

STATE OF NORTH CAROLINA
CATAWBA COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CVS000081-170

DEBARAH GAMBA and KIM
KULAWIK,

Plaintiffs,

v.

JOHN BALCERZAK, CFP; A4
WEALTH ADVISORS, LLC; and
GRADIENT INVESTMENTS, LLC,

Defendants.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the *Determination Order* issued on 20 February 2026 by the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, directing the undersigned to determine whether this action is properly designated as a mandatory complex business case in accordance with N.C.G.S. § 7A-45.4(a). (ECF No. 1.)

2. Plaintiffs Debarah Gamba and Kim Kulawik (Plaintiffs) initiated this action on 9 January 2025 with the filing of their *Complaint*. (ECF No. 2 [Compl.]) In the Complaint, Plaintiffs assert claims against Defendants John Balcerzak, CFP, A4 Wealth Advisors, LLC, and Gradient Investments, LLC (Gradient; and collectively, Defendants) for breach of fiduciary duty, fraud, constructive fraud, fraud in the inducement, civil conspiracy, negligence, gross negligence, negligent misrepresentation, unjust enrichment, unfair and deceptive trade practices, violations of the North Carolina Securities Act, N.C.G.S. § 78A-1 *et seq.*, and violations of the North Carolina Investment Advisers Act, N.C.G.S. § 78C-1 *et seq.*

(Compl. ¶¶ 59–138.) Gradient was served with the Complaint on 14 January 2025. (See Def. Gradient Invs., LLC Mot. Extension Time File Answer or Other Responsive Pleading, ECF No. 7.)

3. On 2 October 2025, Plaintiffs filed a *Motion for Leave to File Amended Complaint* (Motion to Amend) with the Catawba County Clerk of Superior Court.¹ (ECF No. 5.) On the same date, Plaintiffs filed the *Amended Complaint*, alleging the same twelve (12) causes of action against Defendants and adding factual details as to Gradient’s involvement. (ECF No. 3 [Am. Compl.]) Plaintiffs’ Motion to Amend was granted by the Superior Court on 15 January 2026, and the Superior Court deemed the Amended Complaint filed as of 15 December 2025. (Order, ECF No. 6.)

4. Gradient filed the *Notice of Designation* in this case (NOD) on 17 February 2026, seeking designation of the action as a mandatory complex business case under N.C.G.S. § 7A-45.4(a)(2). (Notice Designation 1, ECF No. 4 [NOD].) According to Gradient, the claims in this case “reference violations of the North Carolina Securities Act (N.C.G.S. § 78A-1 et seq.), alleging that Defendants made untrue statements of material fact and omitted necessary facts in connection with the offer, sale, or purchase of securities, as prohibited by N.C.G.S. § 78A-8(2) and § 78A-56(a).” (NOD 4.) Among other things, Gradient notes the Amended Complaint alleges activities by Defendants “explicitly regulated by Chapter 78A.” (NOD 4.)

¹ It is not clear to the Court why the Motion to Amend and Amended Complaint have a hand-stamped filing date of 2 October 2025 and an electronically stamped filing date of 7 November 2025. Although unclear, the Court does not base its conclusion on either date.

5. Based on the record before the Court, it appears that this action arises out of a dispute between Plaintiffs and their financial planner and investment advisors. (*See generally* Am. Compl.) According to Plaintiffs, Defendants “victimized Plaintiffs . . . for approximately one decade between January 2014 and January 2023” by “maximiz[ing] fee extraction from the accounts of clients, including the Plaintiff, willfully prioritizing their best interests over the Plaintiff[.]” (Am. Compl. ¶¶ 8–9.) Plaintiffs allege that Defendants “knowingly recommended and implemented a portfolio structure fundamentally misaligned with Plaintiffs’ documented objectives,” causing Plaintiffs to lose hundreds of thousands of dollars in investments. (Am. Compl. ¶¶ 20, 71, 74–76.)

6. “For a case to be certified as a mandatory complex business case, the pleading upon which designation is based must raise a material issue that falls within one of the categories specified in section 7A-45.4.” *Composite Fabrics of Am., LLC v. Edge Structural Composites, Inc.*, 2016 NCBC LEXIS 11, at *11 (N.C. Super. Ct. Feb. 5, 2016). As set forth in the NOD, Gradient seeks designation of this action as a mandatory complex business case based on allegations in the Amended Complaint. (*See* NOD 4–5.) Specifically, Gradient provides various examples in the NOD of how this action includes disputes involving securities, specifically Chapter 78A. (*See* NOD 4.)

7. “If a party amends a pleading, and the amendment raises a new material issue listed in N.C.G.S. § 7A-45.4(a), any party may seek designation of the action as a mandatory complex business case within the time periods set forth in subsection

7A-45.4(d).” BCR 2.3(a). This rule “applies only to an action that had not previously qualified under subsection 7A-45.4(a) for designation to the Court.” BCR 2.3(b).

8. Designation under subsection (a)(2) is proper if the action involves a material issue related to “[d]isputes involving securities, including disputes arising under Chapter 78A of the General Statutes.” N.C.G.S. § 7A-45.4(a)(2). While the Court agrees that subsection (a)(2) may otherwise be implicated in this case, Gradient’s designation is untimely.

9. Both the original Complaint and the Amended Complaint allege violations of Chapter 78A—the North Carolina Securities Act—by Defendants. (*See* Compl. ¶¶ 119–29; Am. Compl. ¶¶ 163–75.) While the Amended Complaint adds details as to Gradient’s role in the alleged bad acts, the underlying facts and claims are the same in both the Complaint and Amended Complaint. (*See generally* Compl.; *see also* Am. Compl.) Despite the later filing of the Amended Complaint, the NOD could have been written in the same manner designating the case under subsection (a)(2) within thirty (30) days of service of the Complaint. (*See generally* NOD.)

10. “Where the claims are either identical or not materially different in the complaint and the amended complaint, designation must be based on the complaint in order to be considered timely, as the complaint is the first pleading to raise a material issue that falls within one of the categories under N.C.G.S. § 7A-45.4(a).” *Fortune Brands Innovations, Inc. v. Bleser*, 2026 NCBC LEXIS 31, at *5–6 (N.C. Super. Ct. Feb. 4, 2026). Since both the Complaint and Amended Complaint allege

violations of Chapter 78A, designation under subsection (a)(2) must be based on the Complaint.

11. As Gradient was served with the Complaint on 14 January 2025, it should have filed the NOD on or before 13 February 2025. *See* N.C.G.S. § 7A-45.4(d). Given that Gradient did not seek designation until over a year later on 17 February 2026, the Court concludes that designation based on the Amended Complaint is untimely for purposes of N.C.G.S. § 7A-45.4(a)(2).

12. Based on the foregoing, the Court concludes that this action shall not proceed as a mandatory complex business case under N.C.G.S. § 7A-45.4(a) and thus shall not be assigned to a Special Superior Court Judge for Complex Business Cases.

13. Consistent with the *Determination Order*, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 19 that this action is not properly designated as a mandatory complex business case so that the action may be treated as any other civil action, wherein designation as a Rule 2.1 exceptional case may be pursued with the Senior Resident Superior Court Judge if deemed appropriate.

14. The Court's ruling is without prejudice to the right of the parties to otherwise seek designation of this matter as a mandatory complex business case as may be permitted under N.C.G.S. § 7A-45.4.

SO ORDERED, this the 26th day of February, 2026.

/s/ Michael L. Robinson

Michael L. Robinson
Chief Business Court Judge