

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Frank George Rogers, individually and
derivatively as a member and on behalf of
Exodus Aircraft, LLC,

Plaintiffs,

v.

Joshua Brett Kimbrell, Liliya Shcherba
Robertson Kimbrell, Exodus Airways, LLC,
Thomas Blake Whitaker,

Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 206 Mills Avenue, Greenville, South Carolina, 29605 within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in said Complaint.

WILKINS DAVIS, LLC

/s/ Lane W. Davis

Lane W. Davis (SC Bar No. 68796)
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July 10, 2025
Greenville, South Carolina

Attorneys for Plaintiffs

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VERIFIED COMPLAINT
(JURY TRIAL DEMANDED)

Complaining of the Defendants, Plaintiff Frank Rogers (“Rogers”), on behalf of himself and derivatively on behalf of Plaintiff Exodus Aircraft, LLC (“Exodus” or “Company”), would show the Court as follows:

INTRODUCTION

1. This lawsuit involves the unlawful diversion and conversion of millions of dollars in corporate funds by Joshua Brett Kimbrell (“Josh Kimbrell” or “Kimbrell”), while acting as manager and fiduciary of Exodus.

2. With the aid of his spouse, Lilya Shcherba Roberston Kimbrell (“Lilya” or “Spouse”) and his former banker and friend, Thomas Blake Whitaker (“Whitaker”), Josh Kimbrell used a series of complex financial transactions to funnel Exodus’s corporate funds into the coffers of Exodus Airways, LLC (“Sham Exodus”), a bogus limited liability company secretly organized by Kimbrell for purposes of diverting the true Exodus’s corporate proceeds by capitalizing upon the confusion caused by the strikingly similar name intentionally selected by Kimbrell.

3. Kimbrell’s further known misdeeds included secretly and unlawfully: diverting Exodus’s corporate funds to support his political aspirations; diverting Exodus’s corporate funds for

recreational and personal uses; diverting Exodus's monies to an array of other corporate entities to evade detection by Rogers; diverting Exodus's funds to his Spouse Liliya, who has no *bona fide* affiliation with the entity whatsoever; misusing credit cards in Rogers' personal name for Kimbrell's personal benefit without Rogers' knowledge or consent; and converting Exodus's assets and allocated funds to his personal use and the use of other entities under his control.

4. Whitaker and Liliya aided and abetted Kimbrell in the abdication of his fiduciary obligations thereby facilitating his unlawful conduct, which proved systematic, long-lasting, intentional, and conducted with an utter and reckless disregard for Rogers' rights, the rights of Exodus, and the rights of affiliated investors.

PARTIES

5. Plaintiff Rogers resides in the City of Greenville in Greenville County, South Carolina.

6. Plaintiff Exodus exists as a Delaware limited liability company with a principal place of business in Upstate South Carolina.

7. Defendant Josh Kimbrell resides in the community of Boiling Springs in Spartanburg County, South Carolina.

8. Defendant Liliya Kimbrell resides in the community of Boiling Springs in Spartanburg County, South Carolina.

9. Defendant Thomas Blake Whitaker ("Whitaker") resides in the City of Simpsonville in Greenville County, South Carolina.

10. Sham Exodus exists as a South Carolina limited liability company and, upon information and belief, nowhere maintains a legitimate principal place of business.

VENUE & JURISDICTION

11. This Court has jurisdiction to hear this action pursuant to Article V, §11 of the South Carolina Constitution, S.C. Code § 14-1-80, and South Carolina common law.

12. Venue properly exists in this Court pursuant to S.C. Code § 15-7-30 because one or more Defendants reside in Greenville County, South Carolina.

13. The financial damages and corporate harms incurred by Exodus and Rogers, due to Defendants' acts and omissions, were predominantly sustained in Greenville County, South Carolina.

FACTUAL BACKGROUND

14. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

Exodus

15. Exodus offers private aircraft charter services primarily for private businesses.

16. Rogers and Kimbrell each own a 50% ownership interest in Exodus.

17. Rogers acquired his interest in Exodus after executing a Membership Interest Purchase Agreement ("MIPA"), dated October 25, 2022.

18. A true and accurate copy of the MIPA is attached hereto as **Exhibit A** and incorporated herein by reference.

19. Governed by South Carolina law, the MIPA (dated October 25, 2022) constitutes the sole corporate document ever executed by Rogers in relation to his ownership interest in Exodus.

20. Kimbrell never furnished or even asked Rogers to execute an Operating Agreement in relation to Exodus; Rogers never signed one as a result.

21. Over the ensuing two and a half years, Kimbrell served as Exodus's manager.

22. In that capacity, Kimbrell owed the following duties to both Exodus and Rogers:

- a.** a duty of loyalty and care;
- b.** a fiduciary duty to act in furtherance of Exodus's best interests;
- c.** a duty to avoid interested transactions;
- d.** a duty to avoid making decisions involving conflicts of interests;
- e.** a duty to maintain an arm's length relationship with Exodus;
- f.** a duty to ensure Exodus pays its own liabilities;
- g.** a duty to ensure the terms and conditions of all business transactions with Exodus's members, including himself, mirror terms generally available in comparable transactions;
- h.** a duty to correct any known misunderstanding regarding Exodus's separate identity from other entities such as Sham Exodus;
- i.** a duty to maintain adequate capital in light of Exodus's business purpose as an airline charter service;
- j.** a duty to refrain from competing in favor of a party with an adverse interest to Exodus;
- k.** a duty to make financial records readily available to Rogers so he could stay appraised of Exodus's financial condition;
- l.** a duty of good faith and fair dealing in relation to Exodus and Exodus's members;
- m.** a duty to refrain from competing against Exodus or assisting the Company's competitors;
- n.** a duty to avoid corporate waste.

23. For the reasons set forth below, Kimbrell violated virtually every duty he owed to Exodus and Rogers.

Kimbrell's Misdeeds & Sham Exodus

24. Exodus's financial records and corporate documents, once obtained even in abridged fashion, reflect Kimbrell has diverted in excess of \$2 Million Dollars from Exodus in approximately two and a half years.

25. A non-exhaustive list of Kimbrell's efforts to secrete Exodus's funds, as confirmed by business records, includes:

- a.** The unauthorized expenditure of Exodus's corporate funds to pay Kimbrell's political campaign expenses;
- b.** The unauthorized use of credit cards in Roger's name for Kimbrell's personal benefit;
- c.** The unauthorized expenditure of Exodus's proceeds to pay Kimbrell's personal credit cards;
- d.** The diversion of Exodus's corporate funds into PayPal accounts personally held by Kimbrell and his Spouse;
- e.** The funneling of more than \$150,000.00 to Kimbrell's Spouse, who had no affiliation with Exodus.

26. Most or all of Kimbrell's diversion of Exodus's funds involved either the mail or wire.

27. Yet, Kimbrell's most ambitious diversion of funds involved Sham Exodus (*i.e.*, Exodus Airways).

28. On April 30, 2024, Josh Kimbrell secretly formed Exodus Airways, which he actively concealed from Rogers.

29. Kimbrell chose the name Exodus Airways to prompt customers and third parties into mistakenly concluding Exodus Airways and Exodus Aircraft were the same entity so as to avoid detection of his fraudulent scheme.

30. In furtherance of his scheme, Kimbrell thereafter secretly opened bank accounts for Sham Exodus at Pinnacle Bank, where his banker-friend Whitaker worked and could assist with the diversion.

31. In the interim, with Rogers' financial support to cover overhead, Exodus Aircraft continued selling charter aircraft services invoicing its customers for those services.

32. However, when the customers paid Exodus Aircraft pursuant to its invoices, Kimbrell would re-direct payment of the incoming funds to Sham Exodus's account with Whitaker's assistance.

33. Kimbrell thereafter fraudulently concealed his diversion of Exodus's corporate monies, in part, by refusing to provide Rogers with access to the Company's financial records.

34. Kimbrell further concealed his diversion of Exodus's corporate funds by concocting a story blaming Rogers for Exodus's operating problems, which was a total fabrication.

35. The total amount of corporate funds diverted from Exodus into Sham Exodus alone exceeds \$1.1 Million Dollars.

36. At the same time he used Sham Exodus to divert funds, Kimbrell is also believed to have pursued secret business loans on Exodus's behalf.

37. The information submitted to qualified lenders in relation to such applications, upon information and belief, was falsified and materially incorrect and, on at least one occasion, included a document where Kimbrell forged Rogers' signature.

38. Thus far, based upon incomplete documentation, Rogers has identified in excess of \$2 Million dollars in unaccounted-for corporate funds diverted from Exodus by Kimbrell, his Spouse, Whitaker, and other individuals who may be joined to this lawsuit. .

39. If allowed to continue, Kimbrell's diversion of Exodus's funds will inflict irreparable harm upon the Company for which no adequate legal remedy exists.

DERIVATIVE ALLEGATIONS

40. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

41. At all times when Kimbrell undertook the acts or omissions complained of herein, Rogers possessed a fifty percent (50%) ownership interest in Exodus, which he continues to own to date.

42. At all times when Kimbrell undertook the acts or omissions complained of herein, Kimbrell owned a remaining fifty percent (50%) interest in Exodus, which he also continues to own to date.

43. All rights and harms Rogers derivatively seeks to vindicate on behalf of Exodus occurred at Kimbrell's hand, while serving in his fiduciary capacity as the Company's manager, whether alone or acting in concert with his friend, Spouse, or as-of-yet unnamed parties.

44. Such actions are set out more fully above and include but are not limited to the following:

- a. Kimbrell engaged in self-dealing and fraud;
- b. Kimbrell breached his fiduciary obligations to both Exodus and Rogers;
- c. Kimbrell breached his duty of loyalty to Exodus;
- d. Kimbrell committed fraud by omission by refusing to provide the true and accurate financial information and records to Rogers reflecting his conversion and diversion of Exodus's corporate monies;
- e. Kimbrell diverted Exodus's funds and funneled them into a separate entity he secretly organized with a substantially similar name;

- f.** Kimbrell diverted Exodus's funds to his Spouse;
- g.** Kimbrell converted Exodus's assets, including monies allocated to pay specific invoices and also using the Company's plane to generate revenues he then pocketed;
- h.** Kimbrell diverted Company funds for personal recreational use;
- i.** Kimbrell diverted Company funds to support his political ventures;
- j.** Kimbrell used credit cards in Rogers' personal name entrusted to him solely for purposes of Company expenses but instead used them for his personal benefit;
- k.** Kimbrell committed fraud on Exodus and Rogers by misrepresenting the actual financial status of the Company subsequent to his diversion of Company monies;
- l.** Kimbrell harmed Exodus by diverting corporate funds to his own personal use only to mislead third parties into believing the Company's problems arose from something Rogers did, which was untrue;
- m.** Kimbrell actively harmed Exodus by forming Sham Exodus in such manner as to promote confusion and diminish the entity's good will and reputation;
- n.** Kimbrell committed such other acts as are set out above;
- o.** Kimbrell also likely committed as-of-yet other wrongful and unlawful acts injurious to the Company, which will be unearthed during discovery.

45. Any demand on part of Rogers to Kimbrell to pursue the filing of the instant lawsuit on Exodus's behalf would prove utterly futile because such demand would ask Kimbrell to direct the filing of a lawsuit against himself and his Spouse (implicating marital property) wherein they would face substantial personal liability negating any prospect of an independent and disinterested response to such demand by Kimbrell.

46. Such a demand would require Kimbrell to make a decision on Exodus's behalf about which Kimbrell necessarily possesses a conflict of interest and cannot remain impartial.

47. Apart from Kimbrell, who cannot be disinterested under the instant facts, no other director exists and the only other member of Exodus is Rogers.

48. Because Rogers is the only other member of Exodus, he fairly and adequately represents the interests of all other members of the limited liability company apart from Kimbrell, the alleged wrongdoer.

49. Accordingly, the instant lawsuit involves exceptional circumstances where Rule 23(b)(1), SCRCF excuses any demand requirements prior to initiating a derivative lawsuit.

50. Rogers is entitled to reasonable expenses, including reasonable attorney's fees, in bringing this action pursuant to both Delaware and South Carolina law.

FOR A FIRST CAUSE OF ACTION

(Temporary Restraining Order/Preliminary Injunction/Permanent Injunction)

51. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

52. The actions of Kimbrell, Spouse, and Sham Exodus, as specified above in Paragraphs 25, 27-38, and 44 have inflicted significant harm upon Exodus.

53. The diversion of Exodus's corporate funds, if allowed to continue, places Exodus at substantial risk the Company will, at some point in the near future, lack sufficient operating capital to remain commercially viable.

54. Kimbrell's use of Sham Exodus presents a significant risk of confusion between the true Exodus and the sham entity thereby diminishing the value of Exodus's name, tarnishing its reputation, and imperiling the entity's good will with customers.

55. In addition, Kimbrell resigned as Exodus's manager but now refuses to relinquish control of the entity.

56. Plaintiffs have a high likelihood of success in this lawsuit as no *bona fide* justification can exist for Kimbrell, Spouse, and Sham Exodus to divert in excess of \$2M in corporate and personal funds.

57. Plaintiffs also have asserted an unjust enrichment claim and a breach of fiduciary duty claim against Defendants. In the absence of the issuance of preliminary injunctive relief, a substantial risk of further diversion of corporate funds exists such that Plaintiffs face a strong likelihood of losing their equitable remedy of restitution.

58. Rogers has also asserted derivative claims on behalf of Exodus, which sound in equity. Absent the issuance of preliminary equitable relief, Plaintiffs face a substantial risk of losing a meaningful remedy on behalf of Exodus sounding in equity.

59. No adequate legal remedy exists to safeguard against the foregoing harms.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

60. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

61. In his capacity as manager of Exodus, Kimbrell owed fiduciary duties to both Exodus and Rogers as set forth in Paragraph 22 above.

62. Kimbrell breached those duties by undertaking the acts and omissions set forth in Paragraphs 25, 27-38, and 44 above.

63. Due to Kimbrell's breach of fiduciary duties, Exodus and Rogers were deprived of funds rightfully belonging to them and, therefore, are entitled to restitution of all funds diverted from them.

64. Alternatively, Exodus and Rogers sustained losses and are entitled to money damages from Kimbrell in amount to be determined by a jury, along with an award of punitive damages.

FOR A THIRD CAUSE OF ACTION

(Conversion)

65. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

66. Kimbrell, Spouse, and Sham Exodus converted identifiable funds ("Converted Funds") from Plaintiffs that were allocated for specific purposes.

67. The use of such Converted Funds were without the permission of Exodus and Rogers.

68. Plaintiffs are entitled to recover actual damages from Kimbrell, Spouse, and Sham Exodus, along with legal interest from the respective dates of conversion. Because the conduct of Kimbrell, Spouse, and Sham Exodus was intentional and conducted with a reckless disregard of Plaintiffs' rights, Exodus and Rogers are likewise entitled to recover punitive damages in an amount determined by a jury.

FOR A FOURTH CAUSE OF ACTION

(Breach of Contract/Breach of Contract Accompanied By Fraud)

69. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

70. A valid and binding contract existed as between Rogers, Kimbrell, and Exodus concerning the operation of Exodus.

71. Consistent with that contract, the parties agreed Kimbrell would serve and did serve as Exodus's manager until he resigned.

72. Consistent with his role as manager, Kimbrell accepted certain duties and obligations including but not limited to fiduciary obligations.

73. Kimbrell breached his duties and obligations by diverting over \$2M to himself, Sham Exodus, and his Spouse.

74. Kimbrell's breaches of such duties and obligations were in and of themselves fraudulent acts.

75. Moreover, Kimbrell acted fraudulently by actively concealing financial information from Rogers, despite having an affirmative duty to furnish such information.

76. Kimbrell likewise formed Sham Exodus in furtherance of his fraud and corresponding contractual breaches.

77. Kimbrell similarly made fraudulent statements to investors concerning Rogers blaming him for the operational problems his fraud created for Exodus all in an effort to conceal his diversion of corporate funds, which was a breach of his contractual obligations to Rogers and Exodus in the first instance.

78. Exodus has sustained substantial damages as a result of Kimbrell's breaches and accompanying fraudulent acts.

79. Apart from the harms sustained by Exodus, Rogers has likewise sustained substantial individual damages as a result of Kimbrell's breaches and accompanying fraudulent acts.

80. Exodus and Rogers are respectively entitled to recover all actual, consequential, and special damages from Kimbrell, along with punitive damages.

FOR A THIRD CAUSE OF ACTION
(Civil Conspiracy)

81. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

82. Defendants Kimbrell, Whitaker, Liliya, and Sham Exodus combined together for the purpose of injuring Rogers and Exodus.

83. Their combination and concerted actions caused Plaintiffs to sustain special damages.

84. Kimbrell could not have diverted funds to Sham Exodus but for Whitaker's assistance inside of Pinnacle.

85. Kimbrell could not divert funds to Liliya but for her willingness to accept such funds by and through her Paypal account.

86. Sham Exodus could not receive diverted funds as a receptacle for the same but for Kimbrell's initiation of the diversion of those monies and Whitaker's assistance in transferring Exodus's monies to Sham Exodus's account.

87. The special damages incurred are the loss of funds paid by Exodus's customers but diverted to Sham Exodus instead.

88. Plaintiffs are entitled to recover their losses along with punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Unjust Enrichment)

89. The prior allegations, to the extent not inconsistent, are incorporated herein by reference.

90. Plaintiffs conferred benefits upon Kimbrell and Spouse in the form of monies diverted by them by Kimbrell, as more fully described in Paragraphs 25, 27-38, and 44 ("Diverted Funds") above.

91. Kimbrell and Spouse realized such benefits in the form of Diverted Funds.

89. Under the circumstances described hereinabove, Kimbrell and Spouse's retention of such Diverted Funds would be inequitable for them to retain the same. Accordingly, Plaintiffs are entitled to restitution from Defendants.

WHEREFORE, Plaintiffs pray to the Court for the following relief:

- A.** A Temporary Restraining Order, Preliminary Injunction, and a Permanent Injunction;
- B.** An award of all actual, consequential, and special damages in an amount to be determined by a jury;
- C.** An award of restitution;
- D.** An award of punitive damages in an amount to be determined by a jury;
- E.** Such other relief as this Court deems just and proper.

WILKINS DAVIS, LLC

/s/ Lane W. Davis
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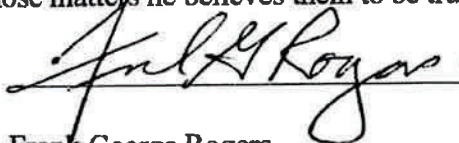
v.

VERIFICATION

Joshua Brett Kimbrell, Liliya Shcherba
Robertson Kimbrell, Exodus Airways, LLC,
Thomas Blake Whitaker,

Defendants.

PERSONALLY appeared before me the undersigned who, being duly sworn, deposes and says:
that he has read the foregoing Summons and Verified Complaint and that the factual matters and
things therein stated are true to his own knowledge, except those matters and things therein
stated upon information and belief, and to those matters he believes them to be true.

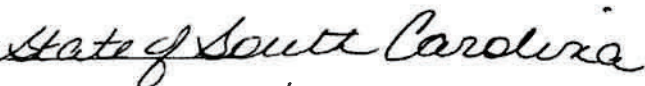

Frank George Rogers

SWORN to and subscribed before me

this 10th day of July, 2025

 (L.S.)

Notary Public for

 State of South Carolina

My Commission Expires:

4/25/2034