

STATE OF NORTH CAROLINA : IN THE GENERAL COURT OF JUSTICE  
 COUNTY OF WAKE SUPERIOR COURT DIVISION  
 09-CVS-019408

LUKE T-L KWONG.

Plaintiff

v.

L.E. WOOTEN & COMPANY,  
 a North Carolina Corporation and  
 AMOS L. MOORE, JR., DAN K. BOONE,  
 V. STEPHEN PLAYER, ROBERT  
 E. EGAN, RALPH S. MOBLEY, JR., and  
 MARC REESE, individuals

Defendants

**NOTICE OF DESIGNATION OF ACTION  
 AS MANDATORY COMPLEX BUSINESS  
 CASE UNDER N.C.G.S. §7A-45.4**

Pursuant to N.C. Gen. Stat. § 7A-45.4, L.E. Wooten & Company, Amos L. Moore, Jr., Dan K. Boone, V. Stephen Player, Robert E. Egan, Ralph S. Mobley, Jr. and Marc Reese [collectively "Defendants"] hereby designate the above-captioned action as a mandatory complex business case. In good faith and based on information reasonably available, Defendants, through undersigned counsel, hereby certify that this action meets the following criteria for designation as a mandatory complex business case pursuant to N.C. Gen. Stat. § 7A-45.4(a), and should be adjudicated in the Business Court:

- (1) The law governing corporations, partnerships, limited liability companies, and limited liability partnerships.
- (2) Securities law.
- (3) Antitrust law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- (4) State trademark or unfair competition law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- (5) Intellectual property law.
- (6) The Internet, electronic commerce, and biotechnology.

Briefly explain why the action falls within the specific categories of N.C. Gen. Stat. 7A-45.4(a) checked above, as well as any additional information you believe may be helpful to the Court in determining whether the Business Court should retain jurisdiction of this matter:

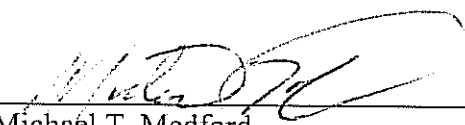
Plaintiff's allegations in his Complaint, dated September 21, 2009, relate directly to a written Shareholders' Agreement entered into between Plaintiff and other shareholders of Defendant L.E. Wooten & Company. In sum, Plaintiff alleges he has been damaged as a result of Defendants' (1) alleged breach of the

Shareholders' Agreement, (2) alleged failure to pay bonuses and/or dividends on corporate stock pursuant to the Shareholders' Agreement, (3) alleged frustration of his reasonable expectations as a shareholder in the company Defendant and (4) the individual Defendants' alleged breach of their fiduciary duties as shareholders of the corporation Defendant. The resolution of Plaintiff's allegations and purported claims in this matter will likely involve, among other things, (1) the terms, scope, interpretation and meaning of the Shareholders' Agreement, (2) the intent of the shareholders in entering into the Shareholders' Agreement, (3) matters relating to Plaintiff's reasonable expectations with respect to the Shareholders' Agreement and (4) the fiduciary duties of shareholders in a corporation. Defendants, in their answer to be filed at a later date, will deny all of Plaintiff's key allegations, including Plaintiff's allegations with respect to the terms, scope, interpretation, meaning and intent of the Shareholders' Agreement, Plaintiff's reasonable expectations and the alleged fiduciary duties of Defendants.

The interests of justice will be promoted if this dispute is heard in the N.C. Business Court. The determination of key legal and factual issues in this dispute will necessarily turn on the highly technical laws regarding the operation of corporations, fiduciary duties of shareholders in a corporation and agreements between the shareholders of corporations.

A copy of all pleadings listed in N.C. R. Civ. P. 7(a) that have been filed to date in this action are attached hereto as Exhibit A for the convenience of the Court.

This the 21<sup>st</sup> day of October, 2009.



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Michael T. Medford

N.C. State Bar No. 7227



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William S. Cherry III

N.C. State Bar No. 33860

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CERTIFICATE OF SERVICE

This is to certify that a copy of the forgoing *Notice of Designation of Action as Mandatory Complex Business Case under N.C.G.S. 7A-45.4* was served this date on counsel for all parties by forwarding a copy thereof via facsimile and enclosed in a postage-paid envelope, deposited in the United States Mail, addressed as follows:


Mark A. La Mantia  
La Mantia Law Offices, P. C.  
P. O. Box 27695  
Raleigh, North Carolina 27624  
Telephone: 919.676.5600  
Facsimile: (919) 676-6674  
*Attorneys for Plaintiff*

This is to certify that a copy of the foregoing *Notice of Designation of Action as Mandatory Complex Business Case Under N.C. Gen. Stat. §7A-45.4* was duly served this date on the following by email pursuant to N.C. Gen. Stat. 7A-45.4(b) and the General Rules of Practice of the North Carolina Rules of Business Court Rule 3.1(c):

The Honorable Ben F. Tennille  
Chief Special Superior Court Judge for Complex Business Cases  
North Carolina Business Court  
Email: [jholmes@ncbusinesscourt.net](mailto:jholmes@ncbusinesscourt.net)

The Honorable Chief Justice Sarah Parker  
Supreme Court of North Carolina  
2 East Morgan Street  
Raleigh, NC 27601  
Email: [david.f.hoke@nccourts.org](mailto:david.f.hoke@nccourts.org)

This the 21<sup>st</sup> day of October, 2009.

  
\_\_\_\_\_  
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NORTH CAROLINA

WAKE COUNTY

LUKE T-L KWONG

Plaintiff,

vs.

L.E. WOOTEN & COMPANY,  
a North Carolina Corporation, and  
AMOS L. MOORE, JR., DAN K. BOONE,  
V. STEPHEN PLAYER, ROBERT E. EGAN,  
RALPH S. MOBLEY, JR., and  
MARC REESE, individuals

Defendants.

FILED IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILE NO.: \_\_\_\_\_

COMPLAINT

(Breach of Contract, Violation of  
North Carolina Wage and Hour Act  
N.C.G.S. 95-25.1 et. seq.,  
Breach of Fiduciary Duty and  
To Compel Payment of Dividend)

Demand for Jury Trial

COMES NOW the PLAINTIFF, Luke T-L Kwong, complaining of the  
acts of Defendants, and hereby alleges and states as follows:

PARTIES, VENUE AND GENERAL  
ALLEGATIONS APPLICABLE TO ALL CLAIMS

1. Plaintiff Luke T-L Kwong (hereinafter "Plaintiff" and/or "Kwong") is, and was at all  
times material, a resident of Raleigh, Wake County, North Carolina. At all times material, and  
throughout the year 2008 and up through April 15<sup>th</sup>, 2009, Plaintiff Kwong was a shareholder of  
Defendant L.E. Wooten and Company, holding during those times some 170 shares as the owner of  
record. Plaintiff Kwong had worked for over 35 years as an employee of Wooten and tendered his  
retirement and resignation on or about September 12, 2008.

2. Upon information and belief, Defendant L.E. Wooten and Company (hereinafter  
"Wooten", "Defendant Wooten", and/or "the Company") is, and was at all times material, a North  
Carolina corporation with its principal place of business and registered office located at 120 N.

Boylan Avenue, Raleigh, North Carolina 27603.

3. Upon information and belief, Defendant Amos L. Moore, Jr. is, and was at all times material, a resident of the State of North Carolina, the President of Defendant Wooten, a Shareholder, and a Member of the Board of Directors of Defendant Wooten. In his various capacities, Defendant Moore exercised considerable control over the operations, payroll and dividend practices of Defendant Wooten and, therefore, and as a result of his positions, stood in a fiduciary position as respects the Plaintiff and other shareholders of the company, and is a "person" as that term is defined in the North Carolina Wage and Hour Act (N.C.G.S. § 95-25.1).

4. Upon information and belief, Defendant Dan K. Boone is, and was at all times material, a resident of the State of North Carolina, the Vice President of Defendant Wooten, a Shareholder and a Member of the Board of Directors of Defendant Wooten. In his various capacities, Defendant Boone exercised considerable control over the operations, payroll and dividend practices of Defendant Wooten and, therefore, and as a result of his positions, stood in a fiduciary position as respects the Plaintiff and other shareholders of the company, and is a "person" as that term is defined in the North Carolina Wage and Hour Act (N.C.G.S. § 95-25.1).

5. Upon information and belief, Defendant V. Stephen Player is, and was at all times material, a resident of the State of North Carolina, the Secretary and Treasurer of Defendant Wooten, a Shareholder and a Member of the Board of Directors of Defendant Wooten. In his various capacities, Defendant Player exercised considerable control over the operations, payroll and dividend practices of Defendant Wooten and, therefore, and as a result of his positions, stood in a fiduciary position as respects the Plaintiff and other shareholders of the company, and is a "person" as that term is defined in the North Carolina Wage and Hour Act (N.C.G.S. § 95-25.1).

6. Upon information and belief, Defendant Robert E. Egan is, and was at all times material, a resident of the State of North Carolina, the Assistant Secretary of Defendant Wooten, a Shareholder and a Member of the Board of Directors of Defendant Wooten. In his various capacities, Defendant Egan exercised considerable control over the operations, payroll and dividend practices of Defendant Wooten and, therefore, and as a result of his positions, stood in a fiduciary position as respects the Plaintiff and other shareholders of the company, and is a "person" as that term is defined in the North Carolina Wage and Hour Act (N.C.G.S. § 95-25.1).

7. Upon information and belief, Defendant Ralph S. Mobley, Jr. is, and was at all times material, a resident of the State of North Carolina, a Shareholder and a Member of the Board of Directors of Defendant Wooten. In his various capacities, Defendant Mobley exercised considerable control over the operations, payroll and dividend practices of Defendant Wooten and, therefore, and as a result of his positions, stood in a fiduciary position as respects the Plaintiff and other shareholders of the company, and is a "person" as that term is defined in the North Carolina Wage and Hour Act (N.C.G.S. § 95-25.1).

8. Upon information and belief, Defendant Marc C. Reese is, and was at all times material, a resident of the State of North Carolina, the Business Manager of Defendant Wooten, and a Shareholder of Defendant Wooten. In his various capacities, Defendant Reese exercised considerable control over the operations, payroll and dividend practices of Defendant Wooten and, therefore, and as a result of his positions, stood in a fiduciary position as respects the Plaintiff and other shareholders of the company, and is a "person" as that term is defined in the North Carolina Wage and Hour Act (N.C.G.S. § 95-25.1).

9. All acts directly related to the Plaintiff's claims occurred in Wake County, North

Carolina, and therefore this court has jurisdiction pursuant to N.C.G.S. § 1-75.4 (c), as well as N.C.G.S. § 95-25.22.

10. Venue is proper in this district in accordance with N.C.G.S. § 1-79 (a1) and (2) and N.C.G.S. § 95-25.22 as the events alleged herein have occurred in Wake County, North Carolina, and Wake County is the location of the Defendant's principal place of business.

11. Just prior to the time of his retirement and resignation from Wooten on or about September 12<sup>th</sup>, 2008, Plaintiff was employed by Wooten as a Group Leader for the Civil Engineering Department and throughout the tenure of his employment had substantially performed the duties and responsibilities of, and met or exceeded the goals and objectives of, his positions with the Company. Plaintiff's retirement and resignation from the Company was in no way initiated by the Company and bore no relationship to the Plaintiff's suitability for work or performance.

12. Plaintiff Kwong, along with other shareholders of the Company, entered into a written Shareholders Agreement in February 2005, which Agreement was intended to apply to the ownership and disposition of any shares existing at that time and thereafter. Neither the Shareholders Agreement nor the Administrative Procedures adopted by the Board of Directors pursuant thereto make or contain any reference to any separate or different classes of shares and do not contain any provisions related to the method and manner of payment of any dividends or distributions; they do provide a mechanism for the Company's repurchase of shares upon the occurrence of various events, including but not limited to a shareholder's retirement from his or her employment with the Company. Nothing in the Shareholders Agreement provides that a shareholder's rights to receive dividends or distributions or other payments based, in whole or part, on the ownership and number of shares owned by a shareholder, would be forfeited or lost for any period during which such shares

were owned by any such shareholder.

13. Throughout the time of Plaintiff's ownership of shares, and all times material, it was Plaintiff's understanding and expectation, and the custom and practices of the Company, that the shareholders of the company would receive their distributions and dividends through wage payments and bonuses made prior to the end of each calendar year and in conjunction with the declaration and payment of other bonuses payments made to employees.

14. Throughout the time of Plaintiff's ownership of shares, and all times material, it was the Plaintiff's understanding and expectation that he would be treated fairly and in a non-discriminatory manner as compared to other shareholders of the Company with respect to any dividends and distributions, and including any amounts paid through bonus wage payments, or included in or made as part of such yearly bonus payments, or otherwise.

15. Pursuant to certain terms and provisions of Defendant Wooten's employment policies, procedures, and the customs and practices in effect during the period of Plaintiff's employment, Defendant Wooten promised and represented to Plaintiff that he would be eligible to participate in and receive various bonuses in regard to the performance of the Department in which he worked and in regard to his ownership of shares of the Company.

16. Although it was understood by the Plaintiff and others that the precise calculation and declaration of the bonuses could not or would not be made until later in each year, none of the policies, practices or Agreements referenced above specifically require or provide that an individual shareholder and employee be employed by the Company at the end of a calendar year in order to be eligible to receive all or any portion of the bonus applicable to his Department and/or his shares, or provide any notification that any such bonuses and payments, or any portion thereof, will be forfeited

if an employee retires before the end of the year.

17. Prior to, and in conjunction with, the Plaintiff's decision to resign and retire and the timing thereof, the Plaintiff had discussions with various people at the company, and specifically including Defendants Boone, Reese and Moore. At no time during any of those discussions did anyone from the Defendant Wooten, or any of the individual Defendants, ever advise or inform Plaintiff Kwong that, if he retired and resigned before the end of the calendar year, he would not receive, or would forfeit:

- A. All or any pro-rated portion of any bonus declared for his Department at or before the end of the year.
- B. All or any portion of the shareholder dividends or distribution included within any bonus for the year 2008, and despite the fact that Plaintiff continued to own his shares through the end of the year and beyond.

18. In reliance on his understanding and expectations, and his dealings with Company personnel, and in light of his continued ownership of stock, the Plaintiff went ahead and gave notice of his retirement and resignation effective September 12, 2008. Plaintiff had specific communications with Defendant Boone regarding his retirement and resignation and Defendant Boone requested a letter of resignation from Plaintiff, which Plaintiff provided.

19. Plaintiff also had particular discussions with Defendant Player and Boone regarding the possible purchase of Plaintiff's stock. At no time during these discussions did any of these Defendants or anyone else from Wooten advise Plaintiff he had lost his right to receive bonus, dividends or distribution, as a result of his retirement.

20. Upon information and belief, as it had done in the past years, the Company made payments to its shareholders and employees at the Company Christmas party held in December 2008, which Plaintiff Kwong was invited to attend. Plaintiff did not receive any payment at or about that time.

21. Sometime thereafter, Plaintiff questioned and sent several communications to various Company personnel, including but not limited to Defendants Moore, Boone and Reese, about his failure to receive any payment and demanded payment accordingly.

22. Pursuant to the employment and shareholder relationships, promises, terms and/or agreements between the parties, Defendant Wooten was obligated to pay the Plaintiff the amount of any bonus wages as soon as they became calculable and no later than such amounts were paid to other employees (current or former) and shareholders accordingly, and pursuant to applicable North Carolina law (including NCGS §95-25.7).

23. On or about June 26, 2009, counsel for Plaintiff forwarded a letter to Defendant Wooten and its Counsel on behalf of Plaintiff, regarding the payment of such employment and shareholder compensation and related claims and issues (as well as other matters) and advising of Plaintiff's intent to seek additional relief as set forth under the Wage and Hour Act. A copy of such letter is attached hereto as Exhibit A.

24. Despite such requests and demands, Defendant Wooten has failed and refused to make any further payments, and has not provided any accounting or related information regarding the determination and payment of any 2008 sums to other shareholders and/or current or former employees, or any other written policies or procedures of the Company. A copy of Defendant Wooten's Counsel's letter in response is attached hereto as Exhibit B. Any further demand on the

Company and/or its Board of Directors would be futile.

25. Had Plaintiff been told or notified, or had Plaintiff had any understanding or knowledge that he would not be eligible to receive any 2008 bonuses, including any amounts related to his ownership of shares in the Company, he would have simply delayed or adjusted the date of his resignation and retirement accordingly.

**FIRST CLAIM FOR RELIEF**  
**(BREACH OF EMPLOYMENT AGREEMENT, INCLUDING COVENANT OF GOOD FAITH AND FAIR DEALING REGARDING BONUSES)**  
**(Against Defendant Wooten)**

26. Plaintiff realleges Paragraphs 1 - 24 above as if fully set forth herein.

27. Once a company wide bonus was determined for 2008, including for shareholders, Defendant Wooten was required, consistent with the principles of good faith and fair dealing existing in every contractual relationship, to treat the Plaintiff fairly and in a non-discriminatory manner, and to not act in a self-interested manner, or arbitrarily or capriciously to deny him his pro rata share of any such bonus.

28. As a result of Defendant Wooten's breach of its agreement and promises and violation of applicable law, Plaintiff has been damaged in an amount as yet fully undetermined, but within the jurisdiction of this Court, and including and not limited to the full amount of all wages and bonus to which he was due and entitled, plus interest at the legal rate from and after the date said amounts and benefits were due and payable until paid.

**SECOND CLAIM FOR RELIEF**  
**(Claims Against Defendants Pursuant to N.C.G.S. 95-25.22)**  
**(Against All Defendants)**

29. Plaintiff realleges Paragraphs 1 - 27 above as if fully set forth herein.

30. As a result of Defendant Wooten's failure to pay any bonus amounts from and after the date they became calculable, and the acts of the Defendants (and each of them) in directing and failing to pay the Plaintiff his bonus in the form of wages, and violation of applicable law, Plaintiff has been damaged in an amount as yet fully undetermined, but within the jurisdiction of this Court, and including and not limited to the full amount of all wages and bonus to which he was due and entitled, plus interest at the legal rate from and after the date said amounts and benefits were due and payable until paid.

31. As a further result of Defendant Wooten's acts, and the acts of Defendants, and each of them, in violation of applicable law, Plaintiff is entitled to liquidated damages and attorney fees, all such sums to be determined by the court pursuant to N.C.G.S. §95-25.22.

**THIRD CLAIM FOR RELIEF**  
**(Breach of Fiduciary Duty and To Compel Payment of Dividend)**  
**(Against All Defendants)**

32. Plaintiff realleges Paragraphs 1 - 27 above as if fully set forth herein.

33. By virtue of their positions within the company, and in relationship to the Plaintiff as shareholders, the individual Defendants, and each of them, had a duty to treat Plaintiff in a equal and non-discriminatory manner in regard to other shareholders owning shares of the same class as the Plaintiff and in regard to the payment of any dividends and distributions, and to exercise their respective powers and influence with the utmost good faith and in a manner intended to respect and protect the interests of Plaintiff as a minority shareholder and to pay over to him his just portion of the income and proceeds of the Company.

34. Plaintiff trusted and relied on the individual Defendants, in their respective capacities as Shareholders, Directors and Officers, and the Company to act at all times in a manner consistent with their legal duties and obligations and to treat Plaintiff in a equal and non-discriminatory manner in regard to other shareholders owning shares of the same class as the Plaintiff and in regard to the payment of any dividends and distributions, and to exercise their respective powers and influence with the utmost good faith and in a manner intended to respect and protect the interests of Plaintiff as a minority shareholder and to pay over to him his just portion of the income and proceeds of the Company.

35. As a result of Defendants' breaches of these duties and obligations and failure to pay Plaintiff his fair share of any bonus amounts and/or dividends and distributions, and violation of applicable law, Plaintiff has been damaged in an amount as yet fully undetermined, but within the jurisdiction of this Court, and including and not limited to the full amount of all dividends and distributions (whether in the form of wages and bonus amounts or otherwise) to which he was due and entitled, plus interest at the legal rate from and after the date said amounts and benefits were due and payable until paid.

36. The acts of the Defendants, and each of them, in violating their respective duties to the Plaintiff were intentional and willful and in reckless disregard of the Plaintiff's rights, and of the type that should be deterred in a civilized society, and Plaintiff is therefore entitled to punitive damages in an amount to be determined by the Court or jury as appropriate under applicable law.

37. Plaintiff is further entitled to his reasonable attorney fees and costs as necessary to pursue this Claim for Relief under applicable law, including but not limited to N.C.G.S. §55-6-40(h).

WHEREFORE, Plaintiff prays this Court grant the following relief:

1. For judgment in favor of the Plaintiff and against Defendant Wooten on Plaintiff's First Claim for Relief, in an amount as yet fully undetermined but including:

a) Plaintiff's unpaid bonus and wages, plus interest at the legal rate from and after the date said amounts and benefits were due and payable until paid;

2. For judgment in favor of the Plaintiff and against Defendants, and each of them, on Plaintiff's Second Claim for Relief, in an amount as yet fully undetermined but including:

a) Plaintiff's unpaid bonus and wages, plus interest at the legal rate from and after the date said amounts and benefits were due and payable until paid;

b) Liquidated damages and attorney fees, pursuant to N.C.G.S. §95-25.22, all such sums to be determined by the Court or jury as appropriate.

3. For judgment in favor of the Plaintiff and against Defendants, and each of them, on Plaintiff's Third Claim for Relief, in an amount as yet fully undetermined but including:

a) Plaintiff's unpaid dividends and distributions, plus interest at the legal rate from and after the date said amounts (whether in the form of bonus and wage payments and benefits, or otherwise) were due and payable until paid;

b) Punitive damages and attorney fees, pursuant to applicable law, all such sums to be determined by the Court or jury as appropriate.

4. On all or any such Claims, for Plaintiff's reasonable costs and fees incurred in pursuing this action.

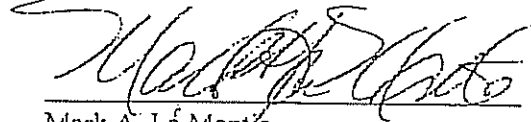
5. On all or any such Claims, for such other relief as this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

The Plaintiff hereby demands a jury trial on all issues permitted by law.

DATED: This 21<sup>st</sup> day of September, 2009.

LA MANTIA LAW OFFICES, P.C.



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