, 2017). Though recognizing that the parties had conducted full discovery on the various categories of damages sought by the plaintiff, the Court held as follows:

> Here, Plaintiff has not ple[d] consequential damages in any of his three complaints or any specific facts he contends support such relief. . . .
>
> As a result, the Court concludes that the consequential damages Plaintiff has forecast he intends to seek at trial are special damages of the sort that Plaintiff was required to specifically plead in his complaint to put Defendants on notice of this damages claim. His failure to plead such special damages is therefore fatal to his claim and precludes him from advancing evidence and argument in support of his alleged consequential damages at trial.

Id. at *32–33.

234. As such, the Court will next examine in turn each of the four categories of damages at issue in order to determine whether they are, in fact, properly characterized as special damages (which were required to be expressly pled).

(1) Joint Venture with DLL

235. The first category of damages that Defendants have sought to exclude as improper concern lost profits from a canceled joint venture that Daedong had contemplated entering into with a financial institution, DLL.

236. Specifically, Daedong contends that it had been negotiating with DLL to form a joint venture for dealership financing. (Chiwhan Yoon Dep. Tr., at 242; Daedong R. 30(b)(6) Dep. Tr., at 86–88.) However, after falling into default with Huntington Bank (as discussed below)—purportedly as the result of the Individual Defendants' failure to notify Huntington Bank of the nature of Daedong's relationship with KIF—Daedong concluded that it would no longer be able to pursue the joint venture. (Chiwhan Yoon Dep. Tr., at 242; Daedong R. 30(b)(6) Dep. Tr., at 86–88.)

237. In support of this theory of claimed damages, Delponti has calculated that Daedong suffered damages in the amount of $6,099,642 as a result of the lost joint venture with DLL—which he has "discounted" to $3,194,996. (*See generally* Ex. H, at 17, 92–101.)

238. It is well recognized that "lost profits . . . are included under the rubric of special damages and must be specifically averred." *Bonestell v. N. Topsail Shores Condos., Inc.*, 103 N.C. App. 219, 228 (1991) (cleaned up); *see also Stanford v. Owens*, 46 N.C. App. 388, 398 (1980) ("Lost profits are included under the rubric of special damages.").

239. However, the Second Amended Complaint is completely devoid of any allegations concerning DLL or a proposed "joint venture" that was canceled as a result

of Defendants' conduct. Therefore, the Court agrees that this category of damages was not properly pled by Daedong and should be excluded.

(2) Default Interest Imposed by Huntington Bank

240. The second category of damages that Defendants seek to exclude concerns the higher costs Daedong has allegedly been forced to pay Huntington Bank under a credit agreement due to the imposition of the "default" interest rate.

241. Daedong asserts that in late 2024, during the negotiation for the credit agreement, the Individual Defendants failed to disclose the existence of the Services Agreement and the DataScan Assignments to Huntington Bank. (Daedong R. 30(b)(6) Dep. Tr., at 87–88; *see generally* Ex. A – 03, ECF No. 240.4.) As a direct result of that failure, Daedong represents that Huntington Bank declared an event of default under the credit agreement and imposed the "default" interest rate—which is two percent higher than the "base" rate—on Daedong's outstanding line of credit. (Daedong R. 30(b)(6) Dep. Tr., at 87–88; *see generally* Ex. A – 03.) In his report, Delponti has opined that the increased interest charges between June and November 2024 have cost Daedong $1,213,538. (Ex. H, at 17, 30–38, 104.)

242. Having thoroughly reviewed the allegations in the Second Amended Complaint and the parties' arguments with respect to this issue, the Court concludes that, once again, Daedong was required to—but did not—allege facts in the Second Amended Complaint sufficient to give Defendants notice of the damages being claimed. *See Rodd*, 30 N.C. App. at 569 (excluding evidence—and barring the recovery—of damages relating to defendant's "[o]perating losses" as a category of

unpled special damages); *see also Rodgers Builders, Inc. v. McQueen*, 76 N.C. App. 16, 21 (1985) (noting that plaintiff's claimed damages included special damages for "interest incurred on loans it was forced to obtain" as a result of the defendant's conduct).

(3) Interest Waivers Granted to Dealers

243. The third category of Daedong's claimed damages that Defendants have challenged relates to the lost profits associated with "interest waivers" that Daedong granted to its dealers between May and July 2024.

244. Specifically, Daedong asserts that as a result of KIF terminating Daedong's access to the DataScan portal on 27 May 2024, Daedong was no longer able to access account information or process payments from its dealers. (Matthew Welborn Dep. Tr., at 121, 124, 132; Alyssa Prince Dep. Tr., at 115–16.) Consequently, in order to maintain Daedong's relationships with its dealers, Daedong offered interest fee waivers for outstanding loan agreements until the DataScan portal was reestablished in July 2024. (Ex. H, at 43.)

245. Delponti has opined that Daedong suffered $272,806 in damages in the form of "lost profits," as a result of having to issue the interest fee waivers to its dealers. (*See* Ex. H, at 17, 47, 104; *see also* Ex. H, at 43 ("However, DDUSA did not regain access to the DataScan system until July 2024, which resulted in harm to DDUSA *in the form of lost profits* from interest waivers that DDUSA had to grant to dealers to maintain dealer relationships while access to the DataScan System was impaired[.]" (footnote omitted and emphasis added).)

246. As noted above, it is well-recognized that "lost profits" are a category of special damages that must be specifically pled pursuant to Rule 9(g) of the North Carolina Rules of Civil Procedure. *See, e.g., Bonestell*, 103 N.C. App. at 228.

247. However, the Second Amended Complaint is completely devoid of any factual allegations concerning Daedong's issuance of interest waivers to its dealers sufficient to give Defendants notice of this category of damages. As a result, exclusion of this evidence is appropriate.

(4) Lost Profits from Dealer Termination

248. The last category of damages that Defendants have challenged relates to lost profits Daedong has allegedly suffered as a result of lost business with its dealers. Specifically, Daedong has asserted that in the aftermath of the DataScan lockout discussed more fully above, one of its dealers—Chauvin Bros. Tractor, Inc. ("Chauvin")—decided to terminate its relationship with Daedong. (Ex. H, at 15, 19, 47–49; *see also* Daedong R. 30(b)(6) Dep. Tr., at 130–31.)

249. In his report, Delponti opined that but for the DataScan lockout, Chauvin would have continued using Daedong's financing programs for approximately four more years. (Ex. H, at 49.) In that time, Delponti estimated, Daedong would have received $6,761 in profits—which he has discounted to $6,085. (Ex. H, at 49–50.)

250. However, for the same reasons discussed in detail above, Daedong's lost profits resulting from the termination of its relationships with its dealers are a form of special damages that Daedong was required to specifically plead.

251. However, the Second Amended Complaint neither mentions Chauvin by name nor does it allege that any dealers actually terminated their relationship with Daedong as a result of Defendants' conduct.

252. Accordingly, summary judgment is **GRANTED** in favor of Defendants as to each of these categories of damages.

II. C-Suite Defendants' Counterclaims

253. In the C-Suite Defendants' Counterclaims, they have asserted claims for declaratory judgment and breach of contract in which they request that the Court declare that Peter, Yung, and Anna are entitled to indemnification based on the provisions of Chapter 55 of the North Carolina General Statutes and Daedong's bylaws.

254. However, the parties agree that each of the C-Suite Defendants' entitlement to indemnification hinges on them prevailing on all of the claims asserted against them by Daedong. *See* N.C.G.S. § 55-8-52 (requiring that a defendant be "wholly successful, on the merits, or otherwise, in the defense of any proceeding to which he was a party" to be entitled to indemnification).

255. Because the Court has denied summary judgment with respect to at least some of Daedong's claims against each of the C-Suite Defendants, the Court is presently unable to determine whether they are entitled to statutory or contractual indemnification. *See Safeworks, Inc. v. Creatore*, 2017 U.S. Dist. LEXIS 21595, at *12 (E.D.N.C. Feb. 15, 2017) (denying a request for indemnification under N.C.G.S. §

55-8-52 as "premature" when at least some claims against the defendant survived a motion to dismiss).

256. Therefore, the C-Suite Defendants' Motion for Summary Judgment is **DENIED** with respect to their counterclaims for statutory and contractual indemnification.

III. KIF's Counterclaims

257. With respect to KIF's Counterclaims, KIF has asserted a claim for breach of the Services Agreement and claims in the alternative for unjust enrichment and breach of implied contract based on Daedong's failure to pay KIF the contracted-for fees remaining due under the Services Agreement.

258. The resolution of these counterclaims, however, first requires a determination as to whether the Services Agreement is a voidable contract.

259. Since the Court has determined that genuine issues of material fact exist with respect to that issue, the Court cannot resolve KIF's counterclaims as a matter of law. *See Window World of Baton Rouge, LLC v. Window World, Inc.*, 2024 NCBC LEXIS 153, at *101 (N.C. Super. Ct. Nov. 26, 2024) (denying summary judgment on an unjust enrichment claim because "[g]enuine issues of material fact remain[ed] concerning whether a valid contract, . . . was in effect between the parties[ ]"); *see also Benchmark Elecs., Inc. v. Cree, Inc.*, 2018 U.S. Dist. LEXIS 8349, at *35 (M.D.N.C. Jan. 18, 2018) (denying summary judgment because "if the factfinder concludes that the parties entered into an express agreement . . . th[e] claim would be barred as a matter of law[ ] (cleaned up)).

260. Therefore, summary judgment is **DENIED** with respect to KIF's counterclaims against Daedong for breach of contract, unjust enrichment, and breach of implied contract.

CONCLUSION

THEREFORE, IT IS ORDERED as follows:

1. Summary judgment is **GRANTED** in favor of Dae as to Daedong's claim for breach of fiduciary duty;
2. Summary judgment is **GRANTED** in favor of Anna and Dae as to Daedong's claim for constructive fraud;
3. Summary judgment is **GRANTED** in favor of Yung, Anna, and Dae on Daedong's claim for misappropriation of corporate funds;
4. Summary judgment is **GRANTED** in favor of Yung and Dae on Daedong's claim for conspiracy to misappropriate corporate funds;
5. Summary judgment is **GRANTED** in favor of Yung, Anna, and Dae on Daedong's claim for unjust enrichment;
6. Summary judgment is **GRANTED** in favor of KIF on Daedong's claim for UDTP;
7. Summary judgment is **GRANTED** in favor of Anna on Daedong's claim for conversion;
8. Summary judgment is **GRANTED** in favor of Defendants on Daedong's claim for unpled damages; and

9. In all other respects, the cross-Motions for Summary Judgment are **DENIED**.

SO ORDERED, this the 8th day of September 2026.[6]

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge for
Complex Business Cases

[6] As noted above, this Opinion was originally filed under seal on 8 September 2026. This public version of the Opinion is being filed on 16 September 2026. To avoid confusion in the event of an appeal, the Court has elected to state the filing date of the public version of the Opinion as 8 September 2026.