DEFENDANTS NASW ASSURANCE SERVICES, INC. AND NASW INSURANCE COMPANY, INC. COUNTERCLAIMS AGAINST PLAINTIFF PREFERRA AND THIRD-PARTY CLAIM AGAINST ANTHONY BENEDETTO

Counter-Plaintiffs/Third-Party Plaintiffs, NASW Assurance Services, Inc. ("ASI") and NASW Insurance Company, Inc. ("NASWIC"), pursuant to Federal Rule of Civil Procedure 13, hereby file their counterclaims against Counter-Defendant, Preferra Insurance Company Risk Retention Group f/k/a NASW Risk Retention Group, Inc. ("Preferra"), and pursuant to Federal Rule of Civil Procedure 13(h) and 14, hereby file their third-party claim against Third-Party Defendant Anthony Benedetto ("Benedetto"), and for their causes of action state as follows:[1]

PRELIMINARY STATEMENT

Preferra claims that Defendants disrupted the Insurance Program and now owe it money following new leadership for Defendants in January 2023. In truth, it was Preferra and Benedetto, who worked for Preferra, ASI, and NASWIC, who sought to disrupt the Insurance Program—for their financial benefit at the expense of Defendants—and began working to do so before any new leadership for Defendants.

ASI and NASWIC's claims arise out of contractual and other promises made by Preferra, but then broken by Preferra to avoid paying money owed to Defendants and divert value to Preferra. In material part, Preferra choose to avoid its legal obligations with the help of Benedetto and perhaps others who violated fiduciary and other duties to ASI and NASWIC. As a result of

[1] The denial or postponement of a Rule 12(b) motion delays the deadline to serve a responsive pleading by up to 14 days after the Court's notice of action to deny or postpone the motion; however, the Federal Rules of Civil Procedure do not prohibit the earlier service of a responsive pleading—such as an answer—provided that, the Rule 12(b) motion "must be made before pleading if a responsive pleading is allowed." Fed. R. Civ. P. 12(a)(4)(A) and 12(b). Any answer served must include compulsory counterclaims and may include permissive counterclaims. *See* Fed. R. Civ. P. 13(a) and (b); Fed. R. Civ. P. 13(h) (joining persons as parties to counterclaims). Defendants are not waiving their arguments to dismiss Plaintiff's claims set forth in their previously filed Rule 12(b)(6) motion by also serving their answer, affirmative defenses, counterclaims, and third-party claim earlier than allowed.

Benedetto's switching sides and Preferra's wrongdoing, ASI and NASWIC sustained significant damages and continue to suffer harm. ASI and NASWIC countersue for breach of contract, breach of fiduciary duty, aiding and abetting, and an accounting.

THE PARTIES

1. Counter-Plaintiff/Third-Party Plaintiff NASW Assurance Services, Inc. is a Delaware corporation that maintains its principal place of business at 50 Citizens Way, Suite 304, Frederick, Maryland 21701. ASI is a wholly owned subsidiary of National Association of Social Workers, Inc. ("NASW"), one of the largest membership organizations for professional social workers.[2]

2. Counter-Plaintiff/Third-Party Plaintiff NASW Insurance Company, Inc. is a District of Columbia corporation with its principal place of business at 50 Citizens Way, Suite 304, Frederick, Maryland 21701. NASWIC is a wholly owned subsidiary of ASI.

3. Counter-Defendant Preferra Insurance Company Risk Retention Group, f/k/a NASW Risk Retention Group, Inc. is a District of Columbia corporation with its principal place of business in Washington, D.C. As a Risk Retention Group ("RRG") within the meaning of 15 U.S.C. § 3901, Preferra is owned by its policyholders, as required by 15 U.S.C. § 3901(a)(4)(E)(i).[3]

4. Third-Party Defendant Anthony Benedetto resides in Middletown, Maryland, and is Preferra's Chief Executive Officer. At all relevant times, Benedetto served as CEO for ASI, NASWIC, and Preferra and served on various company boards of directors.

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[2] NASW was named by Preferra as a defendant in this action, however, it is not a party to the counterclaims or third-party claim.

[3] "Preferra" is used throughout the pleading for consistency, however, the NASW Risk Retention Group, Inc. did not change its name to Preferra Insurance Company Risk Retention Group until January 2023, and therefore references in the pleading to Preferra before January 2023 concern the then named entity, NASW Risk Retention Group, Inc.

5. Upon information and belief, other persons presently unknown to ASI and NASWIC worked with or for Benedetto and/or Preferra and may have breached fiduciary duties owed to ASI or NASWIC, conspired with Benedetto to harm ASI or NASWIC, or provided substantial assistance or encouragement to Benedetto to harm ASI or NASWIC, and potentially include, on information and belief, such persons as Helen Maleady (former ASI CFO) and Leonard Clapp (former NASWIC CFO). ASI and NASWIC will amend their claims to include any such additional persons upon further investigation and as discovery proceeds.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the counterclaims and third-party claim pursuant to 28 U.S.C. § 1367(a), as they are related to claims in the action within such original jurisdiction that they form part of the same case or controversy.

7. This Court has personal jurisdiction over Preferra because it is a District of Columbia corporation and, directly and by agents, transacted business in the District of Columbia, contracted to insure persons in the District of Columbia, caused tortious injury in the District of Columbia, and consented to this Court's jurisdiction by filing its Complaint here.

8. This Court has personal jurisdiction over Benedetto because he, directly and by agents, and through his role as officers and/or directors of the corporate parties, transacted business in the District of Columbia, contracted to insure persons in the District of Columbia, and caused tortious injury in the District of Columbia.

9. Counter-Defendant and Third-Party Defendant have sufficient minimum contacts with the District of Columbia such that this district has specific jurisdiction over them. They engaged in the privilege of conducting business in the District of Columbia, and ASI/NASWIC's claims arise out of those activities. The exercise of personal jurisdiction would not offend the

notions of fair play and substantial justice, as Counter-Defendant and Third-Party Defendant engaged in deliberate significant activities in the District of Columbia.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events, actions, or omissions giving rise to these claims occurred in the District of Columbia.

FACTUAL BACKGROUND

I. The Insurance Program

11. This action involves an insurance program (the "Insurance Program") established for social workers, many of whom are NASW members.

12. The Insurance Program was developed by NASW's subsidiaries, ASI and NASWIC, which formed and funded NASWRRG (now Preferra) to provide professional liability insurance coverage tailored to the needs of social workers.

13. The Insurance Program comprised NASW subsidiaries and Preferra performing distinct yet complementary roles: (i) Preferra, underwriting policies and handling claims; (ii) ASI, providing marketing, administrative, and operational support to Preferra; and (iii) NASWIC, a captive reinsurer assuming a share of Preferra's underwriting risk.

14. The Insurance Program was created in this way so that ASI, NASWIC, and Preferra would all work together to provide insurance products and services to NASW's social worker members.

II. The Contracts

15. ASI, NASWIC, and Preferra entered into various contracts in connection with the Insurance Program. The relevant contracts are discussed below.

A. The Surplus Note Agreements

16. In 2012, ASI loaned Preferra $1 million under a Subordinated Surplus Note Agreement and corresponding Subordinated Note (together, the "2012 Note"), which accrues

interest payable annually in arrears on December 1, and matures December 1, 2037. *See* 2012 Note (with amendments) attached as Ex. 1.

17. In 2015, ASI loaned Preferra $3.5 million under a similar Subordinated Surplus Note Agreement and Note (together, the "2015 Note"), which accrues interest payable annually in arrears on December 1, and matures December 1, 2040. *See* 2015 Note (with amendments) attached as Ex. 2.

18. In 2020, NASWIC loaned Preferra $5,796,343 under another Subordinated Surplus Note Agreement and Note (together, the "2020 Note"), which accrues interest payable annually in arrears on December 1, and matures December 1, 2030. *See* 2020 Note (with amendments) attached as Ex. 3.

19. Each of the 2012, 2015, and 2020 Notes (collectively, the "Notes") contains, at paragraph 5, an acceleration clause providing that "[d]efault by Borrower [*i.e.*, Preferra] in the payment of interest or principal may cause the entire amount to be immediately due and payable."

20. Each of the Notes also contains lender rights to appoint or nominate persons to Preferra's Board of Directors.

B. The Reinsurance Agreement

21. In 2012, NASWIC and Preferra entered into the Quota Share Reinsurance Agreement (the "Quota Share Agreement"). *See* Quota Share Agreement (with amendments) attached as Ex. 4.

22. Pursuant to Article 4.01 of the Quota Share Agreement, Preferra "shall pay" a "Premium" to NASWIC, originally calculated as "twenty-four percent (24%) of the Gross Net Written Premium due for Policies Reinsured." *Id.* at Art. 4.01.[4]

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[4] The Quota Share Agreement defines "Gross Net Written Premium" as the amount: (1) "equal to the premium due to [Preferra] for the Policies Reinsured, less" (2) return premium paid or payable

23. The Quota Share Agreement remains in effect until terminated by either party in accordance with Article 8.02.

24. Article 8.02 of the Quota Share Agreement provides that either party may terminate the agreement immediately if, for example, the other party breaches a material obligation and fails to cure within ten (10) business days of written notice. *See* Ex. 4, Art. 8.02.

C. The Administrative Services Agreements

25. In 2018, ASI and Preferra entered into a Management and Administrative Services Agreement (the "2018 Services Agreement"). *See* 2018 Services Agreement, attached as Ex. 5.

26. Under the 2018 Services Agreement, ASI, as administrator, provided Preferra with administrative and marketing services and Preferra reimbursed for same.

27. Under the 2018 Services Agreement, ASI owned the Professional Liability Insurance book of business (including related data such as membership information, policy details, renewals, and expirations).

28. In 2022, ASI and Preferra entered into an Administrative Services Agreement (the "2022 Services Agreement"). *See* 2022 Services Agreement (with amendments) attached as Ex. 6.

29. Under the 2022 Services Agreement, ASI, as administrator, continued to provide Preferra with administrative and marketing services and Preferra reimbursed for same, but at lower amounts than under the 2018 Services Agreement.

30. Under the 2022 Services Agreement, ASI no longer owned the Professional Liability Insurance book of business (including related data such as membership information,

for the Policies Reinsured, less (3) premiums paid by [Preferra] for insurance that inures to the benefit of [NASWIC]. *See* Ex. 4 at 2. The Quota Share Agreement defines "Policies Reinsured" as "all policies" subject to reinsurance. *See id.* at Art. 2.01 & Sched. 2.01.

policy details, renewals, and expirations). Instead, Preferra owned the book of business according to the agreement.

III. Disruption of the Insurance Program and Diversion of Value to Preferra

31. Preferra, with the help of Benedetto and perhaps others, materially changed the Insurance Program that unfairly favored Preferra's interests over NASW, ASI, and NASWIC.

32. For example, as stated above, the 2022 Services Agreement superseded the 2018 Services Agreement, and as a result, Preferra not only paid less to ASI for administrative and marketing services but took over the Professional Liability Insurance book of business from ASI.

33. Moreover, the 2022 Services Agreement weakened the noncompetition clause in the prior agreement by granting both Preferra and ASI shared rights to policy information, and by removing the post-termination restriction that had prevented Preferra from providing Professional Liability Insurance.

34. Further, amendments to the 2022 Services Agreement allowed Preferra to assume marketing functions at any time and cease paying ASI.

35. In 2023 and 2024, Preferra attempted to also change the reinsurance relationship between it and NASWIC under the then existing (and continuing) Quota Share Agreement.

36. For example, Preferra purported to grant itself administrator rights over NASWIC in an Administrative Service Agreement, effective July 1, 2023, that obligated NASWIC to make payments or reimbursements to Preferra, including an annual payment of $200,000 that increased each year.

37. Preferra purported to change the Quota Share Agreement with an Excess of Loss Reinsurance Agreement, effective January 1, 2024, that would reduce payments to NASWIC and allow Preferra to terminate the reinsurance arrangement altogether simply upon 120 days' written

notice. This stood in stark contrast to the Quota Share Agreement, which expressly prohibited Preferra from terminating absent a material breach by NASWIC.

38. During 2022-2024, Preferra solicited and/or hired key ASI and/or NASWIC employees, including Lucinda Branaman, Deana Palmer, and Bonnie Roush. To secure their departure from ASI and/or NASWIC, Preferra, through Benedetto and perhaps others, offered the employees generous—yet unauthorized—severance packages payable by ASI and/or NASWIC that violated established compensation policies and practices.

39. Similarly, and during this same period, Preferra, through Benedetto and perhaps others, changed Benedetto's employment agreements with ASI and NASWIC by increasing his compensation and benefits and allowing Benedetto to receive generous—yet unauthorized—severance and benefits even if he worked for Preferra but not ASI or NASWIC.

40. Preferra, through Benedetto and perhaps others, also failed to pay royalties due to NASW and/or ASI for use of their tradenames, trademarks, and logos. Preferra has admitted that hundreds of thousands of dollars in royalties were due but delayed payment unless and until a separate contract was formed between NASW and Preferra, which never happened, allowing Preferra to avoid paying anything for use of NASW and/or ASI intellectual property.

41. All of the foregoing changes disrupted the Insurance Program and unfairly diverted value from ASI and NASWIC to Preferra.

IV. Benedetto's Role in Disruption of the Insurance Program

42. From at least 2016 through the end of 2023, Benedetto served as CEO for all three companies, ASI, NASWIC, and Preferra, and sat on various company Boards of Directors in a non-voting capacity.

43. On January 5, 2024, following his December 2023 removal from NASWIC and/or ASI's Boards, Benedetto purported to resign as the CEO for both ASI and NASWIC.

44. ASI and NASWIC rejected the resignation and terminated Benedetto for cause because he, among other things, misled them and caused ASI and/or NASWIC to enter into unfair and unauthorized agreements such as the 2022 Services Agreement, the 2024 Excess of Loss Reinsurance Agreement, and severance agreements with numerous ASI and NASWIC employees.

45. Benedetto continues to serve as Preferra's CEO and a member of its Board of Directors.

46. Benedetto failed to properly notify, advise, or secure the approval of ASI or NASWIC of the contractual and other changes to the Insurance Program that diverted value away from ASI and NASWIC to Preferra.

47. Benedetto, while serving as an officer for ASI and NASWIC, transformed the Insurance Program relationship so that Preferra became the more dominant player: *e.g.*, owning the Professional Liability Insurance book of business, paying less to ASI and NASWIC for administration and reinsurance services, assuming administrator reinsurance rights over NASWIC, lessening ASI and NASWIC lender rights under the Notes, securing the departure of key ASI and NASWIC employees over to Preferra's side, and avoiding intellectual property royalty payments due to NASW and/or ASI.

V. Preferra's Contractual Breaches

48. Preferra is in default under the Notes. It has failed to pay the required annual interest payments by December 1, 2024.

49. Pursuant to the acceleration clause in each of the Notes, "[d]efault by Borrower [*i.e.*, Preferra] in the payment of interest or principal may cause the entire amount to be immediately due and payable."

50. ASI and NASWIC demand full payment under the Notes.

51. Preferra has also failed to comply with ASI and NASWIC's nomination rights under the Notes, which rights were exercised on November 13, 2024—for nine seats on Preferra's Board of Directors—but wrongfully rejected by Preferra on November 21, 2024.

52. Preferra is also in default under the 2012 Quota Share Agreement. It has failed to pay, and will continue to fail to pay, NASWIC the required premiums due since Preferra's purported termination or replacement of that agreement.

53. Preferra is also in default under the 2022 Services Agreement. It has failed to pay ASI the required reimbursement for marketing services provided to Preferra.

COUNT I
(BREACH OF CONTRACT UNDER THE 2012 NOTE)
ASI v. Preferra

54. This paragraph incorporates by reference the prior paragraphs as if fully set forth herein.

55. The 2012 Note is a valid and binding contract between ASI and Preferra.

56. ASI materially performed its obligations to Preferra under the 2012 Note.

57. Preferra has materially breached its obligations to ASI under the 2012 Note by, among other things, failing to pay interest due (approximately $24,000 as of December 1, 2024) and thereby accelerating full payment of the note and failing to permit ASI to nominate voting directors to the Preferra Board of Directors.

58. As a direct and proximate result of Preferra's material breaches of contract, ASI has suffered damages in the amount of unpaid interest and at least $1 million in principal under the acceleration clause, as well as in the form of an inability to exercise nomination rights to Preferra's Board of Directors.

COUNT II
(BREACH OF CONTRACT UNDER THE 2015 NOTE)
ASI v. Preferra

59. This paragraph incorporates by reference the prior paragraphs as if fully set forth herein.

60. The 2015 Note is a valid and binding contract between ASI and Preferra.

61. ASI materially performed its obligations to Preferra under the 2015 Note.

62. Preferra has materially breached its obligations to ASI under the 2015 Note by, among other things, failing to pay interest due (approximately $229,000 as of December 1, 2024) and thereby accelerating full payment of the note and failing to permit ASI to nominate voting directors to the Preferra Board of Directors.

63. As a direct and proximate result of Preferra's material breaches of contract, ASI has suffered damages in the amount of unpaid interest and at least $3.5 million in principal under the acceleration clause, as well as in the form of an inability to exercise nomination rights to Preferra's Board of Directors.

COUNT III
(BREACH OF CONTRACT UNDER THE 2020 NOTE)
NASWIC v. Preferra

64. This paragraph incorporates by reference the prior paragraphs as if fully set forth herein.

65. The 2020 Note is a valid and binding contract between NASWIC and Preferra.

66. NASWIC materially performed its obligations to Preferra under the 2020 Note.

67. Preferra has materially breached its obligations to NASWIC under the 2020 Note by, among other things, failing to pay interest due (approximately $294,000 as of December 1, 2024) and thereby accelerating full payment of the note and failing to permit NASWIC to nominate voting directors to the Preferra Board of Directors.

68. As a direct and proximate result of Preferra's material breaches of contract, NASWIC has suffered damages in the amount of unpaid interest and at least $5.7 million in principal under the acceleration clause, as well as in the form of an inability to exercise nomination rights to Preferra's Board of Directors.

COUNT IV
(BREACH OF CONTRACT UNDER THE QUOTA SHARE AGREEMENT)
NASWIC v. Preferra

69. This paragraph incorporates by reference the prior paragraphs as if fully set forth herein.

70. The Quota Share Agreement is a valid and binding contract between NASWIC and Preferra.

71. NASWIC has materially performed its obligations to Preferra under the Quota Share Agreement.

72. Preferra has materially breached its obligations to NASWIC under Article 4.01 of Quota Share Agreement by failing to pay NASWIC the required premiums due since Preferra's purported termination or replacement of that agreement.

73. Further, Preferra has never provided written notice to NASWIC that NASWIC has materially breached the Quota Share Agreement or provided NASWIC with the opportunity to cure any purported breach of the Quota Share Agreement, pursuant to Article 8.02 of the Quota Share Agreement.

74. Instead, Preferra has merely alleged in the Complaint that Preferra and NASWIC "replaced" the Quota Share Agreement with the 2024 Excess of Loss Reinsurance Agreement that Benedetto and Clapp executed on NASWIC and Preferra's behalf, effective on January 1, 2024—four days before Benedetto and Clapp then terminated that same agreement on January 5, 2024.

75. The Quota Share Agreement was not "replaced" by the 2024 Excess of Loss Reinsurance Agreement and is still in force because Preferra never terminated the Quota Share Agreement in accordance with Article 8.02 of the Quota Share Agreement.

76. As a direct and proximate result of Preferra's material breaches of contract, NASWIC has suffered damages since Preferra's purported termination or replacement of the Quota Share Agreement in the amount of at least $9 million for 2024, and continuing thereafter.

COUNT V
(BREACH OF CONTRACT UNDER THE 2022 SERVICES AGREEMENT)
ASI v. Preferra

77. This paragraph incorporates by reference the prior paragraphs as if fully set forth herein.

78. The 2022 Services Agreement is a valid and binding contract between ASI and Preferra.

79. ASI has materially performed its obligations to Preferra under the 2022 Services Agreement.

80. Preferra has materially breached its obligations to ASI under Paragraphs 1 and 8 of the 2022 Services Agreement by failing to "pay directly or reimburse" ASI for the marketing expenses and costs that ASI incurred on Preferra's behalf between 2022 and 2024.

81. As a direct and proximate result of Preferra's material breaches of contract, ASI has suffered damages in the amount of at least $1 million.

COUNT VI
(ACCOUNTING)
ASI and NASWIC v. Preferra

82. This paragraph incorporates by reference the prior paragraphs as if fully set forth herein.

83. The Insurance Program was created so that ASI, NASWIC, and Preferra would all work together to provide insurance products and services to NASW's social worker members.

84. Toward this end, ASI, NASWIC, and Preferra entered into various contracts in connection with the Insurance Program.

85. Unfortunately, Preferra, with the help of Benedetto and perhaps others, disrupted the Insurance Program and unfairly diverted value away from ASI and NASWIC to Preferra through, among other things, changed contractual relationships as described above.

86. The full extent of contractual and other damage to ASI and NASWIC is unknown because of the complexity of the parties' interrelated contracts, officers, and accounts.

87. As a result, and to achieve justice, ASI and NASWIC are entitled to and request an accounting from Preferra, as to any and all information concerning amounts and property owed and not paid or turned over to them.

COUNT VII
(BREACH OF FIDUCIARY DUTY AGAINST BENEDETTO)
ASI and NASWIC v. Benedetto

88. This paragraph incorporates by reference the prior paragraphs as if fully set forth herein.

89. As CEO of ASI and NASWIC and a director of NASWIC and/or ASI, Benedetto owed both entities fiduciary duties of care, good faith, and loyalty.

90. Rather than maintaining the intended equilibrium of the Insurance Program—through which ASI, NASWIC, and Preferra would all benefit—Benedetto, while simultaneously serving as CEO of ASI, NASWIC, and Preferra (and serving on company boards of directors), orchestrated a scheme to sever and restructure the existing relationships. He chose sides and picked Preferra over ASI and NASWIC. His actions were unfair to ASI and NASWIC and shifted

economic benefits and corporate opportunities to Preferra, where he continued and continues to hold authority as CEO, at the expense of ASI and NASWIC.

91. As detailed above, Benedetto breached his fiduciary duties by systematically dismantling ASI's and NASWIC's contractual and other rights, diverting their financial interests to Preferra, and exploiting their goodwill.

92. In furtherance of this scheme, Benedetto altered contractual and other agreements to Preferra's benefit, in violation of his fiduciary duty and other common law obligations, including duties of care, good faith, and loyalty, to ASI and NASWIC. These changes included, but were not limited to:

a. <u>Shifting Ownership of the Book of Business</u>. The 2022 Services Agreement transferred the Professional Liability Insurance book of business—and the accompanying policyholder data—from ASI to Preferra, thereby stripping ASI of a key asset.

b. <u>Lowering Preferra's Payment Obligations</u>. The 2022 Services Agreement reduced Preferra's obligation to contribute to shared payroll and administrative expenses from 13.5% to 10%, thereby directly diminishing ASI's revenue streams.

c. <u>Weakening Competitive Protections</u>. The 2022 Services Agreement diluted the noncompetition safeguards from the earlier services agreement so that both Preferra and ASI had equal access to policy information and Preferra could continue offering Professional Liability Insurance after termination.

d. <u>Undermining Reinsurance Rights</u>. The 2024 Excess of Loss Reinsurance Agreement, albeit unauthorized and short lived, effectively reduced NASWIC's premium share and granted Preferra new, unilateral termination rights that did not exist under the

Quota Share Agreement, bypassing the original contractual protections and materially harming NASWIC's interests.

e. Extracting Employees with Generous Severance Packages. Benedetto solicited key ASI and NASWIC employees to leave for Preferra and offered them generous—yet unauthorized—severance packages payable by ASI and/or NASWIC that violated established compensation policies and practices generous. This included his own severance arrangements whereby, through 2023 amendments to his employment agreements with ASI and NASWIC, Benedetto secured increased compensation and benefits (*e.g.*, $5 million split-dollar life insurance covering himself and his wife) that survived termination even if he worked for Preferra only.

f. Avoiding Preferra's Royalty Obligations. Benedetto caused Preferra to avoid paying royalties due to NASW and/or ASI for use of their tradenames, trademarks, and logos. This benefitted Preferra at the expense of NASW and/or ASI.

93. Benedetto also failed to properly notify, advise, or secure the approval of ASI or NASWIC of the contractual and other changes to the Insurance Program that diverted value away from ASI and NASWIC to Preferra.

94. Benedetto's actions, including his self-dealing, were willful, malicious, intentional, and taken in bad faith. He undertook them to favor himself and Preferra over the ASI and NASWIC companies he served and to inflict economic harm on ASI and NASWIC.

95. As a direct and proximate result of Benedetto's breaches of his fiduciary duties, ASI and NASWIC have suffered damages in an amount to be determined at trial and are entitled to punitive damages in an amount to be determined at trial, as well as equitable relief allowed by law.

COUNT VIII
(AIDING AND ABETTING BREACH OF FIDUCIARY DUTY AGAINST PREFERRA)
ASI and NASWIC v. Preferra

96. This paragraph incorporates by reference all prior paragraphs as if fully set forth herein.

97. Preferra knowingly aided and abetted Benedetto and perhaps others in breaching fiduciary duties. Preferra's involvement was integral to orchestrating and executing the combined scheme by which ASI's and NASWIC's contractual and other rights were dismantled, their financial interests diverted, and their goodwill exploited for Preferra's gain.

98. At all relevant times, Preferra knew and understood that Benedetto and perhaps others were agents and fiduciaries of ASI and NASWIC, holding positions such as CEO, CFO, and director, and thus owed duties of care, good faith, and loyalty.

99. Preferra knew that the Insurance Program's structure—encompassing mutually beneficial contracts, established rights, and shared objectives—was designed to promote the profitability and stability of not only Preferra but also ASI, NASWIC, NASW and its members.

100. Preferra also knew that Benedetto and perhaps others, as fiduciaries, were obligated to act in the best interests of ASI and NASWIC. But Preferra benefited from the fact and knew that Benedetto and perhaps others did not do so, with Preferra's substantial assistance and encouragement.

101. For example, as stated above, Preferra used Benedetto and perhaps others to transform the Insurance Program relationship so that Preferra became the more dominant player: *e.g.*, owning the Professional Liability Insurance book of business and paying less to ASI under the 2022 Service Agreement (executed by Benedetto on behalf of ASI); paying less to NASWIC under the 2024 Excess of Loss Reinsurance Agreement (executed by Benedetto on behalf of Preferra); causing NASWIC to pay new administration fees to Preferra under an Administrative

Service Agreement, effective July 1, 2023 (executed by Benedetto on behalf of Preferra); and securing the departure of key ASI and NASWIC employees over to Preferra's side.

102. On information and belief, Preferra also provided Benedetto and perhaps others financial, strategic, legal, and other support to effectuate the aforesaid transformation of the Insurance Program to the detriment of ASI and NASWIC.

103. On information and belief, Preferra was aware of its actions to substantially assist and encourage Benedetto and perhaps others to harm ASI and NASWIC.

104. Preferra's actions were willful, malicious, intentional, and taken in bad faith.

105. As a direct and proximate result of Preferra's conduct, ASI and NASWIC have suffered damages in an amount to be determined at trial and are entitled to punitive damages in an amount to be determined at trial, as well as equitable relief allowed by law.

PRAYER FOR RELIEF

WHEREFORE, Counter-Plaintiffs/Third-Party Plaintiffs respectfully request that the Court enter a judgment:

A. Awarding compensatory damages and specific performance and/or injunctive relief in favor of ASI against Preferra for breach of contract under the 2012 and 2015 Notes.

B. Awarding compensatory damages and specific performance and/or injunctive relief in favor of NASWIC against Preferra for breach of contract under the 2020 Note.

C. Awarding compensatory damages in favor of NASWIC against Preferra for breach of contract under the Quota Share Agreement.

D. Awarding compensatory damages in favor of ASI against Preferra for breach of contract under the 2022 Services Agreement.

E. Granting declaratory relief in favor of ASI and NASWIC under their respective agreements with Preferra, including relief declaring that ASI and NASWIC were entitled to appointment or nomination rights under the Notes; that those rights were wrongfully refused by Preferra, invalidating any election of directors to Preferra's Board of Directors; that the Quota Share Agreement was not replaced or terminated and remains in force as the only valid reinsurance agreement between NASWIC and Preferra; and that any termination or expiration of the 2018 or 2022 Services Agreements does not relieve Preferra of its payment and other obligations under the agreements or allow Preferra to maintain ownership of or control over ASI property, including rights to books and records and the professional liability insurance book of business.

F. Awarding compensatory and punitive damages in favor of ASI and NASWIC against Anthony Benedetto for breach of fiduciary duty, as well as granting equitable relief allowed by law.

G. Awarding compensatory and punitive damages in favor of ASI and NASWIC against Preferra for aiding and abetting breaches of fiduciary duties, as well as granting equitable relief allowed by law.

H. Granting an accounting in favor of ASI and NASWIC and against Preferra.

I. For costs, expenses, and/or attorney fees as allowed by law.

J. For pre- and post-judgment interest as allowed by law.

K. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Counter-Plaintiffs/Third-Party Plaintiffs demand a trial by jury on all claims so triable.

Dated: December 17, 2024

Respectfully submitted,

/s/ Richard W. Boone Jr.

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