Parker v. Storey, 2026 NCBC 85.

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| STATE OF NORTH CAROLINA<br><br>MECKLENBURG COUNTY | IN THE GENERAL COURT OF JUSTICE<br>SUPERIOR COURT DIVISION<br>26CV044134-590 |
| KYLE PARKER, Individually and Derivatively on behalf of Oakwolf Group, LLC and Oakwolf Holdings, LLC,<br><br>Plaintiff,<br><br>v.<br><br>DUNCAN STOREY,<br><br>Defendant,<br><br>v.<br><br>OAKWOLF GROUP, LLC and OAKWOLF HOLDINGS, LLC,<br><br>Nominal Defendants. | **ORDER AND OPINION ON MOTION TO DISMISS** |

1. This case arises from disputes among the members and managers of two Mississippi limited liability companies: Oakwolf Group, LLC and Oakwolf Holdings, LLC. Plaintiff Kyle Parker has sued Defendant Duncan Storey for breach of fiduciary duty, asserting a single claim for relief that amalgamates a direct action to enforce fiduciary duties allegedly owed to Parker and derivative actions to enforce fiduciary duties allegedly owed to each LLC. Storey has moved to dismiss the complaint on procedural and substantive grounds. For the following reasons, the Court **GRANTS** his motion to dismiss.

*Bowman and Brooke LLP, by T. Richmond McPherson, Nicole M. Arcodia, and Samantha Verderame, and Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, by Christopher G. Smith, Rachel E. Grossman, H. Hunter Bruton, and Wright W. Crawford, and Ross Levitt LLC, by Brandon Levitt, for Plaintiff Kyle Parker.*

*Wagner Hicks, PLLC, by Jonathon D. Townsend and Hillary Stroud, for Defendant Duncan Storey.*

*No counsel appeared for Nominal Defendants Oakwolf Group, LLC and Oakwolf Holdings, LLC.*

Conrad, Chief Judge.

## I.
## BACKGROUND

2. The following background takes as true the allegations in the complaint.

3. Parker and Storey used to be close friends. They decided to go into business together in 2022 when they formed Oakwolf Group, a company that performs consulting and staffing services for hospitals and related organizations in the healthcare industry. (*See* Compl. ¶¶ 19, 20, ECF No. 3.)

4. Oakwolf Group is a Mississippi LLC based in North Carolina. Following a restructuring in 2024, Oakwolf Holdings became the company's majority member, Jumbo Health Services, LLC became its minority member, and Parker, Storey, and Dan Walsh became its managers. Walsh is the sole owner of Jumbo Health Services. Oakwolf Group has a written operating agreement. (*See* Compl. ¶¶ 11, 23, 24, 27.)

5. Oakwolf Holdings is also a Mississippi LLC. Its majority member is Storey, and its minority members are Parker and one of Parker's brothers. Only Parker and Storey have served as managers. The complaint alleges that each member of Oakwolf Holdings signed or agreed to be bound by a written operating agreement. (*See* Compl. ¶¶ 10, 25, 26, 29, 32, 33.)

6. In just a few short years, Oakwolf Group has grown rapidly. Earlier this year, the company signed a lucrative agreement with the third largest health system in the country. But just as the company's prospects were heating up, the relationship between Parker and Storey went cold. (*See, e.g.*, Compl. ¶¶ 36, 39, 41.)

7. According to the complaint, Parker discovered that Storey had a secret romantic relationship with a subordinate named Jordian Siver. Oakwolf Group hired Siver in April 2025. At some point after beginning a relationship with Siver, Storey allegedly increased her pay, promoted her, and gave her better client accounts and more responsibility. Storey and Siver then got married in a secret ceremony while on a work trip. When Parker confronted Storey about the rumored marriage, Storey allegedly denied it. Parker then had a contentious telephone call with Siver and later suggested to Storey that Siver might need to be fired. (*See, e.g.*, Compl. ¶¶ 42, 43, 45, 47, 48, 50, 53–55.)

8. Around the same time, Walsh expressed concern about a new company that Parker had formed called Imparo Ventures, LLC. Parker assured Walsh that Imparo was a "side project" that he had started in his "personal time" and did not involve Oakwolf Group's clients or resources. Walsh did not respond. (*See* Compl. ¶¶ 57, 60, 61.)

9. Soon after, Storey took steps to exclude Parker from Oakwolf Group and Oakwolf Holdings, citing Parker's creation of Imparo as a competing business as grounds for doing so. As alleged, Storey prepared a "Written Consent of the Majority Member of Oakwolf Holdings, LLC" that purports to remove Parker as a manager of

Oakwolf Holdings. In addition, Storey removed Parker as a manager of Oakwolf Group, terminated Parker's employment (as well as the employment of other members of Parker's family), and cut off Parker's access to books and records. (*See, e.g.*, Compl. ¶¶ 65, 67, 71, 76, 79, 80.)

10. Parker believes that Storey used the existence of Imparo as a pretext to take control of Oakwolf Group and Oakwolf Holdings and that Storey's actions far exceeded his authority. Parker's complaint includes two counts. The first count is for injunctive relief and is not an independent cause of action. The second count for breach of fiduciary duty is therefore the only claim for relief and is asserted individually and derivatively on behalf of Oakwolf Group and Oakwolf Holdings.[1]

11. Storey has moved to dismiss the complaint for many reasons, including failure to state a claim for relief under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. (ECF No. 29.) The motion is fully briefed, and the Court held a hearing on 13 October 2026.

## II.
## ANALYSIS

12. Although the complaint asserts just one claim for breach of fiduciary duty, that claim jumbles together a direct action to enforce Parker's personal rights and

[1] There is a longer procedural history that could be told. The short version is that Parker filed a nearly identical lawsuit in July 2026, unsuccessfully attempted to designate that lawsuit to the Business Court, and then unsuccessfully attempted to dismiss the case without first obtaining judicial approval as required for derivative actions. *See Parker v. Storey* (26CV039999-590; Mecklenburg County). As a result, when Parker began this case, his original lawsuit was still pending and remained pending until September 2026. In this second-filed lawsuit, Parker moved for a temporary restraining order and expedited discovery, and the Court denied both motions. (*See* ECF Nos. 16, 24.) The parties have also filed a spate of other motions, which the Court will resolve in a separate order.

derivative actions to enforce rights belonging to Oakwolf Group and Oakwolf Holdings. Direct actions and derivative actions differ in fundamental ways, both procedural and substantive. The complaint elides these differences, merging direct and derivative allegations into a single, confusing unit. As a result, the briefs are occasionally confusing too, flipping back and forth about whether the complaint asserts a "claim" (singular) or "claims" (plural) and struggling to specify which alleged acts go toward the direct aspect of the claim as opposed to the derivative aspect. In all events, this is the claim that Parker chose to assert, and this is the claim that the Court must analyze.

13. In moving to dismiss the complaint, Storey first targets the derivative component, arguing primarily that Parker has not met the conditions needed to bring a derivative action. The Court agrees.

14. First, under the North Carolina Rules of Civil Procedure, a derivative complaint must "be verified by oath." N.C. R. Civ. P. 23(b). Parker did not verify his complaint. He urges the Court to excuse the oversight and treat an affidavit that he submitted in support of a separate motion for injunctive relief as a substitute for verification of the complaint. But he cites no support for that approach, and in any event, his affidavit contradicts his complaint in some respects and materially differs from it in others. (*Compare, e.g.*, Compl. ¶¶ 31, 33, *with* ECF No. 7.1 at ¶¶ 14, 15.)

15. In short, Parker has not satisfied Rule 23(b). That alone supports dismissal without prejudice of Parker's derivative action on behalf of Oakwolf Group and Oakwolf Holdings. *See, e.g.*, *Zhang v. CapitalNexus LLC*, 2026 NCBC LEXIS 133, at

*21–22 (N.C. Super. Ct. June 25, 2026) (dismissing derivative claims on behalf of limited partnership for failure to verify); *Coleman v. Coleman*, 2015 NCBC LEXIS 114, at *18 (N.C. Super. Ct. Dec. 10, 2015) ("Because Plaintiff has not verified his Complaint, Plaintiff's derivative claim for breach of fiduciary duty must be dismissed, but without prejudice to his right to cure the defect."); *Peak Coastal Venture, L.L.P. v. SunTrust Bank*, 2011 NCBC LEXIS 13, at *23–24 (N.C. Super. Ct. May 5, 2011) (dismissing derivative action on behalf of LLC for failure to verify in addition to other reasons).

16. Second, Oakwolf Group and Oakwolf Holdings are Mississippi LLCs. Thus, Mississippi law governs the steps that a person must take to bring a derivative action on behalf of the companies. Among other things, a plaintiff may sue derivatively only if the "managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed," Miss. Code Ann. § 79-29-1101, and the derivative complaint must "set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member . . . or the reasons for not making the effort," *id.* § 79-29-1105.

17. Neither Parker nor Storey cites decisions applying these statutes. Fortunately, Mississippi's laws closely mirror Delaware's, *compare* Miss. Code Ann. § 79-29-1105, *with* Del. Code Ann. Tit. 6, § 18-1003, and Delaware has a robust body of persuasive case law.[2] As this Court has observed, Delaware's particularity

[2] "On January 1, 2011, the Revised Mississippi Limited Liability Company Act went into effect," and it "incorporate[s] language from Delaware's LLC Act to enable Mississippi courts

requirement imposes a pleading burden on derivative plaintiffs that is "more onerous" than ordinary notice pleading. *Camacho v. McCallum*, 2016 NCBC LEXIS 81, at *27 (N.C. Super. Ct. Oct. 25, 2016) (quoting *Spellman v. Katz*, 2009 Del. Ch. LEXIS 18, at *17–18 (Del. Ch. Feb. 6, 2009)). A plaintiff's failure to allege with particularity the prelitigation efforts to secure action by a manager or member is a basis to dismiss the derivative action. *See id.* The Court sees no reason to construe Mississippi's nearly identical provision any differently.

18. Parker alleges that he "made a written demand on Storey and the Companies prior to initiating this lawsuit" and that "Storey, purportedly on behalf of the Companies, rejected the demand." (Compl. ¶ 94; *see also* Compl. ¶ 91 (stating that "demand" had been made).) This does not come close to meeting the particularity requirement. The allegations do not inform the Court about the demand in a meaningful way, making it impossible to assess Parker's "effort . . . to secure initiation of the action" by either LLC's managers or members. Miss. Code Ann. § 79-29-1105; *see also, e.g., Kane v. Moore*, 2018 NCBC LEXIS 157, at *34–35 (N.C. Super. Ct. Nov. 26, 2018) (applying Delaware law and dismissing derivative claims for failure to allege prelitigation demand "with particularity"); *cf. Al-Hassan v. Salloum*, 2020 NCBC LEXIS 22, at *6 (N.C. Super. Ct. Feb. 20, 2020) (concluding that "a bare allegation that [plaintiff] made undefined written demands" was insufficient to satisfy notice pleading for the demand requirement under North Carolina law).

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to look to Delaware law" for guidance. *Rest. of Hattiesburg, LLC v. Hotel & Rest. Supply, Inc.*, 84 So. 3d 32, 39 n.1 (Miss. Ct. App. 2012).

19. As a result, Parker has not satisfied Mississippi's procedural prerequisites for bringing a derivative action on behalf of Oakwolf Group and Oakwolf Holdings. This is an independent basis for dismissal.

20. Third, under Mississippi law, a derivative plaintiff "must be a member or an owner of a financial interest at the time of bringing the action." Miss. Code Ann. § 79-29-1103. Parker affirmatively alleges that he is not a member of Oakwolf Group and makes no allegation about owning a financial interest in the company. (*See, e.g.*, Compl. ¶¶ 8, 11, 24, 27.) Accordingly, the complaint does not allege facts sufficient to show that Parker has standing to sue derivatively on Oakwolf Group's behalf. *See* N.C. R. Civ. P. 9(a) ("Any party suing in any representative capacity shall make an affirmative averment showing his capacity and authority to sue.").

21. Parker attempted to cure this defect in his brief and at the hearing. Neither attempt is procedurally proper because the way to fix a gap in a pleading is by amending the pleading. Regardless, both arguments fail for other reasons as well. The opposition brief suggests that Parker owns a financial interest in Oakwolf Group because he is a member of Oakwolf Holdings and Oakwolf Holdings is, in turn, a member of Oakwolf Group. But this argument is contrary to Mississippi law, which defines financial rights and interests to include the rights to share in profits, losses, and distributions, as well as other rights expressly designated as financial interests in an operating agreement. *See* Miss. Code Ann. § 79-29-105(h). Parker has no right to profits, losses, and distributions from Oakwolf Group. That he may benefit

indirectly through his membership in Oakwolf Holdings does not make him an owner of a financial interest in Oakwolf Group.

22. As for the hearing, Parker's counsel suggested for the first time that his claim on behalf of Oakwolf Group is a double derivative claim. *See, e.g.*, *White v. Hyde*, 2016 NCBC LEXIS 74, at *12–13 (N.C. Super. Ct. Oct. 4, 2016) (stating that "a double derivative suit is one brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled" (citation and quotation marks omitted)). Parker waived this issue because he did not brief it. *See* BCR 7.2 ("The parties must brief the matters they intend to discuss at a hearing on the motion.").

23. Because Parker has not alleged that he is a member or an owner of a financial interest in Oakwolf Group, he has not adequately pleaded that he has standing to pursue a derivative action on its behalf.

24. Having determined that Parker may not pursue a derivative action, the Court returns to where it started. Parker has not pleaded his claim in a neatly divisible way. He has asserted a unitary claim for breach of fiduciary duty that is direct and derivative all at the same time. Dismissing the derivative part does not simply leave behind the direct part to be dealt with as a distinct claim of its own. That raises an insurmountable pleading problem, even under liberal standards of notice pleading.

25. Mississippi draws sharp lines between direct and derivative claims, just as North Carolina, Delaware, and other States generally do. Thus, the Mississippi

Supreme Court has stressed that an individual claim for breach of fiduciary duty "should be separated" from a parallel or related derivative claim. *Phillips Brothers, LP v. Winstead*, 129 So. 3d 906, 923 (Miss. 2014). This is because individual and derivative claims for breach of fiduciary duty usually involve distinct duties, acts, and harms. *See id.* at 923–24 (distinguishing claims resting on a "duty owed directly to [individual] that caused him personal damages" from claim that "belongs to the corporation" and "necessarily damages the corporation and damages [individual] only derivatively").

26. But the complaint intermixes the duties owed to Parker with those owed to the LLCs, leaving Storey in the dark about what duty he is supposed to have breached for any alleged act. Paragraph 100 alleges that "Storey owed fiduciary duties to the Companies and his fellow Members" in his role as manager of both Oakwolf Group and Oakwolf Holdings. (Compl. ¶ 100.) Paragraph 101 goes on to allege that "Storey breached his fiduciary duties" in six ways, including by favoring Siver, ousting Parker, and making managerial decisions unilaterally. (Compl. ¶ 101.) The complaint lumps together the alleged wrongs to Parker, Oakwolf Group, and Oakwolf Holdings indiscriminately. There is no way to know which part is personal to Parker.

27. More broadly, to survive scrutiny under Rule 12(b)(6), a complaint must explain the claim sufficiently to "enable [the defendant] to answer and prepare for trial." *Forbis v. Honeycutt*, 301 N.C. 699, 701 (1981). These allegations fail that test. The complaint does not give Storey notice of the nature and scope of Parker's individual claim. Is it based on a fiduciary duty arising from Storey's role as manager

of Oakwolf Holdings? Or his role as manager of Oakwolf Group? Or both? Is it based on all six acts listed in paragraph 101? Or a subset? Or should the acts listed in paragraph 101 be divided into subparts, some meant to support the derivative action for Oakwolf Group, some meant to support the derivative action for Oakwolf Holdings, and some meant to support the individual action?

28. It is no answer to say that complaints should be construed liberally. To be sure, pleadings are rarely perfect, and plaintiffs sometimes choose to combine two causes of action into one claim or divide one cause of action into duplicate claims. Dismissal is not automatic in either scenario. So long as the complaint gives the defendant sufficient notice to allow a proper defense, courts and the Rules of Civil Procedure offer plaintiffs ample leeway. Even when a plaintiff mislabels a claim, courts have discretion to look past the label and test the claim's merits. *See Stanback v. Stanback*, 297 N.C. 181, 202 (1979) (observing that courts may review "the allegations of a mislabeled claim").

29. This claim is not mislabeled.[3] And it does not merely combine causes of action under one header. It blends rights belonging to one individual and two entities into an undifferentiated unit so that determining the basis of Parker's individual claim would require Storey and the Court to speculate as to which alleged acts are

[3] As a last-ditch effort at the hearing, Parker's counsel suggested that the complaint might support a claim for breach of contract, presumably one for breach of at least one company's operating agreement. But the complaint does not assert a claim for breach of contract. Nor has Parker ever suggested that he has a claim for breach of contract at any point before the hearing. His motion for injunctive relief does not refer to such a claim. And his brief in opposition to the motion to dismiss waived any argument to this effect, never discussing a claim for breach of contract or hinting that the complaint mislabeled a claim for breach of contract as a claim for breach of fiduciary duty.

supposed to have breached which duties. Try as it might, the Court sees no way to carve out a standalone direct claim. Accordingly, the Court concludes that Parker has failed to state an individual claim for breach of fiduciary duty.

## III.
## CONCLUSION

30. For these reasons, the Court **GRANTS** Storey's motion to dismiss. The Court **DISMISSES** the complaint without prejudice, including both the claim for breach of fiduciary duty and the remedial claim for injunctive relief.

**SO ORDERED**, this the 12th day of November, 2026.

/s/ Adam M. Conrad

Adam M. Conrad
Chief Business Court Judge