

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 24CV038870-910

WEATHERSPOON FAMILY LLC,

Plaintiff,

v.

HATTERAS INVESTMENT PARTNERS,
L.P. and DAVID B. PERKINS,

Defendants,

-and-

HATTERAS EVERGREEN PRIVATE
EQUITY FUND, LLC,

Nominal Defendant.

**VERIFIED DERIVATIVE
COMPLAINT
(Jury Trial Demanded)**

Plaintiff Weatherspoon Family LLC, derivatively on behalf of Hatteras Evergreen Private Equity Fund, LLC (“Evergreen Fund”), by and through its undersigned counsel, brings this derivative action for breach of fiduciary duties against Defendants Hatteras Investment Partners, L.P. (“Hatteras Investment Partners” or the “Manager”) and David B. Perkins. The allegations contained herein are based upon knowledge as to Plaintiff’s own acts, and as to all other matters are based upon information and belief from investigation of counsel, including a review of publicly-available documents and non-public documents that the Manager provided Plaintiff.

I. SUMMARY OF THE ACTION

1. Plaintiff has owned limited liability company membership interests in Nominal Defendant Evergreen Fund, a Delaware limited liability company, at all relevant times. Through this action, Plaintiff asserts breach of fiduciary duty claims on behalf of Evergreen Fund.

2. Defendant Hatteras Investment Partners is Evergreen Fund's manager. Pursuant to Evergreen Fund's limited liability company agreement, the Manager has power and authority over Evergreen Fund. The Manager thereby owes a fiduciary duty to Evergreen Fund under Delaware law.

3. Defendant Perkins has majority ownership and control of the Manager; Perkins is therefore a control person of Evergreen Fund, and owes a fiduciary duty to Evergreen Fund under Delaware law.

4. Evergreen Fund's stated business objective is to achieve long-term capital appreciation by investing in a diversified portfolio of private investments. Until December 7, 2021, consistent with this objective, Evergreen Fund held a diversified portfolio of alternative assets, including private equity limited partnership interests.

5. On December 7, 2021, ignoring Evergreen Fund's business objective which required diversification, Perkins and the Manager caused Evergreen Fund to exchange its alternative asset portfolio, valued at approximately \$43 million, for preferred equity securities in a startup company, The Beneficient Company Group, LLP ("Ben"), that have proven nearly worthless.

6. The Manager's separate business relationship with Ben created a conflict. According to public filings that Ben made with the Securities and Exchange Commission ("SEC") in 2023, Ben had offered the Manager an opportunity to co-sponsor new investment funds. Under contracts entered between the Manager and Ben at the time of the transaction ("Ben Transaction"), Ben would seed these funds with alternative assets that Evergreen Fund, and another Hatteras-sponsored fund, would contribute to Ben. Because the Manager's business opportunities were contingent on Evergreen Fund's completion of the Ben Transaction, the Manager lacked disinterestedness and independence and effectively stood on both sides of the transaction.

7. There were red flags surrounding Ben at the time of the Ben Transaction. Public filings with the SEC made by Ben's former parent company, GWG Holdings, Inc. ("GWG") in November 2021 revealed that the SEC had recently launched an investigation of Ben and GWG focused on Ben's goodwill valuation and incorrect accounting treatment of its subsidiaries, among other issues. GWG's public filings also revealed that Ben had been forced to restate its 2019 financial statements, among other past financial statements, due to Ben's accounting issues, that Ben was deeply unprofitable, that numerous directors of Ben and/or GWG had resigned within the past two years, and that several auditors of Ben and/or GWG had declined to stand for reappointment within the past four years.

8. In June 2023, Ben went public through a merger with a special purpose acquisition company (“SPAC”).¹ The price of Ben’s stock, which is listed on the NASDAQ Stock Market, immediately plummeted. As of the date of this filing, Ben’s stock price, adjusted for a reverse 80-1 split that occurred in April 2024, is down by over 99% since the SPAC merger. Evergreen Fund, which, upon completion of the merger, received common shares in the reorganized Ben entity in exchange for the preferred equity it owned, was prohibited from selling any of its shares during a three-month lockup period. And with very little demand in the market, Evergreen Fund has since liquidated only a fraction of its shares. Evergreen Fund’s investment loss is over \$40 million.

9. Demand on the Manager to assert claims on behalf of Evergreen Fund against itself and Perkins arising from the Ben Transaction would be futile. The Manager received a material benefit from the Ben Transaction, and therefore lacks disinterestedness and independence. In addition, the Manager and Perkins knew that Ben was a risk high investment, but ignored the risks and red flags, as well as Evergreen Fund’s parameters requiring diversification, and used Evergreen Fund’s assets to pursue business opportunities and profits for themselves. The Manager thereby acted recklessly and in bad faith, breached its fiduciary duty, and therefore faces a substantial risk of personal, non-indemnifiable liability on account of Evergreen Fund’s claims. Demand on the Manager is therefore excused.

¹ In connection with the “de-SPAC” merger transaction, Ben was reorganized as a Nevada corporation and its name was changed to “Beneficient.”

II. PARTIES

A. Plaintiff

10. Plaintiff Weatherspoon Family LLC is a North Carolina limited liability company. Blair Shwedo is Plaintiff's manager. In 2017, Plaintiff invested \$2 million in Evergreen Fund, receiving limited liability company membership interests in exchange. Plaintiff has held those securities, and has been a member of Evergreen Fund, continuously since that time.

B. Defendants

11. Defendant Hatteras Investment Partners is a Delaware limited partnership that was formed in 2013. At all relevant times, the Manager's primary office has been located in Wake County, North Carolina. The Manager has been the manager of Nominal Defendant Evergreen Fund at all relevant times.

12. Defendant David B. Perkins is a citizen and resident of Wake County, North Carolina. Perkins is the founder of Hatteras Investment Partners; since its inception, Perkins has had majority ownership and control of the Manager and has been its chief executive officer.

C. Nominal Defendant

13. Evergreen Fund is a Delaware limited liability company formed in 2016. Evergreen Fund's primary office is located in Wake County, North Carolina.

III. JURISDICTION AND VENUE

14. This Court has jurisdiction over the parties and the subject matter of this case.

15. Venue is proper pursuant to N.C.G.S. § 1-80.

IV. FACTS

A. Evergreen Fund's Limited Liability Company Agreement

16. Evergreen Fund's current limited liability company agreement is dated April 1, 2020 ("Evergreen LLC Agreement").

17. The Evergreen LLC Agreement delegates full and exclusive power to the Manager to manage and conduct the business and affairs of Evergreen Fund, subject to the Manager's ability to delegate authority to third parties:

"[t]he Manager shall possess full and exclusive right, power and authority to manage and conduct the business and affairs of the Fund; provided, however, that this [section] shall not be construed to limit the Manager's right, power and authority to delegate, to the maximum extent permitted by law, any of the Manager's rights, powers and authority hereunder, with respect to the Fund, to such person or persons as the Manager may select from time to time.

The Manager did not delegate authority over Evergreen Fund's investment decisions to any third party.

18. The Evergreen LLC Agreement does not eliminate the fiduciary duty that the Manager owes to Evergreen Fund under Delaware law. Likewise, the Evergreen LLC Agreement does not eliminate the fiduciary duty that Perkins owes Evergreen Fund under Delaware law.

19. The Evergreen LLC Agreement does not protect the Manager against liability to Evergreen Fund for acts and omissions constituting willful misfeasance, bad faith, or gross negligence.

20. The Evergreen LLC Agreement does not provide for any indemnification of Perkins or otherwise protect Perkins from liability.

B. The Red Flags Surrounding Ben Were Well Documented

21. The Ben Transaction was completed on December 7, 2021. Pursuant to the transaction, Evergreen Fund exchanged its diversified portfolio of alternative assets—which had a reported net asset value of \$43 million and which consisted primarily of private equity limited partnerships—for illiquid Ben preferred equity.

22. At the time of the Ben Transaction, Ben was a startup company purporting to offer “liquidity products” to holders of alternative assets, which, according to Ben, were structured as loans to “alternative trusts.” Ben said that the loan proceeds were used to purchase alternative assets, which then collateralized Ben’s loan. In addition to receiving interest, Ben said that it earned fees by providing services to the trustees administering the loan collateral. But Ben had a limited operating history, and was also the target of an SEC investigation, which its then-parent company, GWG, had announced through its 2020 annual report on Form 10-K. The SEC investigation, according to GWG’s 2020 10-K, focused on Ben’s accounting practices, among other matters.

23. GWG started investing in Ben in December 2017. In April 2019, Ben’s management, including its founder, Brad Heppner, gained control over GWG by arranging for the buyout of GWG’s controlling stockholders and obtaining the right to appoint all of GWG’s directors. Effective December 31, 2019, GWG obtained a controlling interest in Ben through a transaction by which GWG purchased Ben

common and preferred equity. At this time, Ben became a subsidiary and GWG began reporting Ben's financial results on a consolidated basis. However, as Ben retained the right to appoint GWG's directors, Heppner and Ben remained in control.

24. Prior to December 2017, GWG's business was investing in life insurance policies on secondary markets. GWG raised capital to purchase the life insurance policies by selling bonds to retail investors marketed as "L Bonds," "L" referring to "life insurance." It continued selling the "L Bonds" after it abruptly shifted its business focus from investment in life insurance to investment in Ben, using the proceeds of the bond sales to make investments in Ben.

25. GWG's 2020 10-K, belatedly filed on November 5, 2021, restated GWG's 2019 financials, as well as its financials for the first three quarters of 2020 ("Restatement"). GWG's financials required restatement due to Ben's incorrect accounting treatment of its subsidiaries. The Restatement revealed that Ben's "borrowers," and the entities to which it provided services, were Ben's own subsidiaries. Since any payments that these entities made to Ben were intracompany transfers, the Restatement eliminated all of Ben's previously-reported interest and fees. Rather than third-party lending, the Restatement revealed that Ben's business was investment in alternative assets, which it owned through its subsidiaries. GWG's 2020 10-K also revealed that Ben's alternative asset portfolio had declined substantially in value over the past two years, and that Ben was hemorrhaging cash.

26. The 2020 10-K therefore revealed that GWG had previously misrepresented Ben's business model; rather than generating interest and fees

through innovative lending-based “liquidity products,” Ben’s business was investment in alternative assets.

27. The 2020 10-K also revealed that Ben was under SEC investigation, that Ben was deeply unprofitable, and that GWG was on the brink of collapse. Further, the 2020 10-K revealed that Ben’s senior creditor—an entity to which Ben had made payments in excess of \$100 million since GWG began transferring cash to Ben—was a Heppner affiliate, not an unrelated party, as GWG had previously stated.

28. GWG’s previous SEC filings also disclosed revolving doors of directors and auditors at GWG and Ben. Between April 2019, when Ben took control of GWG, through November 2021, 11 GWG directors, including six dual directors of GWG and Ben, had resigned. As was later revealed, many of these directors resigned after expressing concern about GWG’s investments in Ben. Additionally, between 2017 and 2021, four auditors of either GWG or Ben declined to stand for reappointment.

29. As a result of its inability to timely file its 2020 10-K, GWG had been forced to suspend the L Bond offering in April 2021. Unable to fund its operations with L Bond proceeds, by the time it made its 2020 10-K filing in November 2021, GWG teetered on the brink of collapse. The 2020 10-K included a “Going Concern” warning, disclosing the existence of “substantial doubt regarding [GWG’s] ability to continue as a going concern.” Effective November 29, 2021, Heppner, and the other Ben insiders controlling GWG, caused Ben to spin off from GWG, a transaction disclosed by GWG through an 8-K filed with the SEC on December 3, 2021.

30. On April 20, 2022, GWG and certain of its subsidiaries filed a voluntary petition for reorganization under chapter 11 of title 11 of the U.S. Code in the Bankruptcy Court for the Southern District of Texas. At the time GWG sought bankruptcy protection, it owed approximately \$1.6 billion to L Bond holders.

31. In July 2022, the Wall Street Journal published an article describing that cash invested by GWG in Ben had been diverted for Heppner's benefit. And in April 2024, after eight months of investigation, the litigation trustee for GWG's bankruptcy estate filed a lawsuit against Heppner and several other former officers and directors of GWG. Consistent with the Wall Street Journal's reporting, the litigation trustee has alleged that Heppner funneled cash from Ben (invested by GWG) to his affiliates under the guise of loan repayment.

32. The litigation trustee has also alleged that the Ben equity securities sold to GWG between 2017 and 2021 had little or no value at the times of the sales. These equity securities were junior to over \$1 billion of preferred equity held by insiders. As of December 31, 2019, Ben owned an alternative asset portfolio worth approximately \$342 million and it was saddled with over \$153 million of debt.

33. However, the Ben securities that GWG purchased were priced on the basis of Ben's multi-billion-dollar enterprise valuations. As of December 31, 2019, the date on which GWG's purchase of equity gave it a controlling interest in Ben, GWG reported that Ben had \$2.4 billion of goodwill, representing the difference between Ben's enterprise valuation and the net value of its tangible assets and liabilities, and

implying an enterprise valuation of \$2.3 billion.² Ben's goodwill valuation exceeded its implied enterprise valuation because Ben's liabilities exceeded its tangible assets.

34. According to the litigation trustee, a financial consultant was hired by a special committee of GWG's board to value the securities that Ben would sell to GWG in December 2019. The consultant determined that Ben's multi-billion-dollar enterprise valuation was bogus because it assumed that Ben would obtain billions of assets in the future for no consideration. It referred to Ben's massive enterprise valuation as the product of a "very [sic] very large math/logic mistake."

C. Ben Enticed Perkins and the Manager with Lucrative Business Opportunities

35. According to public SEC filings that Ben made in 2023, Ben had offered the Manager an opportunity to co-sponsor new investment funds. Under agreements entered at the time of the Ben Transaction, Ben was required to seed these funds with alternative assets that Evergreen Fund and another Hatteras-sponsored fund would contribute to Ben. These business opportunities were therefore contingent on Evergreen Fund's completion of the Ben Transaction. The Manager would receive fees by sponsoring, managing, and/or advising the new Hatteras funds. As Evergreen Fund's controllers, the Manager and Perkins stood to benefit from the completion of the Ben Transaction, and therefore effectively stood on both sides of the transaction.

D. Evergreen Fund Suffers a Catastrophic Loss

² Ben's goodwill was calculated in connection with GWG's consolidation of Ben effective December 31, 2019, which was considered a change-of-control event.

36. On June 8, 2023, Ben completed a de-SPAC merger transaction and reorganized as a Nevada corporation named “Beneficient.” In connection with the transaction, Evergreen Fund’s preferred equity in Ben converted to common stock in the Nevada corporation.³

37. Within a month of the merger transaction, Ben’s stock price had fallen from approximately \$8 per share to approximately \$2.65 per share.⁴ By the end of 2023, the price had fallen to less than \$0.50 per share. On April 18, 2024, in order to regain compliance with the NASDAQ’s listing requirement that the bid price for a company’s equity securities exceed \$1 per share, Ben completed a reverse 80-1 stock split. On a split adjusted basis, Ben’s stock, as of the date of this filing, trades for approximately \$0.02 per share. Trading is very thin.

38. Filings that the Manager has made with the SEC indicate that Evergreen Fund began selling Ben shares on September 8, 2023, on or about the day that the lockup ended. Between September 8, 2023 and February 7, 2024, the Manager’s SEC filings indicate that Evergreen Fund sold certain of its shares million shares yielding sales proceeds of less than \$1 million. None of the sales proceeds has been distributed to Evergreen Fund’s members.

³ Ben’s common stock trades on the NASDAQ under the symbol BENF.

⁴ With the collapse of its stock price, Ben has been forced to record impairments to goodwill. As of June 30, 2024, Ben reported a goodwill valuation of approximately \$10 million, down by more than 99% from the \$2.4 billion valuation reported as of December 31, 2019, December 31, 2020, December 31, 2021, December 31, 2022, and March 31, 2023.

39. As noted, Evergreen Fund's alternative asset portfolio was worth approximately \$43 million as of September 30, 2021. Evergreen Fund's remaining Ben shares are worth less than \$1 million today. Accounting for the value of Evergreen Fund's remaining Ben shares and the sales proceeds Evergreen Fund received on the sale of Ben shares between September 2023 and February 2024, Evergreen Fund's investment loss exceeds \$40 million.

V. DERIVATIVE ALLEGATIONS AND FUTILITY OF DEMAND

40. Plaintiff incorporates by reference and re-allege every allegation set forth above, as though fully set forth herein.

41. Plaintiff asserts derivative claims to redress injuries suffered by Evergreen Fund as a direct result of breaches of fiduciary duties by Defendants.

42. Plaintiff purchased Evergreen Fund limited liability company membership interests in 2017 and has owned the securities continuously since that time.

43. As set forth herein, the Manager's acts and omissions resulting in Evergreen Fund's loss constitute recklessness and bad faith. The Manager therefore faces a substantial risk of personal, non-indemnifiable liability to Evergreen Fund on account of its acts and omissions.

44. In addition to facing a substantial risk of personal, non-indemnifiable liability, the Manager lacks disinterestedness and independence because it had an outside business relationship with Ben at the time of the Ben Transaction, stood to

benefit from the completion of the Ben Transaction, and therefore effectively stood on both sides of the transaction.

45. Plaintiff has not made a demand on the Manager to bring derivative claims on behalf of Evergreen Fund against itself and Perkins. Demand on the Manager to assert these claims would be futile and is thereby excused.

46. Plaintiff will adequately and fairly represent the interests of Evergreen Fund in enforcing and prosecuting Evergreen Fund's rights and have retained counsel competent and experienced in derivative litigation.

COUNT I

DERIVATIVE CLAIM ON BEHALF OF EVERGREEN FUND FOR BREACH OF FIDUCIARY DUTY

47. Plaintiff incorporates by reference and re-alleges every allegation set forth above, as though fully set forth herein.

48. Defendant Hatteras Investment Partners is Evergreen Fund's manager and has sole power and authority to manage and control Evergreen Fund and its business affairs. The Manager therefore owes Evergreen Fund a fiduciary duty under Delaware law which has not been contractually eliminated.

49. Defendant Perkins has majority ownership and control of the Manager, and is therefore a control person of Evergreen Fund. As Evergreen Fund's control person, Defendant Perkins owes Evergreen Fund a fiduciary duty under Delaware law which has not been contractually eliminated.

50. By causing Evergreen Fund to enter the Ben Transaction, Perkins and the Manager deliberately used Evergreen Fund's assets to pursue business

opportunities and profits that would not be shared with Evergreen Fund. Perkins and the Manager thereby disloyally used Evergreen Fund's assets for their own benefit, and to the detriment of Evergreen Fund, and thereby breached their fiduciary duties to Evergreen Fund.

51. By disregarding Evergreen Fund's investment parameters, by ignoring the red flags surrounding Ben, and by using Evergreen Fund's assets to pursue business opportunities and profits for itself, the Manager acted recklessly and in bad faith and breached its fiduciary duty.

52. As a direct and proximate result of Defendants' breaches of their fiduciary duties, Evergreen Fund has sustained damages, as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff hereby demand judgment as follows:

- A. Declaring this action properly maintainable as a derivative action;
- B. Against Defendants and in favor of Evergreen Fund for the amounts of damages sustained by Evergreen Fund as a result of Defendants' breaches of fiduciary duty;
- C. Awarding such other extraordinary equitable and/or injunctive relief as is appropriate, including attaching, impounding, imposing a constructive trust on, or otherwise restricting Defendants' assets so as to assure that Plaintiff on behalf of Evergreen Fund, has an effective remedy;
- D. Awarding Plaintiff and Evergreen Fund pre- and post-judgment interest at the statutory rate;
- E. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, experts' fees, costs, and expenses;

F. Granting such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: December 4, 2024.

Respectfully submitted,

/s/ Matthew E. Lee

Matthew E. Lee

N.C. State Bar No. 35405

Jeremy R. Williams

N.C. State Bar No. 48162

Eric G. Steber

N.C. State Bar No. 54999

MILBERG COLEMAN BRYSON

PHILLIPS GROSSMAN, PLLC

900 W. Morgan Street

Raleigh, NC 27603

Telephone: 919-600-5000

Facsimile: 919-600-5035

mlee@milberg.com

jwilliams@milberg.com

esteber@milberg.com

Paul D. Malmfeldt*

MALMFELDT LAW GROUP P.C.

120 N. LaSalle Street, Suite 2000

Chicago, IL 60602

Tel: (312) 606-8625

pdm@malmfeldt.com

Scott L. Silver*

SILVER LAW GROUP

11780 W. Sample Road, Suite 103

Coral Springs, FL 33065

Tel: (954) 755-4799

ssilver@silverlaw.com

**pro hac vice forthcoming*

Counsel for Plaintiff

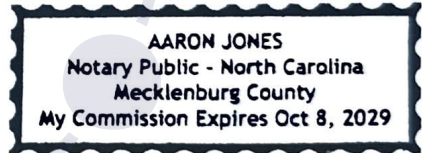
VERIFICATION

I, Blair Shwedo, being duly sworn, affirm that I am the Manager of the Weatherspoon Family LLC, the Plaintiff in the foregoing action; that I have the authority to bring the foregoing action on behalf of Weatherspoon Family LLC; and that I have read the foregoing Verified Derivative Complaint and know the contents thereof, and that the same is true of my own knowledge, except for those matters and things stated upon information and belief, and that as to those matters and things, I believe them to be true.

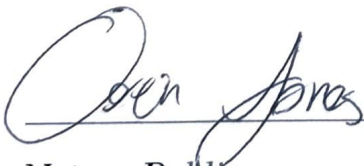
This is the 3 day of December, 2024.



STATE OF North Carolina)
COUNTY OF Mecklenburg)



Subscribed and sworn to before me this 3rd day of December, 2024.



Notary Public

October 8, 2029

My Commission Expires

