

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23 CVS 25675

DWAYNE MILLER,

Plaintiff,

v.

REDGOOSE, L.L.C. d/b/a NERDS TO  
GO and PHILIP CARTER,  
individually,

Defendants.

**ORDER ON PLAINTIFF'S  
OPPOSITION TO DESIGNATION TO  
BUSINESS COURT**

1. **THIS MATTER** is before the Court on Plaintiff Dwayne Miller's ("Miller") Opposition to Designation to Business Court (the "Opposition"). (Opp'n Designation Bus. Ct. [hereinafter "Opp'n"], ECF No. 14.)

2. Miller initiated this action on 14 September 2023, asserting claims against Defendants Nerds to Go, LLC and Philip Carter ("Carter") for violations of the North Carolina Wage and Hour Act and breach of contract. (*See* Verified Compl. ¶¶ 15–32, ECF No. 3.) Miller subsequently filed his First Amended Complaint (the "FAC") on 9 November 2023, the only material change being the substitution of Defendant RedGoose, LLC ("RedGoose") for Defendant Nerds to Go, LLC. (*See* First Am. Compl. [hereinafter "FAC"], ECF No. 6.)

3. On 11 December 2023, Carter filed his Answer to FAC, (Answer FAC, ECF No. 7), and RedGoose filed its Answer to FAC and Counterclaims (the "Counterclaims"), asserting counterclaims against Miller for fraud, fraud and conversion, tortious interference with contract, and unfair and deceptive trade

practices, (Answer FAC and Countercls. ¶¶ 29–73 [hereinafter “Countercls.”], ECF No. 8).

4. That same day, RedGoose timely filed a Notice of Designation (the “NOD”), asserting that this action involves a dispute under section 7A-45.4(a)(5) based on its Counterclaims. (Notice Designation 2 [hereinafter “NOD”], ECF No. 9.)

5. On 12 December 2023, this case was designated as a mandatory complex business case<sup>1</sup> by the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, (Designation Order, ECF No. 1), and assigned to the Honorable Mark A. Davis, Special Superior Court Judge for Complex Business Cases, (Assignment Order, ECF No. 2).

6. Miller timely filed the Opposition on 10 January 2024, contending that designation of this action as a mandatory complex business case is not proper under section 7A-45.4(a)(5). (Opp’n 1–2.) RedGoose filed its Response in Opposition to Plaintiff’s Objection to Business Court Designation (the “Response”) on 25 January 2024. (Defs.’ Resp. Opp’n Pl.’s Obj. Bus. Ct. Designation [hereinafter “Resp.”], ECF No. 20.) The matter is now ripe for determination.

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<sup>1</sup> Miller’s FAC was filed in the District Court Division of Wake County. (See FAC 1.) RedGoose’s Counterclaims included a Motion to Transfer Division (the “Motion”), seeking a transfer of the action from the District Court Division to the Superior Court Division of Wake County pursuant to Rule 12(b)(3) of the North Carolina Rules of Civil Procedure (the “Rule(s)”) and N.C.G.S. § 7A-258. (See Countercls. 5.) After giving Miller an opportunity to respond to the Motion, Judge Mark A. Davis granted the Motion on 20 December 2023. (See Order Def. NTG’s Mot. Transfer Division, ECF No. 10.) In his Opposition, Miller represents that he “is not contesting [RedGoose’s] Motion to Transfer the case to the Superior Court Division of Wake County.” (Opp’n 3 n.2.)

7. Section 7A-45.4(c) requires that “[t]he Notice of Designation shall, in good faith and based on information reasonably available, succinctly state the basis of designation[.]” To qualify for designation 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). The Court has previously determined that “a party may use its counterclaim as the basis for a notice of designation.” *Id.* at \*8.

8. Designation under section 7A-45.4(a)(5) is proper if the action involves a material issue related to “[d]isputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies.” “To qualify for mandatory complex business case designation under this section, the material issue must relate to a dispute that is ‘closely tied to the underlying intellectual property aspects’ of the intellectual property at issue.” *Pinsight Tech., Inc. v. Driven Brands, Inc.*, 2020 NCBC LEXIS 23, at \*5 (N.C. Super. Ct. Feb. 20, 2020) (quoting *Cardioventis AG v. IQVIA Ltd.*, 2018 NCBC LEXIS 64, at \*6 (N.C. Super. Ct. June 27, 2018)).

9. This case arises out of a dispute between RedGoose and its former employee, Miller. In the FAC, Miller alleges that, after he tendered his resignation from RedGoose to Carter on 1 June 2023, Carter asked him to make himself available to

assist during the transition period through the end of June. (*See* FAC ¶ 14.) In exchange, Miller alleges that Carter agreed to pay Miller wages through 9 June 2023 and severance in the amount of his weekly wage through 30 June 2023. (*See* FAC ¶ 14.) Miller further alleges that RedGoose failed to pay him the promised wages and severance, (*see* FAC ¶¶ 14–32), resulting in the instant action.

10. RedGoose, however, paints a very different picture. In its Counterclaims, RedGoose alleges that Miller retained his administrative access credentials to RedGoose’s computer software system after his resignation in order to help with the transition. (*See* Countercls. ¶ 13.) But, according to the Counterclaims, Miller abused that access to lock RedGoose personnel out of their systems, lock a client out of its own systems, and change Carter’s administrative credentials with RedGoose’s wholesale vendor in order to transfer RedGoose client accounts to Miller’s own new venture. (*See* Countercls. ¶¶ 13–17, 24.) RedGoose further alleges that Miller used his access to RedGoose’s Amazon.com account to purchase a substantial amount of inventory that remains “missing and unaccounted for.” (Countercls. ¶ 28.)

11. Miller appears to oppose designation on two grounds, neither of which have merit.

12. First, Miller argues that designation under section 7A-45.4(a)(5) is improper because the Counterclaims “contain no claims involving intellectual property, nor do they even contain the phrase ‘intellectual property.’” (Opp’n 4.) He further contends that the “only intellectual property component to [RedGoose]’s [C]ounterclaims is

that part of its business is re-selling software licenses to its customers at a markup.” (Opp’n 6.)

13. The Court disagrees.

14. Designation under section 7A-45.4(a)(5), just like designation under section 7A-45.4(a)(8), does not “depend[ ] on the appearance or absence of magic words—such as ‘[intellectual property]’—in the [pleading].” *UNOX, Inc. v. Conway*, 2019 NCBC LEXIS 41, at \*7 (N.C. Super. Ct. June 28, 2019). Rather, the question is whether “the material issue . . . relate[s] to a dispute that is ‘closely tied to the underlying intellectual property aspects’ of the intellectual property at issue.” *See Pinsight Tech., Inc.*, 2020 NCBC LEXIS 23, at \*5 (quoting *Cardioventis AG*, 2018 NCBC LEXIS 64, at \*6). In conducting this inquiry, the Court “has not been historically confined to the actual causes of action asserted in a [pleading], but has also examined the underlying factual allegations[ ]” in the pleading. *Cornerstone Health Care, P.A. v. Moore*, 2015 NCBC LEXIS 65, at \*7 (N.C. Super. Ct. June 22, 2015).

15. Here, the “intellectual property at issue” in the Counterclaims is not, as Miller incorrectly asserts, “the existence of . . . licenses as part of [RedGoose]’s business model[.]” (Opp’n 3), but rather “whether [Miller] has committed fraud through the use and misuse of [RedGoose]’s software and IT systems, the software and IT systems of [RedGoose]’s client, and [RedGoose]’s and its client’s ‘data and data security,’ ” (Resp. 4; *see also* NOD 3). It is this alleged misconduct that forms the basis for each of the counterclaims RedGoose asserts against Miller. RedGoose alleges that Miller misused his administrative account credentials to (i) “solicit[ ]

[RedGoose]’s clients to terminate their subscriptions and service agreements with [RedGoose] and switch their services to [Miller]’s new venture[,]” (Countercls. ¶¶ 13, 61–73); (ii) “lock out [RedGoose] personnel from their own systems—preventing them from accessing critical client data and infrastructure[,]” (Countercls. ¶¶ 15, 30–38); (iii) lock out a client from the client’s systems, (Countercls. ¶¶ 16–17, 30–38); (iv) “delete[] Philip Carter’s administrative credentials with the wholesaler, create[] his own new administrative credentials within [RedGoose]’s account, . . . open[] a separate account with the wholesaler for his new venture, and then attempt[] to . . . transfer [RedGoose]’s client accounts and software licenses from [RedGoose] to his new venture within the wholesaler’s system[,]” (Countercls. ¶¶ 24, 49–59); and (v) purchase items on Amazon.com for which “Miller did not invoice clients and are not currently in [RedGoose]’s inventory[,]” (Countercls. ¶¶ 28, 40–47).

16. Based on above allegations, the Court concludes that RedGoose’s Counterclaims involve a material issue involving a “dispute involving the . . . use . . . of intellectual property, including computer software, software applications, information technology and systems, [and] data and data security,” permitting designation under section 7A-45.4(a)(5). The Court therefore concludes that Miller’s first argument is without merit.

17. Miller’s second argument is equally unpersuasive. He argues that the allegations in the Counterclaims are “factually incorrect” and spends much of the Opposition attempting to refute these allegations by relying on two affidavits filed in

support of the Opposition.<sup>2</sup> (See Opp’n 5–8; see also Aff. Dwayne Miller, dated Jan. 9, 2024, ECF No. 15; Aff. Reynhardt Van Rensburg, dated Jan. 10, 2024, ECF No. 16.)

18. But, as RedGoose notes in its Response, the Opposition’s focus on the merits of RedGoose’s Counterclaims is misplaced and premature. (See Resp. 2–3.) Designation is proper when the allegations in the “*pleading* upon which designation is based . . . raise a material issue that falls within one of the categories specified in section 7A-45.4.” *Composite Fabrics of Am., LLC*, 2016 NCBC LEXIS 11, at \*11 (emphasis added). “The Court accepts those allegations as true solely for the purposes of [determining whether a case qualifies for mandatory complex business designation].” *Se. Auto., Inc. v. Genuine Parts Co.*, 2016 NCBC LEXIS 63, at \*3 (N.C. Super. Ct. Aug. 17, 2016). Because the Court “may not consider any issues that may or may not be raised in a future pleading”—or a forecasted defense—“when determining whether designation is proper[.]” *Cunningham v. Waff*, 2023 NCBC LEXIS 58, at \*5 (N.C. Super. Ct. Apr. 10, 2023) (quoting *Stout v. Alcon Ent., LLC*, 2020 NCBC LEXIS 77, at \*4 (N.C. Super. Ct. June 30, 2020)), “any challenge as to the [veracity] of the allegations contained in [RedGoose’s] pleading is better left to a

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<sup>2</sup> Although Miller notes that the Counterclaims (and the NOD) are unverified, (see Opp’n 2 n.1), this fact has no bearing on the Court’s determination as to whether this case has been properly designated under N.C.G.S. § 7A-45.4(a). “[Pleadings] need not be verified ‘unless some statute requires verification as a condition to the maintenance of the action.’” *Pitt Cnty. v. Dejavue, Inc.*, 185 N.C. App. 545, 555 (2007) (quoting *Levy v. Meir*, 248 N.C. 328, 329 (1958) (per curiam)); see also N.C. R. Civ. P. 11(a) (“Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit.”). None of the claims asserted by RedGoose include a statutory requirement for verification.

motion brought under Rule [56,]” *Payne’s Grp. & Assocs. v. Brian Mallard Grp. of Tex., LP*, 2021 NCBC LEXIS 5, at \*5 (N.C. Super. Ct. Jan. 19, 2021).

19. The Court’s inquiry is therefore limited to the allegations in the pleading or pleadings on which designation is based. As a result, the Court declines to consider either Miller’s proffered affidavits or Carter’s responsive affidavit.<sup>3</sup> (See Aff. Philip Carter, dated Jan. 25, 2024, ECF No. 21.) Because the Court concludes that the allegations of the Counterclaims, as pleaded, bring this matter within the purview of section 7A-45.4(a)(5), Miller’s second argument also fails.

20. For the foregoing reasons, the Court concludes that Miller’s challenge to designation of this action as a mandatory complex business case under section 7A-45.4(a)(5) is without merit and the Opposition shall therefore be overruled.

21. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** that the Opposition is **OVERRULED**. This action involves a material issue related to “[d]isputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies[,]” as required

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<sup>3</sup> In his Opposition, Miller relies on *Southeastern Automotive, Inc. v. Genuine Parts Company* for his contention that the Court may consider affidavits in connection with an opposition to mandatory complex business case designation. (See Opp’n 2 n.1.) However, *Southeastern Automotive* involved a Rule 12(b)(3) motion to dismiss for improper venue rather than an opposition to designation. See 2017 NCBC LEXIS 34, at \*6 n.2 (N.C. Super. Ct. Apr. 17, 2017). The Business Court is a specialized forum of the Superior Court Division rather than a separate division, so an opposition to designation is not a motion made pursuant to Rule 12(b)(3). Therefore, for the reasons discussed above, the Court’s inquiry is confined to the allegations in the pleading or pleadings on which designation is based.



by N.C.G.S. § 7A-45.4(a)(5) and shall proceed as a mandatory complex business case before the Honorable Mark A. Davis, Special Superior Court Judge for Complex Business Cases.

**SO ORDERED**, this the 30th day of January, 2024.

/s/ Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Chief Business Court Judge