

Christi Underwood

CAUSE NO. DC-18-00398

RICHARD W. WALKER, individually and	§	IN THE DISTRICT COURT OF
derivatively on behalf of NATIONAL	§	
CENTER FOR POLICY ANALYSIS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
RONALD S. IVY, MICHAEL L. WHALEN,	§	
WILLIAM D. GROSS, ALLEN B. WEST,	§	
DENNIS McCUITION, JAMES AMOS, JR.,	§	
JACKI PICK, LARRY WEDEKIND and	§	
REAGAN STEWART,	§	_____ JUDICIAL DISTRICT
	§	
Defendants,	§	
	§	
-and-	§	
	§	
NATIONAL CENTER FOR POLICY	§	
ANALYSIS, a non-profit corporation,	§	
	§	
Nominal Defendant.	§	

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Richard W. Walker (“Walker”), individually and derivatively on behalf of National Center for Policy Analysis (the “NCPA”), and files this, his Original Petition against Ronald S. Ivy (“Ivy”), Michael L. Whalen (“Whalen”), William D. Gross (“Gross”), Allen B. West (“West”), Dennis McCuiston (“McCuiston”), James Amos, Jr. (“Amos”), Jacki Pick (“Pick”), Larry Wedekind (“Wedekind”), Reagan Stewart (“Stewart”), and nominal Defendant, NCPA, and would respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN LEVEL 3

1. Discovery in this case is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

II. PARTIES

2. Walker is an individual who resides in Tarrant County, Texas.

3. The NCPA, a nominal defendant, is a non-profit corporation with its principal place of business in Dallas, Texas. It may be served through its dissolution officer, Reagan Stewart, who may be found at Clarion Financial Services, LLC, 4809 Cole Avenue, Suite 108, Dallas, Texas 75205

4. Ivy has been a member of the NCPA board of directors from at least December 2014 until the present. He may be served at his address of 5430 Northbrook Drive, Dallas, Texas 75220.

5. Whalen has been a director of the NCPA from at least January 1, 2016 until the present. He may be served at his address of 2140 St. Andrews Circle, Bettendorf, Iowa 57222.

6. Gross was a director of the NCPA from at least December 2014 until approximately December 31, 2016. He may be served at his address of 4214 Manning Lane, Dallas, Texas 75220.

7. West was the chief executive officer of the NCPA from approximately February 1, 2015 until approximately February 1, 2016. He has been a director of the NCPA from approximately February 1, 2016 until the present. He may be served at his address of 9925 Wood Forest Drive, Dallas, Texas 75243.

8. McCouston was the interim chief executive officer of the NCPA from December 2014 through February 2015. He was a director of the NCPA from February 2015 until March 2016. He may be served at his business address of Foundation for Responsible Television, 11700 Preston Road, Dallas, Texas 75230.

9. Amos was the chief executive officer of the NCPA from February 2016 until at least July 1, 2017. He has been a member of the NCPA board of directors from February 2016 until the present. He may be served at his address of 2204 Still Water Ct., Southlake, Texas 76092.

10. Pick was an officer of the NCPA from February 2015 until July 2017. She may be served at her address of 8714 Broken Point Drive, Irving, Texas 75063.

11. Wedekind has been a member of the NCPA board of directors from February 2015 until the present. He may be served at his business address of Integranet, 1900 N. Loop West Freeway, Houston, Texas 77018.

12. Stewart has acted as the dissolution officer for the NCPA from July 1, 2017 until the present. He may be served at his business address of Clarion Financial Services, LLC, 4809 Cole Avenue, Suite 108, Dallas, Texas 75205.

III. JURISDICTION AND VENUE

13. Jurisdiction is appropriate in this Court because the damages sought are within the jurisdictional limits of this Court.

14. Venue is appropriate in Dallas County, Texas pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) because all or a substantial part of the events or occurrences giving rise to the cause of action took place in Dallas County, Texas.

IV. FACTUAL BACKGROUND

A. The NCPA

15. The NCPA is a non-profit economic think tank formed at least 30 years ago. In December of 2014, the NCPA was a vibrant institution with over \$600,000 in the bank and an estimated going concern value of at least \$2.5 million.

16. Starting in December 2014, however, Defendants Ivy, Whalen, Gross, West, McCuiston, Pick and Wedekind abdicated their fiduciary duties and their duty of care to the NCPA regarding financial oversight and fiscal prudence. These omissions include but are not limited to:

- (1) failing to guard against enterprise risk;
- (2) failing to put in place internal controls for the financial integrity of the institution;
- (3) failing to see that not only were adequate institution controls in place, but also ensuring that those controls were followed; and
- (4) failing to prudently managing future expenses to match projected cash flow.

17. On or about January 18, 2016, the NCPA officers and directors discovered the chief financial officer hired in 2015 had embezzled approximately \$1,000,000.

18. The NCPA was never able to recover from the financial mismanagement by its officers and directors in 2015 and 2016. Indeed, the NCPA's financial records show that by September of 2016, the non-profit had a negative net worth of \$1.7 million. In July 2017, the NCPA announced it was dissolving and immediately ceased to do business.

19. Walker asserts that the NCPA has been insolvent since at least September of 2016.

20. Reagan Stewart was appointed as the dissolution officer of the NCPA on or about July 1, 2017. He serves in that capacity currently. To the best of Walker's knowledge, the current board of directors consists of Ivy, West, Amos, Whalen and Wedekind.

B. Walker

21. Walker was the chief operating officer and a longtime employee of the NCPA. In December of 2014, a dispute arose regarding his employment. A Settlement Agreement ("Agreement") was executed and Walker left the employ of the NCPA on or about December 3, 2014. Under the Agreement, Walker was supposed to receive monthly payments from the NCPA.

22. When, on July 1, 2017, the NCPA announced it was dissolving, it ceased making the required payments to Walker. On September 20, 2017, Walker obtained a Judgment against the NCPA in the amount of \$160,972.83. As a result, he is one of the largest creditors of the NCPA.

23. In December 2017, after two different court orders compelling such, Walker was able to obtain some NCPA financial records and take depositions of multiple NCPA corporate representatives. It was only then that Walker became aware of the NCPA officers' and directors' breach of their fiduciary duties and duty of care to the institution in 2015 and 2016. On December 27, 2017, Walker sent a demand letter to NCPA's counsel demanding the current officers and directors investigate and prosecute claims against the officers and directors in place at the NCPA from January 15, 2015 through February 2016 for breaching their fiduciary duties to the NCPA. To the best of Walker's knowledge, to date these claims have not been investigated or prosecuted and Walker's request has been ignored.

V. CAUSES OF ACTION

A. Walker's Direct Claims for Breach of Fiduciary Duties

24. Paragraphs 1 through 23 are incorporated herein by reference as if fully set forth verbatim.

25. On or about July 1, 2017, the NCPA ceased doing business. It was insolvent. As a result, under Texas law the current NCPA officers and directors owe a fiduciary duty to Walker, a NCPA creditor. These fiduciary obligations include but are not limited to maximizing and not wasting the NCPA's assets in order to satisfy creditors' claims. One of the NCPA's principal assets is its claims against Defendants Ivy, Whalen, Gross, West, McCuiston, Pick and Wedekind for breach of their fiduciary duties and duty of care as it relates to the financial management and oversight of the NCPA in 2015 and 2016. The post-judgment testimony of the NCPA corporate

representatives, as well as a preliminary review of the NCPA's financial records, make it clear that these claims are meritorious and should be pursued. Despite that, and notwithstanding Walker's written request that the current officers and directors pursue these claims, they have refused to do so, which is a breach of Defendants Stewart, Ivy, Whalen, West, Amos and Wedekind's fiduciary obligations.

26. As a result of Defendants Stewart, Ivy, Whalen, West, Amos and Wedekind's breach of their fiduciary duties, Walker has been damaged in at least the amount of his Judgment, \$160,972.83.

B. Walker's Derivative Breach of Fiduciary Duties Claim on Behalf of the NCPA

27. Paragraphs 1 through 26 are incorporated herein by reference as if fully set forth verbatim.

28. As unearthed in the post-judgment depositions of the NCPA's representatives in December 2017, the institution has strong claims against the officers and directors in charge of the NCPA in 2015 and 2016 for breach of their fiduciary duties and duty of care as it relates to the financial oversight and management of the NCPA. Walker contends those officers and directors, Defendants Ivy, Whalen, Gross, West, McCuiston, Pick and Wedekind, totally abdicated their fiscal and fiduciary responsibilities to the institution, which caused it to degrade from an active, going concern with a value of at least \$2.5 million, to an insolvent entity which has ceased to do business.

29. Walker, as a major creditor of the NCPA, has made a written demand of the current NCPA officers and directors to prosecute these claims on behalf of the NCPA. Thus far, however, they have refused to do so. As a result, it is incumbent upon Walker to bring these claims on a derivative basis on behalf of the NCPA.

30. These claims could not have been brought beforehand because the NCPA was under the control of many of the same officers and directors who committed the breach of fiduciary duties and gross mismanagement complained of. Indeed it was only after the NCPA was forced to disclose its financial records and proffer corporate representatives that the egregious breaches of fiduciary duties and fiscal mismanagement were brought to light.

31. As a direct result of Defendants Ivy, Whalen, Gross, West, McCuiston, Pick and Wedekind's breaches of fiduciary duties and gross mismanagement, the NCPA has been destroyed. As a result, Walker seeks damages on behalf of the NCPA in the amount of its value as a going concern, which Walker estimates to be at least \$2.5 million and no more than \$7 million.

VI. ATTORNEYS' FEES

32. Pursuant to Texas law, Walker requests award of his attorneys' fees and expenses incurred in bringing a derivative action on behalf of the NCPA.

VII. JURY DEMAND

33. Walker demands a trial by jury on the legal issues described herein.

VIII. REQUEST FOR DISCLOSURE

34. Pursuant to Tex. R. Civ. P. 194.3, Defendants, Ronald S. Ivy, Michael L. Whalen, William D. Gross, Allen B. West, Dennis McCuiston, James Amos, Jr., Jacki Pick, Larry Wedekind and Reagan Stewart, are hereby requested to disclose, within fifty (50) days of service of this Request, the information or material described in Tex. R. Civ. P. 194.2.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Richard W. Walker, requests that the Defendants, Ronald S. Ivy, Michael L. Whalen, William D. Gross, Allen B. West, Dennis McCuiston, James Amos, Jr., Jacki Pick, Larry Wedekind, Reagan Stewart and nominal Defendant National Center for Policy Analysis, be cited to appear and answer, and that upon final

hearing, Walker recover judgment against the Defendants, both individually and derivatively on behalf of the NCPA, as follows:

- a. all actual damages as calculated at the time of trial;
- b. reasonable and necessary attorneys' fees and expenses;
- c. costs of court;
- d. pre- and post-judgment interest as allowed by law; and
- e. such other and further relief, both at law and in equity, to which Plaintiff may be justly entitled.

Dated: January 11, 2018

Respectfully submitted,

DEWOLF LAW



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