

STATE OF NORTH CAROLINA
RANDOLPH COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV000662-750

THE ASSURANCE GROUP, LLC,
Plaintiff,

v.

DARRIN H. SHACKELFORD;
BRANDON S. PASSE; ABBY
BEAVER LYNCH; KRISTIE ALICE
SHACKELFORD; LORIANNA
PASSE; and EPIC BROKER
SOLUTIONS, LLC,

Defendants and
Third-Party
Plaintiffs,

v.

EDWARD LEE SHACKELFORD,

Third-Party
Defendant.

**ORDER ON PLAINTIFF'S
CORRECTED MOTION FOR LEAVE
TO FILE SECOND AMENDED
COMPLAINT**

THIS MATTER is before the Court on Plaintiff The Assurance Group, LLC's ("TAG") Corrected Motion for Leave to File Second Amended Complaint ("Motion to Amend" or "Motion," ECF No. 72).

THE COURT, having considered the Motion, the briefs of the parties, the arguments of counsel, and all appropriate matters of record, **CONCLUDES** that the Motion should be **GRANTED in part** and **DENIED in part** for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

1. The following is a summary of those allegations contained in TAG's First Amended Complaint ("FAC," ECF No. 4)—which is currently its operative pleading—that are relevant to the present Motion.

2. TAG is an insurance marketing organization that sells insurance-related products on behalf of insurance companies. (FAC ¶ 9.)

3. In order to sell such insurance products, TAG utilizes its “network of approximately 650 licensed affiliated sales agents.” (FAC ¶ 10.) These agents either work as employees or independent contractors of TAG, which requires each of them to enter into an employment agreement or an independent agent agreement, respectively. (FAC ¶¶ 11, 14.)

4. Defendants Darrin H. Shackelford (“D. Shackelford”), Brandon S. Passe (“B. Passe”), Abby Beaver Lynch, and Lorianna Passe (“L. Passe”) are former agents of TAG or otherwise worked for TAG in some other capacity. (FAC ¶¶ 15–17, 22.)

5. The present Motion largely concerns TAG’s claims against D. Shackelford.

6. TAG alleges that in early 2024, Defendants “formed a plan and conspiracy . . . to poach TAG’s Agents, employees, and clients, and to misappropriate [TAG’s] Confidential Information[.]” (FAC ¶ 38.)

7. As part of the conspiracy, Defendants created a new company—Epic Broker Solutions, LLC (“Epic”)—to directly compete with TAG. (FAC ¶ 38.)

8. TAG asserts that D. Shackelford was a key participant in the above-referenced conspiracy to injure TAG. (FAC ¶¶ 38, 43–44, 51–52.)

9. On 24 February 2025, TAG initiated the present lawsuit by filing a Complaint in Randolph County Superior Court against D. Shackelford and B. Passe. (ECF No. 3.) The Complaint asserted claims against both Defendants for breach of

contract, violation of the North Carolina Trade Secrets Protection Act, tortious interference with contract, unfair and deceptive trade practices, civil conspiracy, and money owed. (Compl. ¶¶ 55–80.)

10. On 6 May 2025, TAG filed its FAC. (ECF No. 4.) In this pleading, TAG (1) added Lynch, Kristie Shackelford, L. Passe, and Epic as Defendants; (2) joined L. Passe as a Defendant to its breach of contract claim; and (3) asserted a new claim for fraud against D. Shackelford and B. Passe. (FAC ¶¶ 68–99.)

11. This matter was subsequently designated to the North Carolina Business Court and assigned to the undersigned on 24 June 2025. (ECF Nos. 1–2.)

12. On 14 November 2025, TAG filed the present Motion and attached a redlined version of its proposed Second Amended Complaint (“SAC”) as Exhibit 1. (“Motion to Amend,” ECF Nos. 72–72.1.)

13. The Court held a hearing on the Motion to Amend on 20 February 2026 at which all parties were represented by counsel.

14. The Motion to Amend has been fully briefed and is now ripe for resolution.

LEGAL STANDARD

15. Rule 15 of the North Carolina Rules of Civil Procedure states in pertinent part as follows:

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not yet been placed upon the trial calendar, he may so amend it at any time within 30 days after it is served. Otherwise, a party may amend his pleading only by leave of court or by written consent of the adverse party; and

leave shall be freely given when justice so requires.

N.C. R. Civ. P. 15(a).

16. Our Supreme Court has held that “[t]here is no more liberal canon in the [R]ules than that leave to amend shall be freely given when justice so requires.” *Vaughan v. Mashburn*, 371 N.C. 428, 434 (2018) (cleaned up). “This liberal amendment process under Rule 15 complements the concept of notice pleading embodied in Rule 8 . . . and reflects the legislature’s intent that decisions be had on the merits and not avoided on the basis of mere technicalities[.]” *Id.* (cleaned up).

17. Nevertheless, “the [R]ules still provide some protection for parties who may be prejudiced by liberal amendment.” *Henry ex rel. Henry v. Deen*, 310 N.C. 75, 82 (1984) (cleaned up). “Reasons justifying denial of an amendment include: (1) undue delay, (2) bad faith, (3) undue prejudice, (4) futility of amendment, and (5) repeated failure to cure defects by previous amendments.” *Howard v. IOMAXIS, LLC*, 2021 NCBC LEXIS 116, at *17 (N.C. Super. Ct. Dec. 22, 2021) (cleaned up). “The burden is upon the opposing party to establish that [it] would be prejudiced by the amendment.” *Vitaform, Inc. v. Aeroflow, Inc.*, 2021 NCBC LEXIS 79, at *11 (N.C. Super. Ct. Sept. 16, 2021) (cleaned up).

18. Motions to amend are “addressed to the discretion of the trial court.” *Vaughan*, 371 N.C. at 433 (cleaned up).

ANALYSIS

19. TAG’s proposed SAC essentially seeks to (1) add various allegations regarding the restrictive covenants contained in the employment agreements that

TAG made its employees sign; (2) add the names of additional former TAG agents who it contends were working with Epic; (3) delete TAG's claim for tortious interference with contract; (4) add a demand for a jury trial; and (5) add a claim (along with supporting allegations) for breach of fiduciary duty against D. Shackelford.

20. With regard to these proposed amendments, Defendants oppose only the new claim for breach of fiduciary duty against D. Shackelford. Therefore, as an initial matter, TAG's Motion is **GRANTED** with regard to the unopposed new allegations it seeks to assert in its SAC.

21. Defendants contend that the addition of the new claim for breach of fiduciary duty against D. Shackelford would be improper on several grounds, but the Court need only address their argument based on futility.

22. "The futility standard under Rule 15 is essentially the same standard used in reviewing a motion to dismiss under Rule 12(b)(6), but provides the Court liberal discretion to find that an amendment lacks futility." *Simply the Best Movers, LLC v. Marrins' Moving Sys., Ltd.*, 2016 NCBC LEXIS 28, at *5–6 (N.C. Super. Ct. Apr. 6, 2016) (cleaned up). "[A] motion to amend is not futile when the allegations of the [amendment], treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory, whether properly labeled or not." *Howard v. IOMAXIS, LLC*, 2023 NCBC LEXIS 159, at *15 (N.C. Super. Ct. Nov. 29, 2023) (cleaned up). On the other hand, "[a] motion for leave to amend is futile and appropriately denied when the proposed amendment could not withstand a motion to dismiss for failure to state a claim." *Insight Health Corp. v. Marquis Diagnostic*

Imaging of N.C., LLC, 2016 NCBC LEXIS 77, at *6 (N.C. Super. Ct. Oct. 7, 2016) (cleaned up).

23. 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 injury to the plaintiff.” *Sykes v. Health Network Sols., Inc.*, 372 N.C. 326, 339 (2019) (cleaned up).

24. In the proposed SAC, TAG alleges that a claim for breach of fiduciary duty is proper against D. Shackelford because of his status as an officer of TAG and in light of his close familial relationship to TAG’s President, Edward G. Shackelford (“Ed Shackelford”). (SAC ¶¶ 31, 54.) Specifically, the SAC states in pertinent part as follows:

D. Shackelford was later given the title of Regional Vice President of TAG, which position carried with it extra compensation, as well as the additional duties of leading multiple Regional Sales Directors and attending and participating in regularly scheduled senior leadership team meetings. Such position gave D. Shackelford access to even more of Plaintiff’s Confidential Information and direct contact with a large number of Agents.

...

By virtue of his title as a Regional Vice President with TAG, his responsibilities as the leader of a large hierarchy, and his familial relationship as the nephew of TAG’s President, Ed Shackelford, D. Shackelford held a position of trust and confidence. D. Shackelford, therefore, owed fiduciary duties to TAG up until the time he resigned his position.

(SAC ¶¶ 31, 54.)

25. “[T]o make out a claim for breach of a fiduciary duty, plaintiffs must first

allege facts that, taken as true, demonstrate that a fiduciary relationship existed between the parties.” *Sykes*, 372 N.C. at 339–40. North Carolina courts recognize two types of fiduciary duties—those that “arise by operation of law (*de jure*)” or those that are “based on the facts and circumstances (*de facto*)[.]” *Lockerman v. South River Elec. Mbrshp. Corp.*, 250 N.C. App. 631, 635 (2016) (cleaned up).

[The fiduciary duty] not only includes all legal relations [(*de jure*)], such as attorney and client, broker and principal, executor or administrator and heir, legatee or devisee, factor and principal, guardian and ward, partners, principal and agent, trustee and *cestui que trust*, but it extends to any possible case in which a fiduciary relation exists in fact, and in which there is a confidence reposed on one side, and resulting domination and influence on the other [(*de facto*)].

Id. at 635–36 (cleaned up).

26. TAG appears to be alleging a *de facto* fiduciary relationship between D. Shackelford and TAG as opposed to a *de jure* fiduciary relationship.

27. “The standard for finding a *de facto* fiduciary relationship is a demanding one.” *Id.* at 636. North Carolina courts have only found a *de facto* fiduciary relationship to exist “when one party figuratively holds all the cards—all the financial power or technical information, for example[.]” *S.N.R. Mgmt. Corp. v. Danube Partners 141, LLC*, 189 N.C. App. 601, 613 (2008) (cleaned up).

28. As a general proposition, “the relation of employer and employee is not one of those regarded as confidential” so as to give rise to a fiduciary relationship. *Dalton v. Camp*, 353 N.C. 647, 652 (2001) (cleaned up). As noted above, TAG seeks to escape this general rule by asserting two theories. First, it contends that D. Shackelford owed TAG a fiduciary duty because he was an officer of the company.

Second, TAG argues that a fiduciary relationship exists based on the fact that D. Shackelford is the nephew of Ed Shackelford—TAG’s President.

29. Under North Carolina law, a corporate officer owes a fiduciary duty to the company. *Green v. Freeman*, 367 N.C. 136, 141 (2013) (citing N.C. Gen. Stat. § 55-8-30). However, TAG’s argument as applied to D. Shackelford is contradicted by TAG’s own discovery responses in this case.

30. TAG’s response to Interrogatory No. 8 propounded by Defendants stated as follows:

Identify each and every current or former officer of TAG (a) by stating the name of each such officer; (b) by stating the start date and, if applicable, end date of such officer’s tenure as an officer of TAG; and (c) by describing each document effecting or memorializing such officer’s appointment or status as an officer of TAG and, if applicable, termination of status as an officer of TAG.

ANSWER: Plaintiff objects to this interrogatory as not reasonably likely to lead to the discovery of admissible evidence. Without waiving this objection, TAG identifies the following as corporate officers for the period indicated:

Officer Name	Start Date	End Date
Edward Shackelford – President	October, 1988	Current
W. Curtis Klein – Chief Marketing Officer	October, 2005	Current
Christopher Finan – Chief Operating Officer	May, 2023	Current
Mark Carter – Chief Financial Officer	April, 2006	Current
Bryan Adams – Chief Executive Officer	October, 2020	Current

(Pl.’s Resps. Def. D. Shackelford’s First Set Interrogs. & Reqs. Produc., ECF No. 92.2, at 4.)

31. Thus TAG’s response to this interrogatory reveals that it does not

consider D. Shackelford to have actually been an officer with the company.

32. Perhaps for this reason, at the 20 February hearing, counsel for TAG acknowledged the difficulty with this argument and stated that TAG was proceeding primarily on its assertion that a fiduciary relationship existed between D. Shackelford and TAG based upon the close familial relationship that existed between D. Shackelford and his uncle.

33. However, this theory also fails. “[I]t has long been established that the finding of a familial relationship alone does not create a fiduciary relationship.” *Holloway v. Holloway*, 221 N.C. App. 156, 165 (2012) (cleaned up). To establish a fiduciary relationship in the presence of a familial relationship, a plaintiff must allege more than “mere conclusory assertions” of the special circumstances giving rise to a fiduciary relationship. *See Fox v. Fox*, 283 N.C. App. 336, 346 (2022) (affirming dismissal of a claim for constructive fraud where the “close familial relationship” allegations were “mere conclusory assertions that [were] not supported by any allegations regarding any special circumstance giving rise to a fiduciary relationship[.]”); *Benfield v. Costner*, 67 N.C. App. 444, 446 (1984) (“An allegation of a ‘mere family relationship’ is not particular enough to establish a confidential or fiduciary relationship.” (cleaned up)).

34. Here, it is difficult to categorize TAG’s allegations on this issue as anything other than merely conclusory.

By virtue of his . . . familial relationship as the nephew of TAG’s President, Ed Shackelford, D. Shackelford held a position of trust and confidence. D. Shackelford, therefore, owed fiduciary duties to TAG up until the time he resigned his position.

...

By engaging in a competing endeavor, through EPIC, and providing material support to EPIC, D. Shackelford breached his fiduciary duty of loyalty to TAG.

(SAC ¶¶ 54, 101.)

35. Without more, TAG has failed to sufficiently allege a claim for breach of fiduciary duty against D. Shackelford on the basis of his familial relationship with TAG's president.

36. Therefore, the Court concludes that to the extent TAG's Motion to Amend seeks to add a claim for breach of fiduciary duty against D. Shackelford, that portion of the Motion to Amend should be **DENIED** on the ground of futility.

CONCLUSION

Accordingly, the Court hereby **ORDERS** as follows:

- a. The Motion to Amend is **GRANTED in part** and **DENIED in part**.
- b. TAG shall file a Second Amended Complaint by 10 March 2026 substantively identical to ECF 72.1 **except** that the Second Amended Complaint shall not contain any reference to the proposed breach of fiduciary duty claim against Darrin Shackelford.¹

¹ As a result, at a minimum, paragraphs 54, 56, and 99–102 should be deleted from the proposed Second Amended Complaint before filing the Second Amended Complaint.

SO ORDERED, this the 3rd day of March 2026.

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