

**IN THE CHANCERY COURT OF      COUNTY, MISSISSIPPI**

**and**

**vs.**

**NO.**

**and**

**ANSWER AND COUNTERCLAIM**

answers the plaintiffs' complaint as set forth below.

**FIRST DEFENSE**

is not a real party in interest pursuant to the Complaint.

**SECOND DEFENSE**

, and should be joined as the defendant real parties in interest.

**THIRD DEFENSE**

and should be joined as additional plaintiffs.

**FOURTH DEFENSE**

An accounting is not an available remedy in this case. All of the information plaintiffs seek from an "accounting" may be obtained through discovery.

**FIFTH DEFENSE**

Plaintiffs are not entitled, statutorily or by contract, to attorneys' fees.

**SIXTH DEFENSE**

The defendants signed the contract made the subject of this suit, and all other documents related to the transactions contemplated thereby, in their representative capacities for , and .

**SEVENTH DEFENSE**

Plaintiffs have failed to mitigate their damages.

**EIGHTH DEFENSE**

An award of punitive damages in this case would violate the due process clause and equal protection clause of the fourteenth amendment of the United States Constitution and article III, § 14, and other provisions of the Mississippi Constitution.

#### NINTH DEFENSE

An award of punitive damages in this action is precluded because defendants had, at a minimum, an arguable reason for their conduct.

#### TENTH DEFENSE

Defendants are entitled to a set-off from the damages, if any, of plaintiffs.

#### ELEVENTH DEFENSE

#### ANSWER

1.

admits that and are adult resident citizens of Mississippi, and that, on information and belief, their addresses are correctly stated in paragraph 1. The remaining allegations in paragraph 1 are denied.

2.

The allegations in paragraph 2 are admitted.

3.

admits that plaintiffs, on , , entered into a Contract to purchase (" ") and (" "). The remaining allegations in paragraph 3 are denied.

4.

Except to admit that the Contract provided that the premises were to be returned to a "state of the allegations in paragraph 4 are denied.

5.

The allegations in paragraph 5 are admitted.

6.

Except to admit that defendants were to retain all proceeds for , the allegations in paragraph 6 are denied.

7.

Except to admit that plaintiffs have \_\_\_\_\_, the allegations in paragraph 7 are denied.

8.

Except to admit that, according to the Contract, the accounts were to be left open until certain third party payers had been notified and the final corporate tax returns were filed, and that said tax returns have not been filed, the allegations in paragraph 8 are denied.

9.

Except to admit that defendants obtained a storage facility, prior to the sale of the business, at \_\_\_\_\_, the allegations in paragraph 9 are denied.

10.

Except to admit that plaintiffs have requested certain renovations of the buildings, the allegations in paragraph 10 are denied.

11.

Except to admit that \_\_\_\_\_ has had access to information regarding fund deposits and withdrawals in the checking accounts that remained open pursuant to the Contract, access to information regarding the filing and/or collection of the insurance proceeds and the identity of the property and ownership affected by the loss, and access to the identity of the property removed from the storage facility and the disposition of this property, the allegations in paragraph 11 are denied.

12.

The allegations in paragraph 12 are denied.

13.

The allegations in paragraph 13 are denied.

14.

The allegations in paragraph 14 are denied.

15.

\_\_\_\_\_ denies the allegations in the last unnumbered paragraph of the complaint that begins with "WHEREFORE", and specifically denies that plaintiffs are entitled to any of the relief sought therein.

Every allegation in the complaint that is not specifically and expressly admitted herein is hereby specifically and expressly denied.

WHEREFORE, PREMISES CONSIDERED, defendant respectfully submits that plaintiffs' complaint against him/her should be dismissed with prejudice.

Respectfully submitted,

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Attorney for

Of counsel:

Telephone:  
MSB #  
Attorney for

## COUNTERCLAIM

And now having answered, , and as counterclaimants, assert this counterclaim against , , and .

## PARTIES

Counterdefendant is an adult resident citizen of County, Mississippi, who may be served with this counterclaim through his/her attorney, .

2.

Counterdefendant is an adult resident citizen of County, Mississippi, who may be served with this counterclaim through his/her attorney, .

3.

Counterdefendant is a Mississippi Corporation that may be served with process through its registered agent, , , Mississippi.

4.

Counterdefendant is a Mississippi Corporation that may be served with process through its registered agent, , , Mississippi.

## JURISDICTION AND VENUE

5.

This Court has personal and subject matter jurisdiction in this matter. Venue is proper in County, Mississippi.

## FACTUAL BACKGROUND

6

On or about , , (" ") and (" ") entered into a Contract with (" ") and (" "). Pursuant to the Contract, and were to purchase certain assets and liabilities of and . A copy of said Contract is attached hereto as Exhibit "A" and is incorporated herein by reference.

7.

On or about , , an Addendum to the Contract was executed by and and and . A copy of the Addendum is attached hereto as Exhibit "B" and is incorporated herein by reference.

8.

In , , certain property of , , , individually, , individually, , and others, was damaged in a natural disaster. Pursuant to the Addendum, and were to receive the insurance proceeds for those assets of and that were damaged in the natural disaster, were to be transferred to them in the sale, and were not replaced and paid for prior to the sale. and paid and the sum of \$ as an advance on said insurance proceeds.

9.

Pursuant to the Addendum, funds were left in the checking accounts of and . These accounts were left open until certain third payers had been notified of the change of the Employer Identification Number to and , and the final corporate tax returns were filed and paid by and .

10.

, , and were provided, at closing and previous thereto, a list of assets that were being transferred by and to them in the sale. The checking accounts of and were not assets that were to be transferred pursuant to the sale. The money in the checking accounts at the time of closing remained the property of the sellers. After closing, any money deposited in the checking accounts for services rendered by the buyers was the property of the buyers.

11.

was given signature authority on the checking accounts of and so that money could be transferred to third party payers. exceeded his/her authority by transferring money out of the checking accounts of and to non-third party payers at a time when he/she knew or should have known that said accounts were not transferred in the sale.

12.

Pursuant to the Contract, and , and and individually, signed notes for the purchase price of the assets of and . The notes were to be on the same terms as the plaintiffs' master note with and/or the SBA. The notes had an initial interest rate, as specified in the Contract, of % per annum, subject to an annual adjustment. Due to a mistake in execution, the amount of interest due, and its due date, and for the first year of the notes was incorrectly calculated. A copy of the referenced notes are attached hereto as Exhibits "C" and "D"

COUNT I: REFORMATION

13.

Defendants /counterplaintiff's reference the foregoing paragraphs.

14.

Pursuant to the Contract, the notes were to be on the same terms as the plaintiffs' master note with [redacted] and/or the SBA. The notes attached hereto as Exhibits "C" and "D", as specified in the Contract, had an initial interest rate of [redacted] % per annum, subject to an annual adjustment. The notes were executed by [redacted] and [redacted], and [redacted] personally guaranteed the notes.

15.

Pursuant to the Contract, [redacted] and [redacted], and [redacted] and [redacted], individually, signed notes for the purchase price of the assets of [redacted] and [redacted]. The notes were to be on the same terms as the plaintiffs' master note with [redacted] and/or the SBA. The notes had an initial interest rate, as specified in the Contract, of [redacted] % per annum, subject to an annual adjustment. Due to a mistake in execution, the amount of interest due, and its due date, [redacted] and [redacted] for the first year of the notes was incorrectly calculated. A copy of the referenced notes are attached hereto as Exhibits "C" and "D".

16.

The Court should reform the note attached hereto as Exhibit "C" to show the sum of \$ [redacted] being the true and correct amount of interest due and owing for the first year of said note. The Court should reform the note attached hereto as Exhibit "D" to show the sum of \$ [redacted] being the true and correct amount of interest due and owing for the first year of said note. The Court should reform both notes to show a due date of the interest for the first year of [redacted], [redacted], and interest and principal commencing on [redacted], [redacted].

## COUNT II: CONVERSION

17.

Defendants /counterplaintiffs reference the foregoing paragraphs.

18.

Plaintiffs/counterdefendants, jointly and severally, intentionally and wrongfully exerted an act of dominion and control over the money in the checking accounts of [redacted] and [redacted] by removing money from said accounts when they knew or should have known that the checking accounts were not assets transferred.

19.

As a direct and proximate result of defendants/counterplaintiffs' wrongful conversion of the assets of plaintiffs/counterdefendants, the plaintiffs/counterdefendants have sustained damages.

COUNT III: BREACH OF CONTRACT

20.

Defendants /counterplaintiffs reference the foregoing paragraphs.

21.

Plaintiffs/counterdefendants, jointly and severally, breached the Addendum to the Contract by removing money in the checking accounts of and when they knew or should have known that the checking accounts were not assets transferred in the sale.

22.

As a direct and proximate result of plaintiffs/counterdefendants' breach of Contract, and have sustained real, actual, consequential, and resulting damages.

RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, , and respectfully request that judgment be entered against the plaintiffs/counterdefendants, individually and jointly and severally, in the following manner:

(a) The Court reform the note attached hereto as Exhibit "C" to show the sum of \$ being the true and correct amount of interest due and owing for the first year of said note, and a due date of , , and interest and principal commencing on , .

(b) The Court reform the note attached hereto as Exhibit "D" to show the sum of \$ being the true and correct amount of interest due and owing for the first year of said note, and a due date of , , and interest and principal commencing on , .

(c) Compensatory, real, actual, consequential, and resulting damages for plaintiffs/counterdefendants wrongful conversion and breach of contract;

(d) Post-judgment interest and costs of this action; and

(e) Such other and further relief as the Court deems just and proper in the premises.

Respectfully submitted,

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Attorney for

Of counsel:



Telephone:  
MSB #  
Attorney for

STATE OF MISSISSIPPI  
COUNTY OF

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named \_\_\_\_\_ who after being duly sworn on oath states that the matters and facts contained in the foregoing Answer and Counterclaim are true and correct as therein stated.

SWORN TO AND SUBSCRIBED BEFORE ME, this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: