

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 AND OPINION ON  
PLAINTIFF'S MOTION TO DISMISS  
AMENDED COUNTERCLAIMS**

**THIS MATTER** is before the Court on Plaintiff Dwayne Miller's Motion to Dismiss Amended Counterclaims ("Motion to Dismiss" or the "Motion," ECF No. 48.) The Court, having considered the Motion to Dismiss, the parties' briefs, the arguments of counsel, the applicable law, and all appropriate matters of record, **CONCLUDES** that the Motion to Dismiss should be **DENIED**.

*Shanahan Law Group, PLLC by Kieran J. Shanahan for Plaintiff  
Dwayne Miller.*

*Green Mistretta Law, PLLC by Robert A. Smith, Stanley B. Green, and  
Dawn T. Mistretta for Defendants RedGoose, LLC d/b/a Nerds to Go  
and Philip Carter.*

Davis, Judge.

**INTRODUCTION**

1. This case involves a twist on a familiar fact pattern in this Court involving a dispute between an employer and its former employee. Here, the company asked the employee—following his resignation—to assist with the transition resulting from his departure by ensuring that other company employees

were aware of the location of key client information stored on the company's computer system. The company alleges that the employee instead used his continued access to its computer system for nefarious purposes that caused it to suffer monetary injury. The present Motion concerns the legal sufficiency of the company's allegations in support of several of its claims for relief arising from these facts.

### **FACTUAL AND PROCEDURAL BACKGROUND**

2. The Court does not make findings of fact in connection with a motion to dismiss under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure and instead recites those facts contained in the [counterclaims] (and in documents attached to, referred to, or incorporated by reference in the [counterclaims]) that are relevant to the Court's determination of the motion. *See, e.g., Window World of Baton Rouge, LLC v. Window World, Inc.*, 2017 NCBC LEXIS 60, at \*11 (N.C. Super. Ct. July 12, 2017).

3. Miller is a resident of Franklin County, North Carolina. (Am. Countercls. ¶ 1, ECF No. 47.)

4. Defendant RedGoose, L.L.C. d/b/a Nerds to Go ("NTG") is a North Carolina limited liability company with its principal place of business in Wake County, North Carolina. (Am. Countercls. ¶ 2.)

5. Defendant Philip Carter is a resident of Franklin County, North Carolina and is the franchise owner of NTG. (Am. Compl. ¶¶ 3–4, ECF No. 6.)

6. Miller worked for NTG from 26 January 2022 until his resignation on 1 June 2023. (Am. Countercls. ¶ 8.)

7. NTG is a computer services company which provides enterprise software services and is a sub-licensor of office-related computer software. (Am. Countercls. ¶¶ 13, 20.)

8. At the time of his resignation, Miller agreed (at NTG's request) to work for two additional weeks in order to ensure that NTG's employees would be able to effectively access customer information after his departure so that the company could provide continuous service to its clients. In exchange, Miller was to be compensated at his former rate of pay during the transition period. (Am. Countercls. ¶¶ 9–10.)

9. NTG asserts that Miller had no intention of actually assisting in the transition process and that, to the contrary, he agreed to NTG's request solely in order to gain continued access to proprietary information on its computer systems (including client-related information) for a new business he was starting that would compete with NTG. (Am. Countercls. ¶¶ 12–13.)

10. After obtaining access to this information, Miller contacted NTG's clients and asked them to terminate their service agreements with NTG and switch to Miller's new venture. (Am. Countercls. ¶ 13.)

11. In furtherance of this scheme, Miller sent correspondence to all of NTG's clients and included a termination form, which they could use to cancel their NTG service agreements. (Am. Countercls. ¶ 14.)

12. In addition, Miller used his network access credentials to lock out NTG employees from accessing client data and also deleted client passwords, which had the effect of preventing NTG's customers from accessing their own sites. When NTG

demanded that Miller provide the login credentials and passwords, Miller refused to hand over this information unless NTG provided him with two weeks' pay. (Am. Countercls. ¶¶ 15–17.)

13. NTG was ultimately required to hire third-party experts to gain access to its systems and reset its clients' log-in information. (Am. Countercls. ¶ 18.)

14. In addition to providing IT support for its clients, NTG also purchases wholesale software licenses and sells them to its clients, effectively creating sublicenses for which it bills its clients on a monthly basis. (Am. Countercls. ¶¶ 20–23.)

15. NTG alleges that during this same time period, Miller attempted to transfer its clients' software accounts to Miller's new venture and in some cases sold NTG's clients new software subscriptions but diverted the subscription revenue to Miller's new business. (Am. Countercls. ¶¶ 24–26.)

16. Finally, NTG asserts that Miller placed online orders for the purchase of equipment and supplies through NTG's Amazon.com account, that these purchases were not invoiced to any of NTG's customers, and that they could not be accounted for in a recent audit. (Am. Countercls. ¶ 28.)

17. NTG alleges that, as a result of Miller's wrongful actions, it lost both clients and thousands of dollars in revenue. (Am. Countercls. ¶¶ 19, 27.)

18. This lawsuit was initiated not by NTG but rather by Miller, who filed a Complaint in Wake County District Court on 14 September 2023 in which he asserted claims against NTG and Carter under the North Carolina Wage and Hour Act and

for breach of contract. (ECF No. 3.) Miller subsequently filed a First Amended Complaint in Wake County District Court on 9 November 2023. (ECF No. 6.)

19. NTG filed its initial Counterclaims on 11 December 2023, which included claims for fraud, conversion, tortious interference with contract, and unfair and deceptive trade practices (“UDTP”). (ECF No. 8.)

20. On 12 December 2023, this case was designated a complex business case and assigned to the undersigned. (ECF Nos. 1, 2.)

21. The Court subsequently entered an Order on 20 December 2023 transferring this case from the District Court Division to the Superior Court Division. (ECF No. 10.)

22. On 23 August 2024, NTG filed its Amended Counterclaims in which it added claims for computer trespass under N.C.G.S. § 14-458 and embezzlement and theft by employee. (Am. Countercls. ¶¶ 40–49, 60–67.)

23. Miller filed the present Motion to Dismiss on 23 September 2024.

24. The Motion came before the Court for a hearing on 13 November 2024 at which all parties were represented by counsel.

25. The Motion has now been fully briefed and is ripe for resolution.

### **LEGAL STANDARD**

26. In ruling on a motion to dismiss under Rule 12(b)(6), the Court may only consider the complaint and “any exhibits attached to the complaint,” *Krawiec v. Manly*, 370 N.C. 602, 606 (2018), in order to determine whether “as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon

which relief can be granted under some recognized legal theory,” *Forsyth Mem’l Hosp., Inc. v. Armstrong World Indus., Inc.*, 336 N.C. 438, 442 (1994) (cleaned up). The Court must view the allegations in the complaint “in the light most favorable to the non-moving party.” *Christenbury Eye Ctr., P.A. v. Medflow, Inc.*, 370 N.C. 1, 5 (2017) (cleaned up).

27. “It is well-established that dismissal pursuant to Rule 12(b)(6) is proper when (1) the complaint on its face reveals that no law supports the plaintiff’s claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff’s claim.” *Corwin v. British Am. Tobacco PLC*, 371 N.C. 605, 615 (2018) (cleaned up).

## ANALYSIS

28. The Court makes two preliminary observations. First, the present Motion to Dismiss is addressed solely to NTG’s counterclaims and does not implicate any of Miller’s claims for relief. Second, Miller’s Motion seeks dismissal only as to NTG’s claims for fraud, computer trespass, tortious interference with contract, and UDTP. As a result, the counterclaims for conversion and embezzlement and theft by employee are unaffected by the Motion.

### A. Fraud

29. We have previously held that

[t]o state a claim for fraud, the plaintiff must show: (1) a false representation or concealment of material fact, (2) reasonably calculated to deceive, (3) made with the intent to deceive, (4) that does in fact deceive, and (5) results in damage to the plaintiff. *Harrold v. Dowd*, 149 N.C. App. 777, 782, 561 S.E.2d 914, 918 (2002) (citing *Ragsdale v. Kennedy*, 286 N.C. 130, 138, 209 S.E.2d 494, 500 (1974)).

Rule 9(b) of the North Carolina Rules of Civil Procedure requires fraud claims to be pled with particularity. N.C. R. Civ. P. 9(b). “Mere generalities and conclusory allegations of fraud will not suffice.” *Sharp v. Teague*, 113 N.C. App. 589, 597, 439 S.E.2d 792, 797 (1994) (quoting *Moore v. Wachovia Bank & Trust Co.*, 30 N.C. App. 390, 391, 226 S.E.2d 833, 835 (1976)).

The particularity requirement of Rule 9(b) means that a plaintiff must specifically allege the time, place and content of the alleged fraudulent misrepresentation or concealment, and the identity of the person who concealed the information. See *Terry v. Terry*, 302 N.C. 77, 85, 273 S.E.2d 674, 678 (1981).

*Allran v. Branch Banking & Trust Corp.*, 2011 NCBC LEXIS 20, at \*\*8–9 (N.C. Super. Ct. July 6, 2011).

30. NTG contends that Miller misrepresented his true intentions when he agreed to assist NTG with its plan to ensure continuous service to its clients following his departure. In reality, NTG asserts, Miller had no actual intention of helping NTG in this manner and instead sought to use this computer access for his own purposes, including the solicitation of NTG’s customers for his new venture.

31. As an initial matter, the Court finds that the fraud counterclaim satisfies Rule 9(b). NTG’s counterclaim is specific as to the content of Miller’s alleged misrepresentation as well as the date and other circumstances under which it was made.

32. Miller’s primary argument is that NTG’s allegations fail to show a causal connection between Miller’s misrepresentation and the harm it allegedly suffered.

33. Specifically, Miller asserts that the essence of the asserted misrepresentation—as pled by NTG—is that he stated he would work to provide the other NTG employees with access to client-related information stored on the company’s computer network in exchange for receipt of his former salary for the ensuing two weeks when, in reality, he never intended to perform this service for NTG. Miller argues that (1) the only damages that NTG could have logically incurred from such a misrepresentation would have been the sums it paid Miller for the work it thought he was performing pursuant to their agreement, but that (2) NTG is instead claiming damages for the separate and unrelated injury resulting from Miller’s actions in taking away its clients and its ensuing loss of customers.

34. The Court finds Miller’s argument to be unavailing because it reads the fraud claim too narrowly. NTG has alleged that Miller misrepresented his agreement to accept NTG’s offer because he secretly sought computer access for the purpose of inducing the company’s clients to leave NTG and follow him to his new business. At this initial stage of the proceeding, the Court concludes that such an injury is causally related to Miller’s alleged misrepresentation. But for his false statement as to his willingness to assist NTG as requested, Miller would not have been able to obtain the computer access that he then used to accomplish the result of taking away NTG’s clients, using NTG’s proprietary information for his own purposes to the detriment of the company, “ransoming” data, and locking clients out of NTG’s systems. These allegations are enough to survive a motion to dismiss.



35. Next, Miller argues that NTG has failed to allege that it reasonably relied upon Miller’s misrepresentation. The Court disagrees.

36. NTG makes the following allegations on this issue in its Counterclaims:

- “This false representation was material to the agreement between NTG and Plaintiff—NTG would not have agreed to pay Plaintiff the equivalent of an additional two weeks of work if Plaintiff did not agree to perform vital services for NTG to aid it in transitioning its clients to other NTG employees.” (Am. Countercls. ¶ 33.)
- “The false representation was reasonably calculated to deceive Defendant into paying Plaintiff additional money and giving him continued access to NTG systems and data.” (Am. Countercls. ¶ 34.)
- “The false representation was made intentionally by Plaintiff with intent to deceive NTG.” (Am. Countercls. ¶ 35.)
- “The false representation did in fact deceive NTG. Plaintiff’s employment was terminated on Thursday, June 1, 2023 by telephone. Notwithstanding this termination, Plaintiff was paid for both Thursday and Friday, June 1-2, using vacation and holiday pay, in reliance on Plaintiff’s representation that he would work to aid NTG with the transition. Additionally, NTG did in fact continue to grant Plaintiff access to its systems and data based on that representation.” (Am. Countercls. ¶ 36.)

37. The Court is satisfied that these allegations sufficiently allege the reliance element of a fraud claim.

38. Accordingly, Miller’s Motion to Dismiss NTG’s fraud counterclaim is **DENIED.**

## **B. Computer Trespass**

39. A claim for computer trespass under North Carolina law is governed by N.C.G.S. § 14-458(a), which provides in pertinent part as follows:

Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network without authority and with the intent to do any of the following:

(1) Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network.

...

(3) Alter or erase any computer data, computer programs, or computer software.

...

(5) Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network.

N.C.G.S. § 14-458(a)(1), (3), (5).

40. For purposes of this statute, “a person is ‘without authority’ when (i) the person has no right or permission of the owner to use a computer, or the person uses a computer in a manner exceeding the right or permission[.]” N.C.G.S. § 14-458(a).

41. Miller seeks to dismiss NTG’s claim for computer trespass on the theory that because NTG voluntarily gave Miller access to its computer systems it cannot claim that he acted without authority by accessing that system. As a result, Miller argues, NTG is unable to satisfy the elements of a computer trespass claim because it admits that his access to its computer system was authorized.

42. In response, NTG contends that regardless of whether Miller was initially given permission to access the computer system, his actual *use* grossly exceeded the scope of his authority when he used that access to “lock NTG and clients

out of their systems, ransom certain data, and to steal proprietary and confidential client data.” (Am. Countercls. ¶¶ 47–49.)

43. Thus, the parties’ dispute on this issue hinges on whether North Carolina’s computer trespass statute requires that a defendant’s initial access to the computer at issue be unauthorized in order for a violation to exist or, alternatively, whether a violation can be found where the defendant uses the computer in an unauthorized manner regardless of whether his original access was permitted.

44. This Court recently adopted the latter interpretation in *Relation Ins., Inc., v. Pilot Risk Mgmt. Consulting, LLC*, 2024 NCBC LEXIS 99 (N.C. Super. Ct. July 12, 2024) in connection with a claim for computer trespass under North Carolina law. In *Relation*, we ruled that a violation of N.C.G.S. § 14-458 can occur even where the defendant’s initial access to the computer at issue was authorized.

For purposes of this statute, “a person is without authority when (i) the person has no right or permission of the owner to use a computer, *or the person uses a computer in a manner exceeding the right or permission*[,] N.C.G.S. §14-458(a) . . . . Here, *Relation* alleges that the Former Employees “used” *Relation*’s computers in a manner exceeding their rights or permission.

*Relation*, 2024 NCBC LEXIS 99, at \*124 (emphasis added).

45. Federal courts in North Carolina interpreting N.C.G.S. § 14-458(a) have reached a similar conclusion:

However, just because [the employee] had unlimited access did not mean he had unlimited authorization. While he could access all of ICP, he was only authorized to use that access to the extent it was necessary to perform his CHGYM tasks and duties. Any greater utilization of that access would exceed his “right or permission,” thus qualifying as “without authority” for purposes of the North Carolina computer trespass statute. N.C. Gen. Stat. § 14-458(a).

*CHGYM LLC, v. Unify Athletics LLC*, 2022 U.S. Dist. LEXIS 6249 (M.D.N.C. Jan. 12, 2022); *see also McKeown v. Tectran Mfg.*, 2018 U.S. Dist. LEXIS 81743, (W.D.N.C. May 14, 2018) (finding allegations sufficient to state a claim for violation of N.C.G.S. § 14-458 where a former employee, after resigning but prior to returning his work-issued laptop, uploaded his employer's documents and information to a thumb drive and then proceeded to delete those same files from his work-issued laptop).

46. Thus, because NTG has alleged that Miller exceeded his authorized use of NTG's computer system, the Court finds that it has pled a valid claim for computer trespass.

47. Miller's Motion to Dismiss is therefore **DENIED** as to NTG's counterclaim for violation of N.C.G.S. § 14-458.

### **C. Tortious Interference with Contract**

48. Our Supreme Court has articulated the elements of a tortious interference with contract claim as follows:

(1) a valid contract between the plaintiff and a third person which confers upon the plaintiff a contractual right against a third person; (2) the defendant knows of the contract; (3) the defendant intentionally induces the third person not to perform the contract; (4) and in doing so acts without justification; (5) resulting in actual damage to plaintiff.

*United Labs., Inc. v. Kuykendall*, 322 N.C. 643, 661 (1988).

48. Miller makes two primary arguments in support of his motion to dismiss this claim.

49. First, Miller argues that NTG has failed to either describe with specificity the contracts with which he allegedly interfered or attach copies of those contracts to its Counterclaims.

50. North Carolina courts have held that a claim for tortious interference with contract is not subject to a heightened pleading requirement. *See Greentouch USA Inc., v. Lowe's Cos., Inc.*, 2024 NCBC LEXIS 132, at \*20 (N.C. Super. Ct. Oct. 2, 2024). (“[C]laims of tortious interference with existing contract are not held to a heightened pleading standard but rather must only satisfy the relatively low bar of notice pleading.”).

51. Therefore, the Court’s analysis is limited to the issue of whether this claim, as pled, satisfies notice pleading. Our Supreme Court has held that “under the liberal concept of notice pleading” a plaintiff’s allegations “need only give sufficient notice of the events on which the claim is based to enable defendants to respond and prepare for trial and [be] sufficient to satisfy the substantive elements of the claim of tortious interference with contract.” *Embree Constr. Grp., Inc. v. Rafcor, Inc.*, 330 N.C. 487, 501 (1992); *see also Feltman v. City of Wilson*, 238 N.C. App. 246, 252 (2014) (“Under notice pleading, a statement of claim is adequate if it gives sufficient notice of the claim asserted to enable the adverse party to answer and prepare for trial, to allow for the application of the doctrine of *res judicata*, and to show the type of case brought.”) (cleaned up).

52. NTG alleges that it is a sub-licensor of certain office-related software and provides enterprise software services to its clients. (Am. Countercls. ¶¶ 13, 20.)

The Counterclaims also contain allegations about Miller’s awareness of NTG’s customer contracts and the steps he took to induce those clients to leave NTG and follow him to his new business venture. (Am. Countercls. ¶¶ 13–16, 75–76.) Notice pleading does not require greater detail as to the specific terms of those contracts.

53. Second, Miller contends that because there is no allegation that he was subject to a contractual covenant not to compete or a covenant not to solicit NTG’s clients, he was fully permitted to compete with NTG for clients as a business competitor. For this reason, he argues, NTG has failed to allege that he acted without justification so as to satisfy the fourth element of a tortious interference claim.

54. This Court has made clear that a defendant-competitor cannot escape liability on a tortious interference claim by arguing that it acted with justification where the competitor competed through the use of unlawful means. *See MarketPlace4 Ins., LLC v. Vaughn*, 2023 NCBC LEXIS 31, at \*35 (N.C. Super. Ct. Feb. 24, 2023) (“[T]he ‘without justification’ element of a tortious interference claim is satisfied where the defendant’s conduct involved unlawful means.”). As we stated in *MarketPlace4 Ins.*:

This limitation on a defendant’s ability to assert justification is eminently logical. After all, if a defendant could automatically escape liability on a tortious interference claim simply by claiming that it was engaged in a competitive relationship with the plaintiff during the time period referenced in the complaint, then it would be virtually impossible for a plaintiff to *ever* succeed on a tortious interference claim in this context.

*Id.* at \*35–36.

55. Here, as discussed throughout this Opinion, NTG has alleged that Miller fraudulently obtained continued access to NTG’s computer systems after his resignation in order to persuade clients to leave NTG for his own financial benefit.

In furtherance of this goal:

- Miller “solicited NTG’s clients to terminate their subscriptions and service agreements with NTG and switch their services to [Miller’s] new venture . . . . To do so, [Miller] sent NTG’s clients a form letter to send in to NTG cancelling their services agreements.” (Am. Countercls. ¶¶ 13–14.)
- “[Miller] also illegally used his administrative access credentials to NTG’s systems to lock out NTG personnel from their own systems—preventing them from accessing critical client data and infrastructure . . . . When one client contacted NTG . . . to reset passwords after being locked out of their own systems by . . . Miller, NTG was unable to access the passwords as they had been deleted by [Miller] and removed offsite . . . . When this occurred, NTG contacted [Miller] and asked him for the credentials. [Miller] admitted he had the credentials, but demanded a ransom payment in the amount of the two weeks pay that had been previously discussed in order to return the passwords back to NTG . . . . NTG did not comply with the ransom demand and instead was required to hire third-party experts[.]” (Am. Countercls. ¶¶ 15–18.)
- “[Miller] deleted Philip Carter’s administrative credentials with the [software] wholesaler, created his own new administrative credentials within NTG’s account, separately opened a separate account with the wholesaler for his new venture, and then attempted to use his NTG credentials to transfer NTG’s client accounts and software licenses from NTG to his new venture within the wholesaler’s system. . . . The wholesaler discovered this transfer process and halted it after it recognized that it was unauthorized. Thereafter, since the transfer was thwarted, [Miller] simply created new accounts for the clients he had solicited under his new venture’s account. . . . From within this new account [Miller] signed the clients up for entirely new licenses, even though the clients and NTG remained obligated to pay the wholesaler for the remaining months on their original licenses that were being sold under NTG’s account.” (Am. Countercls. ¶¶ 24–26.)

56. These allegations are more than sufficient to allege unlawful methods of competition. For these reasons, the Court **DENIES** Miller's Motion to Dismiss as to NTG's counterclaim for tortious interference with contract.

#### **D. UDTP**

57. Finally, the Court is also unpersuaded by Miller's arguments seeking dismissal of NTG's UDTP claim.

58. "To prevail on a claim of unfair and deceptive trade practices a plaintiff must show (1) an unfair or deceptive act or practice, or an unfair method of competition, (2) in or affecting commerce, (3) which proximately caused actual injury to the plaintiff or to his business." *Spartan Leasing Inc. v. Pollard*, 101 N.C. App. 450, 460–61 (1991).

59. Miller first contends that NTG has merely alleged that Miller breached his agreement with NTG following his resignation and argues that a breach of contract—absent aggravating circumstances—is insufficient to give rise to a UDTP claim. *See SciGrip, Inc. v. Osaе*, 373 N.C. 409, 427 (2020) (holding that a breach of contract claim "standing alone, did not suffice to support the maintenance of an unfair and deceptive trade practices claim"); *see also Griffith v. Glen Wood Co.*, 184 N.C. App. 206, 217 (2007) (holding that a plaintiff must show both a breach of contract and the presence of substantial aggravating circumstances to support a UDTP claim); *Branch Banking and Trust Co. v. Thompson*, 107 N.C. App. 53, 62 (1992) ("[A] mere breach of contract, even if intentional, is not sufficiently unfair or deceptive under N.C.G.S. § 75-1.1.").



60. However, as discussed above, NTG has alleged that Miller made a fraudulent misrepresentation, embezzled funds, locked NTG employees out of its computer system, tortiously interfered with its contracts with customers and clients, and used its computers in an unauthorized manner to steal its clients. These allegations, if proven, go well beyond a simple breach of contract.

61. Moreover, the Court has now declined to dismiss any of NTG's other counterclaims, and the continuing viability of at least some of those claims automatically serves as a predicate for a UDTP claim to proceed. *See, e.g., Bhatti v. Buckland*, 328 N.C. 240, 243 (1991) (holding that fraud constitutes a *per se* violation of the UDTPA); *Faucette v. 6303 Carmel Rd., LLC*, 242 N.C. App. 267, 276 (2015) (holding that a tortious conversion claim can satisfy the elements of a UDTP claim); *S. Fastening Sys. v. Grabber Constr. Prods.*, 2015 NCBC LEXIS 42 at \*28–29 (N.C. Super. Ct. Apr. 28, 2015) (“[O]ur Courts have long recognized that claims for...tortious interference with contract may form the basis of a UDTP claim.”) (cleaned up).

62. Finally, Miller argues that NTG has failed to adequately plead that Miller's acts were “in or affecting commerce” because they took place within the context of an employment relationship.

63. This Court has previously stated that

despite the expansive definition of commerce contained in Chapter 75, “the [UDTPA] is not focused on the internal conduct of individuals within a single market participant, that is, within a single business.” *White v. Thompson*, 364 N.C. 47, 53 (2010) (holding that defendant's conduct fell outside the scope of the UDTPA where he “unfairly and deceptively interacted only with his partners” and where “his conduct

occurred completely within the . . . partnership”); *see also Alexander v. Alexander*, 250 N.C. App. 511, 515 (2016) (holding that defendant’s misappropriation of corporate funds “for the benefit of himself and his family members are more properly classified as the misappropriation of funds within a single entity rather than commercial transactions between separate market participants ‘in or affecting commerce’ ”).

*Kelly v. Nolan*, 2022 NCBC LEXIS 78, at \* 24 (N.C. Super. Ct. July 19, 2022)

64. Here, however, NTG has alleged that Miller’s wrongful acts included inducing NTG’s clients to leave NTG and follow him to his new business. NTG has also asserted that Miller engaged with NTG’s software wholesaler in an attempt to shift software license agreements from NTG to Miller’s new business venture. The Court finds that such conduct, if proven, would constitute acts “in or affecting commerce.”

65. Accordingly, the Court **DENIES** Miller’s Motion to Dismiss NTG’s UDTP counterclaim.

### **CONCLUSION**

**THEREFORE, IT IS ORDERED** that Miller’s Motion to Dismiss is **DENIED**.

**SO ORDERED**, this the 26<sup>th</sup> day of November, 2024.

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