

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:12-cv-37**

OLIVIA BURLESON APPLING,)
ANDREA BAKER,)
CHRISTINE A BEHREND,)
AMY L. BILLINGS,)
KAREN S. BROWN,)
NATE CAPPS,)
SURYA K. CHALLA,)
CHERYL H. CHURCH,)
NANCY MICHELLE CLEARY,)
BARBARA MARLENE COCKERHAM,)
JENNIFER E. COMBS,)
ROBERT M. COX,)
KATHLEEN JOYCE CRAVER,)
GRAHAM DOEGE-OSLER,)
SARAH H. DUNAGAN,)
STEPHANIE DVORAK,)
KIMBERLY C. EDWARDS,)
SONYA FARR,)
RHONDA FIELDS,)
VIRGINIA GARDINER,)
MAT GOULD,)
CHRISTINA GRIFFIN,)
CLAUDIA GROSS,)
TAMARA H. GUESS,)
SHANNON HANEY,)
DENISE HARRISON,)
MURRAY HAWKINSON,)
LISA R. HUDGENS,)
AMY IKALL,)
ADAM MICHAEL JARRELL,)
CURTIS JOHNSON,)
ELIZABETH LAWSON,)
JUSTIN LEONARD,)
MICHAEL A. LEONE,)
JILL LONG,)
LISBETTE R. LUNDGREN,)
ASHLEY MCKINNEY,)
HEATHER MCCROARTY,)
IDA E. MCNEIL-ISAACS,)
MONICA SMITH MILLS,)

COMPLAINT

REBECCA MORETZ,)
MARTHA MOXLEY,)
JEANIE MULL,)
ALISHA ORREN,)
SARAH PETERS,)
AMIE SHEPPERD PLATT)
DANIEL PLATT)
DEBORAH REESE,)
MATTHEW T. ROSS,)
DIANE T. RYDER,)
TERESA SALMON,)
CARRIE SHAFER,)
REID SMITHDEAL)
KENDRA SWEAT,)
JOHN TATE,)
KATHRYN A. THOMAS,)
JAMES G. THORNTON,)
LAURA TUGMAN,)
CATHERINE E. UPCHURCH,)
MICHAEL J. VANNOY,)
VALENCIA S. VONDRAN,)
SANDRA WALKER,)
LORI WATTS,)
ROBIN M. WYATT, and)
JOAN ZIMMERMAN,)
)
Plaintiffs,)
)
v.)
)
ALLEGHANY COUNTY,)
ASHE COUNTY,)
AVERY COUNTY,)
GARY L. BLEVINS,)
LARRY COX,)
NATHAN A. MILLER,)
NEW RIVER SERVICE AUTHORITY,)
KENNY R. POTEAT,)
WILLIAM SANDS,)
WATAUGA COUNTY, and)
WILKES COUNTY,)
)
Defendants.)

COMES NOW the Plaintiffs, Olivia Burleson Appling, Andrea Baker, Christine A Behrend, Amy L. Billings, Karen S. Brown, Nate Capps, Surya K. Challa, Cheryl H. Church, Nancy Michelle Cleary, Barbara Marlene Cockerham, Jennifer E. Combs, Robert M. Cox, Kathleen Joyce Craver, Graham Doege-Osler, Sarah H. Dunagan, Stephanie Dvorak, Kimberly C. Edwards, Sonya Farr, Rhonda Fields, Virginia Gardiner, Mat Gould, Christina Griffin, Claudia Gross, Tamara H. Guess, Shannon Haney, Denise Harrison, Murray Hawkinson, Lisa R. Hudgens, Amy Ikall, Adam Michael Jarrell, Curtis Johnson, Elizabeth Lawson, Justin Leonard, Michael A. Leone, Jill Long, Lisbette R. Lundgren, Ashley McKinney, Heather McCroarty, Ida E. McNeil-Isaacs, Monica Smith Mills, Rebecca Moretz, Martha Moxley, Jeanie Mull, Alisha Orren, Sarah Peters, Amie Shepperd Platt, Daniel Platt, Deborah Reese, Matthew T. Ross, Diane T. Ryder, Teresa Salmon, Carrie Shafer, Reid Smithdeal, Kendra Sweat, John Tate, Kathryn A. Thomas, James G. Thornton, Laura Tugman, Catherine E. Upchurch, Michael J. Vannoy, Valencia S. vonDran, Sandra Walker, Lori Watts, Robin M. Wyatt, and Joan Zimmerman (hereinafter, collectively, the “Plaintiffs”), by and through their legal counsel, CEO Law PLLC, and as their complaint against Defendants Alleghany County, Ashe County, Avery County, Gary L. Blevins, Larry Cox, Nathan A. Miller, New River Service Authority, Kenny R. Poteat, William Sands, Watauga County and Wilkes County (hereinafter, collectively, the “Defendants”), allege as follows:

SUMMARY OF ALLEGATIONS

1. The North Carolina local government entities of Alleghany County, Ashe County, Avery County, Watauga County and Wilkes County have—in concert with a five-member board comprised of one member residing in of each of the five counties—taken millions of dollars from the Government of the United States earmarked to pay for the provision of specific services

mandated by federal¹ law and comingled them with other dollars then converted and misappropriated to fund an unincorporated enterprise that provided all manner of services to a pool of problematic indigents routinely referred there by local authorities.

2. The unincorporated enterprise—not formed as a separate “legal person” but given the name *New River Service Authority*—fundamentally operated as an agent of Defendants to *inter alia* ostensibly carry out a so-called “interlocal agreement”² entered into by, between, and among Defendant counties.

3. Financial records show, however, that Defendants negligently squandered much of the federal and other money funneled to *New River Service Authority*. In fact, Defendants operated *New River Service Authority* in the red year-after-year, bleeding money non-stop as Defendants buried their collective heads in the sand, until the mismanaged enterprise withered and finally—in the face of demands for Defendants to return millions of converted and misappropriated dollars as a result of their alleged joint and several failure “to substantially comply with requirements of State and federal law”³ and with creditors clamoring for millions more—staggered to its knees and met an untimely death.

4. Now, having misspent millions of federal dollars and with the spigot suddenly closed, Defendants disclaim financial responsibility and attempt to dodge their lawful obligation to pay compensation due Plaintiffs, former *New River Service Authority* workers who diligently provided services until the very end, i.e., professionals who did what they were trained to do

¹ Title 42 of the Code of Federal Regulations.

² NC Gen Stat § 160A-461.

³ Letter from the North Carolina Department of Health and Human Services alleging New River failed “to substantially comply with requirements of State and federal law”, dated Feb. 6, 2012.

consistent with the federal mandates for which Defendants received, then converted and misappropriated, millions of federal dollars.

5. Asleep at the wheel when it counted, Defendants have swiftly come wide awake, trying to avoid blame and shamelessly denying the liability that is rightfully, and lawfully, theirs.

PARTIES

6. Plaintiff Olivia Burleson Appling is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

7. Plaintiff Andrea Baker is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

8. Plaintiff Christine A Behrend is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

9. Plaintiff Amy L. Billings is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

10. Plaintiff Karen S. Brown is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

11. Plaintiff Nate Capps is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

12. Plaintiff Surya K. Challa is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

13. Plaintiff Cheryl H. Church is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

14. Plaintiff Nancy Michelle Cleary is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

15. Plaintiff Barbara Marlene Cockerham is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

16. Plaintiff Jennifer E. Combs is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

17. Plaintiff Robert M. Cox is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

18. Plaintiff Kathleen Joyce Craver is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

19. Plaintiff Graham Doege-Osler is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

20. Plaintiff Sarah H. Dunagan is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

21. Plaintiff Stephanie Dvorak is a citizen of the State of North Carolina, residing at •• •••• •••• ••••, ••••, NC.

22. Plaintiff Kimberly C. Edwards is a citizen of the State of North Carolina, residing at •• •••• ••~•• ••~••, ••~••, NC.

23. Plaintiff Sonya Farr is a citizen of the State of North Carolina, residing at •• ••~•• ••~•• ••~••, ••~••, NC.

24. Plaintiff Rhonda Fields is a citizen of the State of North Carolina, residing at •• ••~•• ••~•• ••~••, ••~••, NC.

25. Plaintiff Virginia Gardiner is a citizen of the State of North Carolina, residing at •• ••~•• ••~•• ••~••, ••~••, NC.

26. Plaintiff Mat Gould is a citizen of the State of North Carolina, residing at •• ••••
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27. Plaintiff Christina Griffin is a citizen of the State of North Carolina, residing at ••
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28. Plaintiff Claudia Gross is a citizen of the State of North Carolina, residing at ••
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29. Plaintiff Tamara H. Guess is a citizen of the State of North Carolina, residing at ••
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30. Plaintiff Shannon Haney is a citizen of the State of North Carolina, residing at ••
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31. Plaintiff Denise Harrison is a citizen of the State of North Carolina, residing at ••
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32. Plaintiff Murray Hawkinson is a citizen of the State of North Carolina, residing at
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33. Plaintiff Lisa R. Hudgens is a citizen of the State of North Carolina, residing at ••
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34. Plaintiff Amy Ikall is a citizen of the State of North Carolina, residing at •• ••••
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35. Plaintiff Adam Michael Jarrell is a citizen of the State of North Carolina, residing
at •• •••• •••• ••••, ••••, NC.

36. Plaintiff Curtis Johnson is a citizen of the State of North Carolina, residing at ••
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37. Plaintiff Elizabeth Lawson is a citizen of the State of North Carolina, residing at
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38. Plaintiff Justin Leonard is a citizen of the State of North Carolina, residing at ••
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39. Plaintiff Michael A. Leone is a citizen of the State of North Carolina, residing at ••
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40. Plaintiff Jill Long is a citizen of the State of North Carolina, residing at •• ••••
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41. Plaintiff Lisbette R. Lundgren is a citizen of the State of North Carolina, residing
at •• •••• •••• ••••, ••••, NC.

42. Plaintiff Ashley McKinney is a citizen of the State of North Carolina, residing at
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43. Plaintiff Heather McCroarty is a citizen of the State of North Carolina, residing at
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44. Plaintiff Ida E. McNeil-Isaacs is a citizen of the State of North Carolina, residing
at •• •••• •••• ••••, ••••, NC.

45. Plaintiff Monica Smith Mills is a citizen of the State of North Carolina, residing at
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46. Plaintiff Rebecca Moretz is a citizen of the State of North Carolina, residing at ••
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47. Plaintiff Martha Moxley is a citizen of the State of North Carolina, residing at ••
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48. Plaintiff Jeanie Mull is a citizen of the State of North Carolina, residing at •• ••••
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49. Plaintiff Alisha Orren is a citizen of the State of North Carolina, residing at ••
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50. Plaintiff Sarah Peters is a citizen of the State of North Carolina, residing at •• ••••
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51. Plaintiff Amie Shepperd Platt is a citizen of the State of North Carolina, residing
at •• •••• •••• ••••, ••••, NC.

52. Daniel Platt is a citizen of the State of North Carolina, residing at •• •••• ••••
••••, ••••, NC.

53. Plaintiff Deborah Reese is a citizen of the State of North Carolina, residing at ••
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54. Plaintiff Matthew T. Ross is a citizen of the State of North Carolina, residing at ••
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55. Plaintiff Diane T. Ryder is a citizen of the State of North Carolina, residing at ••
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56. Plaintiff Teresa Salmon is a citizen of the State of North Carolina, residing at ••
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57. Plaintiff Carrie Shafer is a citizen of the State of North Carolina, residing at ••
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58. Plaintiff Reid Smithdeal is a citizen of the State of North Carolina, residing at ••
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59. Plaintiff Kendra Sweat is a citizen of the State of North Carolina, residing at ••
••••• ••••• •••••, •••••, NC.

60. Plaintiff John Tate is a citizen of the State of North Carolina, residing at •• ••••
••••• •••••, •••••, NC.

61. Plaintiff Kathryn A. Thomas is a citizen of the State of North Carolina, residing at
•• •••• ••••• •••••, •••••, NC.

62. Plaintiff James G. Thornton is a citizen of the State of North Carolina, residing at
•• •••• ••••• •••••, •••••, NC.

63. Plaintiff Laura Tugman is a citizen of the State of North Carolina, residing at ••
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64. Plaintiff Catherine E. Upchurch is a citizen of the State of North Carolina,
residing at •• •••• ••••• •••••, •••••, NC.

65. Plaintiff Michael J. Vannoy is a citizen of the State of North Carolina, residing at
•• •••• ••••• •••••, •••••, NC.

66. Plaintiff Valencia S. vonDran is a citizen of the State of North Carolina, residing
at •• •••• ••••• •••••, •••••, NC.

67. Plaintiff Sandra Walker is a citizen of the State of North Carolina, residing at ••
••••• ••••• •••••, •••••, NC.

68. Plaintiff Lori Watts is a citizen of the State of North Carolina, residing at •• ••••
••••• •••••, •••••, NC.

69. Plaintiff Robin M. Wyatt is a citizen of the State of North Carolina residing at ••
••••• ••••• •••••, •••••, NC.

70. Plaintiff Joan Zimmerman is a citizen of the State of North Carolina, residing at ••
•••• •••• ••••, ••••, NC.

71. Defendant Alleghany County is a local government entity seated in Sparta, NC.

72. Defendant Ashe County is a local government entity seated in Jefferson, NC.

73. Defendant Avery County is a local government entity seated in Newland, NC.

74. Defendant Gary L. Blevins is a citizen of the State of North Carolina, residing at
•• •••• •••• ••••, ••••, NC.

75. Defendant Larry Cox is a citizen of the State of North Carolina, residing at •• ••••
•••• ••••, ••••, NC.

76. Defendant Nathan A. Miller is a citizen of the State of North Carolina, residing at
•• •••• •••• ••••, ••••, NC.

77. Defendant New River Service Authority is an unincorporated enterprise with its
principal place of business in Boone, NC.

78. Defendant Kenny R. Poteat is a citizen of the State of North Carolina, residing at
•• •••• •••• ••••, ••••, NC.

79. Defendant William Sands is a citizen of the State of North Carolina, residing at ••
•••• •••• ••••, ••••, NC.

80. Defendant Watauga County is a local government entity seated in Boone, NC.

81. Defendant Wilkes County is a local government entity seated in Wilkesboro, NC.

JURISDICTION AND VENUE

82. This is an action for fraud, common law fraud, promissory fraud, fraud by
concealment, misrepresentation, negligence, conversion, detrimental reliance, fraudulent

inducement, breach of fiduciary duty, misappropriation, conspiracy, aiding and abetting and concerted action as well as breach of contract and seeking *inter alia*, punitive damages.

83. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 because claims herein arise under the Constitution, Federal statutes, or treaties of the United States, as well as pendent jurisdiction over other claims herein.

84. This Court has personal jurisdiction over Plaintiffs, each one of whom is a resident and citizen of North Carolina.

85. This Court has personal jurisdiction over local-government-entity Defendants Alleghany County, Ashe County, Avery County, Watauga County and Wilkes County, which have their seats in the North Carolina counties of Alleghany, Ashe, Avery, Watauga and Wilkes, respectively, such that the exercise of personal jurisdiction over them by this Court would not offend traditional notions of fair play and substantial justice.

86. This Court has personal jurisdiction over Defendant New River Service Authority, which is an unincorporated enterprises with its principal office in Watauga County, North Carolina, such that the exercise of personal jurisdiction by this Court would not offend traditional notions of fair play and substantial justice.

87. This Court has personal jurisdiction over Defendants Gary L. Blevins, Larry Cox, Nathan A. Miller, Kenny R. Poteat and William Sands, who are each a resident and citizen of North Carolina.

88. This Court is a proper venue for this action pursuant to 28 U.S.C. §1391(c).

FACTUAL BACKGROUND COMMON TO ALL CLAIMS

89. Title 42 of the Code of Federal Regulations governs the provision of certain services (hereinafter the “Services”).

90. North Carolina General Statute § 160A-461 provides that a “unit of local government” may enter into an “interlocal agreement” with another “unit of local government” to facilitate provision of the Services.

91. On November 5, 2006, the Defendants entered into such an agreement ostensibly to facilitate joint and several provision of the Services (hereinafter the “Interlocal Agreement”).

92. Since that time, Defendants have, jointly and severally, carried out their Interlocal Agreement *inter alia* via an enterprise they named *New River Service Authority* and sometimes also known as *New River Behavioral Healthcare* (hereinafter, collectively, “NRSA”).

93. NRSA is not a separate “legal person” registered with the North Carolina Secretary of State.

94. NRSA is managed by a five-member “Board” comprised of one member residing in each of Alleghany, Ashe, Avery, Watauga and Wilkes counties.

95. By means of their Interlocal Agreement and otherwise, Defendant counties empowered NRSA to act on their behalf, i.e., to act *inter alia* as their agent and perform acts that bind them as principals.

96. Defendants were entrusted with millions of dollars from the Government of the United States earmarked to pay for provision of the Services mandated by federal⁴ law, but comingled them with state and local dollars then converted and misappropriated to fund an NRSA enterprise operated to provide all manner of support services to a large pool of problematic indigents—often the communities’ weakest and poorest, many with needs for services aimed at increasing autonomy and functioning that go well beyond services contemplated by Title 42—nevertheless routinely referred to NRSA by local authorities.

⁴ Title 42 of the Code of Federal Regulations.

97. For years, Defendants allowed their NRSA enterprise to be run by a licensed professional counselor with little or no business or management education who, untrained and unprepared, continuously operated it in the red, bleeding money non-stop while Defendants buried their collective heads in the sand, as indicated by the following meeting minute excerpts.

a. August 2008 meeting minutes⁵ report: “The YTD total loss for FY2007/08 is \$1.8 million.”

b. December 2009 meeting minutes⁶ report: “The 2008/09FY ended in a \$1 million deficit.”

c. September 2010 meeting minutes⁷ report: Board Member Poteat “stated that...[he] is at times alarmed by the amounts transferred when no explanation is given to him for the transfer.”

d. July 2011 meeting minutes⁸ report: Board Member Poe said the “formal report [due] to all five county Boards of Commissioners within 60-days of the annual NRSA audit...has never been done to her knowledge before the Ashe County Board of Commissioners...[and] pointed out that NR[SA] has had an operating loss for the past three years. She stated that...if NR[SA] had debts it comes back to the county budgets and back to the counties to pay.”

e. August 2011 meeting minutes⁹ reveal that its CEO Andrews acknowledged they “would be ending the year with a \$1 million

⁵ 8/28/2008 NRSA Minutes.

⁶ 12/3/2009 NRSA Minutes.

⁷ 9/23/2010 NRSA Minutes.

⁸ 7/28/2011 NRSA Minutes.

⁹ 8/25/2011 NRSA Minutes.

deficit....Accounts payable now stands at around \$1 million dollars that has not been paid...the accounts receivable account is not in order...standard accounting practices were not followed...” Those same minutes also report the CEO “stated that right now it is not clear whether that is negligence or illegal activity” and was advised “that the loss for the last fiscal year (2010/11FY) could be as high as \$3 million.”

98. With financial records in disarray, Defendants failed to, among other things, file lawfully required audit reports, for which gross negligence Board Members are individually subject to personal liability and reportedly face potential criminal misdemeanor charges.

99. As NRSA thrashed and died, Defendants’ NRSA enterprise desperately directed staff to take questionable actions aimed at creating more billable revenue. One-hour counseling sessions were cut to one-half-hour, for example, because two one-half-hour sessions produced more revenue than a one-hour session. Clients were shuttled into group sessions, because they produced more revenue than individual sessions. “Do what’s best for the organization,” employees were directed, without regard for client needs. “Feed the monster” became the mantra as Defendants’ negligently-managed NRSA enterprise collapsed around them.

100. All this took place in such a way that could only have occurred with NRSA Board concurrence or, at the very least, with Board Members willfully, or negligently, turning a blind eye, i.e., it took place under color of “responsible corporate officer” and like doctrines which “attribute knowledge” and establish that someone “knowingly” did something, where knowledge of wrongdoing is inferred based upon someone’s position.

101. Thus, Board Members past and present are individually responsible for the NRSA enterprise's actions and inactions by virtue of their position or authority. They jointly and

severally knew, or should have known, even if an individual Board Member did not expressly authorize or direct NRSA enterprise subordinates. They had, by reason of their positions on the NRSA Board, responsibility and authority either to prevent in the first instance, or to seek out and promptly correct malfeasance, but failed to do so. Indeed, individual NRSA Board Members cannot insulate themselves from liability by arguing they delegated their responsibility to others, or by closing their eyes to the problems.

102. Having carelessly squandered much of what they received from the United States Government and elsewhere, having woefully mismanaged their NRSA enterprise until—in the face of demands for Defendants to return millions of converted and misappropriated dollars as a result of their joint and several failure “to substantially comply with requirements of State and federal law”¹⁰ and with creditors clamoring for millions more—their NRSA enterprise staggered to its knees and fell one last time.

103. Now, having misspent millions of federal dollars and with the spigot suddenly closed, Defendants disclaim financial responsibility and attempt to dodge their lawful obligation to pay compensation due Plaintiffs, former NRSA workers who diligently provided services until the very end, i.e., professionals who did what they were trained to do consistent with the federal mandates for which Defendants received, but converted and misappropriated, federal dollars.

104. To Plaintiffs’ request for payment of such compensation as they have earned, Defendants imperiously reply, “The Board has decided not to pay...”—as though that settles it.

105. Asleep at the wheel when it counted, Defendants have swiftly come wide awake, trying to avoid blame and shamelessly denying the liability that is rightfully, and lawfully, theirs.

¹⁰ Letter from the North Carolina Department of Health and Human Services alleging New River failed “to substantially comply with requirements of State and federal law”, dated Feb. 6, 2012.

106. The Interlocal Agreement requires, however, that: “All just liabilities and other indebtedness incurred by NRSA in performance of its operations under this [Interlocal] Agreement shall be promptly paid as the same shall become due;”¹¹.

107. Moreover, the Interlocal Agreement requires that: “...all liabilities of NRSA shall be paid from its unobligated surplus funds, and if said funds are not sufficient to satisfy such indebtedness, the remaining unpaid portion of the same shall be apportioned to and paid by the Counties on the same pro rata basis that the Counties have appropriated and contributed funds to NRSA during such time as this [Interlocal] Agreement has been in effect.”¹²

108. This civil action is in the nature of fraud, common law fraud, promissory fraud, fraud by concealment, misrepresentation, conversion, detrimental reliance, fraudulent inducement, breach of fiduciary duty, misappropriation, conspiracy, aiding and abetting and concerted action as well as breach of contract and the defense of sovereign immunity is not available to Defendants.

109. On information and belief, all Defendant counties have either purchased a policy of insurance and/or participated in a local government risk pool pursuant to Article 23, Chapter 58, of the North Carolina General Statutes which may provide coverage for the events complained of and, therefore, waived immunity from civil liability in this action.

110. Defendant counties are, jointly and severally, mere local government entities and, as such, cannot claim Eleventh Amendment immunity.

¹¹ Article VI Section 3 of the Interlocal Agreement.

¹² Article VI Section 3 of the Interlocal Agreement.

111. The Defendant board members' conduct complained of herein is not legislative; rather, the conduct is executive or administrative and, as such, is beyond the scope of absolute immunity.

112. The Defendant board members' conduct complained of herein violates clearly established Federal and other statutory laws of which a reasonable person would have known and, as such, is beyond the scope of qualified immunity.

113. As more fully set forth above, Defendants are required by Federal statutes, by contract, and by State law, to pay all amounts due Plaintiffs, irrespective of their having converted and misappropriated the Federal funds placed in their care, as fiduciaries, to do so.

CLAIM I

Fraud, Common Law Fraud, Fraud by Concealment & Promissory Fraud

114. Plaintiffs repeat and re-allege the allegations in paragraphs 1 to 113 above, as if fully set out herein.

115. Defendants promised Plaintiffs they would be compensated for *inter alia* unpaid leave.

116. Defendants did not intend to fully perform the promises when they made them, knowing that they could create the false subterfuge that only NRSA, and not Defendant counties, would be obligated to pay money to Plaintiffs.

117. Plaintiffs justifiably and reasonably relied on the fraudulent misrepresentations of Defendants.

118. Defendants knew that their representations were false and engaged in a concerted and systematic pattern of deception, as is fully particularized herein.

119. Defendants' motive to deceive Plaintiffs is obvious: Defendants knew that if Plaintiffs were given complete and accurate information about Defendants' scheme to avoid responsibility for the money owed Plaintiffs, they may not have aided Defendants in the provision of Services that Defendants were lawfully obligated to provide.

120. Defendants intended to induce, and did in fact succeed in inducing, Plaintiffs into aiding Defendants in the provision of the Services that Defendants were lawfully obligated to provide during and after which Defendants made continuous, systematic and ongoing efforts to avoid paying the money owed Plaintiffs.

121. Defendants intended to deceive Plaintiffs by concealing the fact they did not intend to accept responsibility for the money owed Plaintiffs; Plaintiffs did not know of the concealed fact that Defendants intended to avoid responsibility for the money owed Plaintiffs; Plaintiffs reasonably relied on Defendants' deception; and, as a direct and proximate result of Defendants concealment of an important fact, Plaintiffs have suffered damages.

122. Defendants intended to induce, and did in fact induce, by means of misrepresentation, fraud or deceit, Plaintiffs to render services without knowledge of Defendants' nefarious plan. Defendants' fraudulent conduct, as described with particularity above, and Plaintiffs' reasonable and justifiable reliance upon representations of Defendants, caused and resulted in loss to Plaintiffs in excess of \$10,000, in an amount to be determined at trial.

CLAIM II

Conversion

123. Plaintiffs repeat and re-allege the allegations in paragraphs 1 to 122 above, as if fully set out herein.

124. Defendants had exclusive control over the use of all federal and other monies funneled to NRSA and was required to use, but did not use, federal monies exclusively for the purpose of funding Services.

125. Defendants collected and received money from the federal government and knew that money should be used to provide Services. Despite this knowledge, Defendants comingled the federal money with other monies then converted and misappropriated it to fund an enterprise operated to provide not just the required Services but all manner of other services to a pool of problematic indigents routinely ordered there by local authorities.

126. Despite a demand from Plaintiffs, Defendants have failed and refused to pay the amounts owed to Plaintiffs.

127. As a direct and proximate result of Defendants' conversion of monies owed them, Plaintiffs have been damaged in an amount in excess of \$10,000, to be determined at trial.

CLAIM III

Detrimental Reliance

128. Plaintiffs repeat and re-allege the allegations in paragraphs 1 to 127 above, as if fully set out herein.

129. Defendants made their representations with the purpose of having Plaintiffs rely upon them.

130. Defendants' representations were made under circumstances reasonably expected to induce substantial action, or inaction, by Plaintiffs.

131. As Defendants anticipated and planned, Plaintiffs reasonably and justifiably relied upon Defendants' repeated representations.

132. As a direct and proximate result of his detrimental reliance, Plaintiffs have incurred damages in excess of \$10,000 in an amount to be determined at trial.

CLAIM IV

Fraudulent Inducement and Breach of Contract

133. Plaintiffs repeat and re-allege the allegations in paragraphs 1 to 132 above, as if fully set out herein.

134. Defendants owe Plaintiffs a duty to, *inter alia*, pay the money owed Plaintiffs.

135. As set forth above, Defendants fraudulently induced Plaintiffs to continuously act, or not act, in such a way as to avoid Defendants having to provide the truth regarding their intent to avoid paying the money owed Plaintiffs.

136. Defendants breached their agreement with Plaintiffs in that when called upon to pay the money owed them, Defendants did not do so.

CLAIM V

Breach of Fiduciary Duty

137. Plaintiffs repeat and re-allege the allegations in paragraphs 1 to 136 above, as if fully set out herein.

138. Defendants willfully and/or intentionally disregarded their fiduciary duties, by means of the conducts described herein in violation of federal laws, and now attempt to avoid paying compensation lawfully due Plaintiffs.

139. Defendants had and continue to have a duty to refrain from promoting their personal economic interests above and at the expense of Plaintiffs. Instead, Defendants have attempted to conceal their wrongdoing and avoid paying the money due Plaintiffs.

140. Defendants participated in the acts of mismanagement alleged herein, and knowingly, willfully, and/or intentionally undertook the wrongful conducts alleged herein. Defendants thereby breached and failed to fulfill their fiduciary duties.

141. The conduct alleged herein was not due to an honest error of judgment, but rather was due to Defendants' bad faith and was done knowingly, willfully and/or intentionally.

142. Defendants have breached and/or aided and abetted breach of fiduciary duties.

143. Plaintiffs have sustained damages in excess of \$10,000 to be determined at trial.

CLAIM VI

Misappropriation of Federal Funds

144. Plaintiffs repeats and re-alleges the allegations in paragraphs 1 to 143 above, as if fully set out herein.

145. Defendants negligently failed to put federal funds to the exclusive use for which they were intended and thereby converted and misappropriated federal funds.

146. Defendants' conduct resulted in damages to Plaintiffs in excess of \$10,000 to be determined at trial.

CLAIM VII

Conspiracy, Aiding and Abetting, and Concerted Action

147. Plaintiffs repeat and re-allege the allegations in paragraphs 1 to 146 above, as if fully set out herein.

148. In committing the wrongful acts alleged herein Defendants have pursued, or joined in the pursuit of, a common course of conduct, and acted in concert with and conspired with one another, in furtherance of their common plan or design. In addition to the wrongful

conduct herein alleged as giving rise to primary liability, Defendants further aided and abetted and/or assisted each other in breach of their respective duties as herein alleged.

149. Defendants operated as a collective entity at meetings held either in person or telephonically where they discussed matters affecting the allegations described in this complaint and reached collective and consensual decisions as to what actions to take.

150. During all times relevant hereto, Defendants initiated a course of conduct which was designed in furtherance of the plan, conspiracy and course of conduct as set forth herein.

151. Defendants engaged in a conspiracy, common enterprise and/or common course of conduct. Defendants accomplished their conspiracy, common enterprise or common course of conduct through their illegal and improper actions as described herein. Each of Defendants was a direct, necessary and substantial participant in the conspiracy, common enterprise or common course of conduct complained of herein.

152. Each of Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions, as particularized herein, to substantially assist the commission of the wrongdoing complained of, each of Defendants acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing and was aware of her or her overall contribution to, and furtherance of, the wrongdoing. Defendants' individual and/or collective acts of aiding and abetting include, *inter alia*, the acts each of them are alleged to have committed in furtherance of the conspiracy, common enterprise and common course of conduct complained of herein.

153. Each of Defendants, by acting as herein described, did so knowingly and in such an intentional manner as to constitute a fraud and deceit upon Plaintiffs.

154. Defendants' conduct resulted in damages to Plaintiffs in excess of \$10,000 to be determined at trial.

CLAIM VIII

Punitive Damages

155. Plaintiffs repeat and re-allege the allegations in paragraphs 1 to 154 above, as if fully set out herein.

156. Defendants' conduct as particularized herein was willful, wanton and malicious. Defendants' conduct was in direct disregard of the rights of Plaintiffs, and reflected a conscious indifference for the damage that would be caused.

157. Accordingly, Plaintiffs are entitled to an award of punitive damages against Defendants in an amount not less than \$10,000 to be determined at trial.

WHEREFORE, Plaintiffs seek a trial by jury on all issues so triable and judgment against Defendants requiring Defendants to pay Plaintiffs an amount in excess of \$75,000 consisting of:

- A. Compensatory damages in excess of \$10,000;
- B. Interest as allowed by law;
- C. Punitive Damages in excess of \$10,000;
- D. Attorney fees as allowed by law; and
- E. Granting such other relief as the court deems just and proper.

This the 2nd day of April, 2012.

s/ Charles Oswald
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CERTIFICATE OF SERVICE

I hereby certify that on 04/02/2012 I electronically filed the foregoing document with the Clerk of Court in the United States District Court for the Western District of North Carolina using the CM/ECF System. Participants in the case who are registered CM/ECF users will be served by the CM/ECF System.

I further certify that I have mailed the foregoing document by First Class mail, postage prepaid, to the following:

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