UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF SOUTH DAKOTA

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|---|---|---|
| CHS HEDGING, LLC, a Delaware LLC | ) | |
| | ) | |
| Plaintiff | ) | 4:16-CV-04132-KES |
| | ) | |
| v. | ) | AMENDED ANSWER |
| | ) | AND COUNTERCLAIMS |
| DUANE J. STEFFENSEN, an individual, | ) | |
| and | ) | |
| JOANN STEFFENSEN, an individual | ) | |

COMES NOW the Defendants, DUANE J. STEFFENSEN and JOANN STEFFENSEN, by and through their attorneys, Richard J. Helsper, Donald M. McCarty, and Benjamin L. Kleinjan, of Helsper, McCarty & Rasmussen, P.C., of Brookings, South Dakota and for their joint Answer to Plaintiff's Complaint served in the above-captioned matter state and alleges as follows:

1. Each and every allegation set forth in the Plaintiff's Complaint is hereby denied, except as specifically admitted herein.

2. Defendants' knowledge or information is insufficient to form a belief about the truth of the allegation in Paragraph 1, therefore it is deemed denied.

3. Paragraph 2 is admitted.

4. Paragraph 3 is admitted.

5. Paragraph 4 is admitted.

6. The diversity of the parties is admitted. Defendants' knowledge or information is insufficient to form a belief about the truth of the remainder of the allegations in Paragraph 5, therefore it is deemed denied.

7. Paragraph 6 is admitted.

8. Paragraph 7 is admitted.

9. The account was opened when Jared Steffensen signed a customer agreement in order to conduct commodity hedging with Country Hedging, Inc. Defendants' knowledge

or information is insufficient to form a belief about the truth of the remainder of the allegations in the remainder of Paragraph 8, therefore it is deemed denied.

10. Defendants' knowledge or information is insufficient to form a belief about the truth of the allegation in Paragraph 9, therefore it is deemed denied.

11. Defendants' knowledge or information is insufficient to form a belief about the truth of the allegation in Paragraph 10, therefore it is deemed denied.

12. Defendants' knowledge or information is insufficient to form a belief about the truth of the allegation in Paragraph 11, therefore it is deemed denied.

13. Paragraph 12 is denied.

14. Paragraph 13 is denied.

15. Paragraph 14 is denied.

16. Paragraph 15 re-alleges previous paragraphs, and therefore does not require an Answer.

17. Defendants' knowledge or information is insufficient to form a belief about the truth of the allegation in Paragraph 16, therefore it is deemed denied.

18. It is admitted that the exhibit attached to Plaintiff's Complaint states what is alleged in Paragraph 17. Further allegations are denied.

19. It is admitted that the exhibit attached to Plaintiff's Complaint states what is alleged in Paragraph 18. Further allegations are denied.

20. Defendants' knowledge or information is insufficient to form a belief about the truth of the allegation in Paragraph 19, therefore it is deemed denied.

21. Paragraph 20 is denied.

22. Defendants' knowledge or information is insufficient to form a belief about the truth of the allegation in Paragraph 21, and Paragraph 21 is denied.

## AFFIRMATIVE DEFENSES

23. A material alteration of the agreement between the debtor and the creditor discharged the Defendants.

24. The Complaint fails to state a claim for which relief may be granted.

25. Plaintiff is not the real party in interest.

26. The Defendants' risk under the continuing guaranty was significantly and materially increased beyond that which was assumed under the original guaranty, resulting in a discharge at that time.

27. Upon information and belief, the creditor named in the continuing guaranty ceased to exist in 2012, discharging the Defendants from any further liability thereafter.

28. Upon information and belief, the broker-set account limits for daily maximum number of orders and maximum order size, which was in place at the time the guaranty was signed, was removed, terminating the guaranty under the doctrine of commercial impracticability, as the removal of broker-set account limits was unknown and could not reasonably been anticipated.

29. Upon information and belief, the Plaintiff had a contractual duty to mitigate damages and covenanted with the debtor to use commercially reasonable efforts to minimize any damages Plaintiff might incur, but Plaintiff failed to mitigate and any damages of the Defendants should be offset accordingly.

30. Upon information and belief, the guaranty was discharged by a prior material breach of the agreement between the Plaintiff and the debtor.

## COUNTERCLAIMS

COMES NOW, the above named Defendants, DUANE STEFFENSEN and JOANN STEFFENSEN, and for their counterclaims against the above-named Plaintiff state as follows:

1. This is a compulsory counterclaim for damages which arose out of the intentional, reckless, grossly negligent, and/or fraudulent conduct of Plaintiff and its employees that cost H&I Grain of Hetland, Inc. ("H&I Grain") millions of dollars.

2. Defendants are shareholders and/or equity holders in H&I Grain and are shareholders and/or equity holders in those funds as of July 2016, when commodity futures trading accounts for H&I Grain and linked deposit accounts were frozen to prevent further losses.

3. When electronic trading via a phone app began for the account in 2012, a limit on the account rejected orders in excess of 50,000 bushels, but during the final four days leading up to the closure of the account, trades were executed that IN TOTAL exceeded 50,000,000 bushels, resulting in massive trading losses.

4. Plaintiffs, who were charged with certain statutory, regulatory, and contractual duties, were responsible for massive losses sustained by Steffensens, which would not have been sustained but for the Plaintiff's breach of the same. Plaintiff had duties, including fiduciary duties, to conduct due diligence, provide accurate and complete information, to exercise care, and to monitor its employees, policies, and systems to safeguard the investor's assets from unintended trades. The loss of the assets is a

direct and proximate result of omissions, false representations and failure to fulfill applicable duties owed to H&I Grain and its intended third party creditor beneficiaries, Duane and JoAnn Steffensen.

## JURISDICTION

5. Defendants Duane and JoAnn Steffensen ("Steffensens") are residents of South Dakota.

6. Plaintiff CHS Hedging, LLC, ("CHS") is, upon information and belief, a limited liability company formed under Delaware law with a principle place of business in Inver Grove Heights, Minnesota, that is engaged in the business of being a Futures Trading Merchant ("FTM").

7. Jurisdiction is proper because the pursuant to 28 U.S.C. 1332 because the parties are of diverse citizenship, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

8. In the alternative, jurisdiction is proper under 28 U.S.C. 1367 because the counterclaims arise out of the same transaction or occurrence as the Plaintiff's claims.

## FACTS COMMON TO ALL COUNTERCLAIMS

9. Duane and JoAnn Steffensen, husband and wife, are the sole shareholders of H&I Grain, which is a corporation formed under South Dakota law.

10. H&I Grain is in the business of operating a grain elevator in Kingsbury County, South Dakota, which buys and sells corn and soybeans from local farmers out of the small town of Hetland, which has a population of approximately 45.

11. The day to day operation of H&I Grain was managed by the Steffensens for many years. As the Steffensens approached retirement, they transitioned the day to day management of the rural elevator to their grown children. Duane Steffensen does low-stress work for H&I Grain due to a heart condition. JoAnn Steffensen does basic secretarial work and answers phones as needed for H&I Grain. Both Duane and JoAnn take substantial time off each year as they are both semi-retired.

12. Prior to 2011, neither the Steffensens nor their children had any experience trading futures commodity contracts, other than directly with other local elevators, soybean plants, and ethanol plants. This fact was communicated to CHS and its predecessor in interest.

13. In 2011, Duane Steffensen and Jared Steffensen discussed whether H&I Grain could or should open a hedge account with Country Hedging, which is a predecessor to CHS.

14. In November 2011, H&I Grain's operation handled approximately 1 million bushels of corn, which was its primary commodity, valued at approximately $3 million.

15. The purpose of the grain elevator hedge account was to hedge against overnight fluctuations in corn and soybean prices for grain that was delivered to the rural elevator.

16. Jared Steffensen explained to Duane Steffensen that a limit would be placed on the account so that H&I Grain could not engage in excessive high risk trades. This explanation was based on information communicated to Jared Steffensen from Country Hedging.

17. Due to the financial condition of H&I Grain, Country Hedging required a personal guaranty before opening a hedge account for H&I Grain. On November 15, 2011, Steffensens signed a personal guaranty form provided by Country Hedging.

18. Phyllis Nystrom is an employee of CHS and its predecessor at its office in Inver Grove Heights, Minnesota, and her telephone calls were recorded by her employer at all relevant times.

19. On November 17, 2011, Phyllis Nystrom called JoAnn Steffensen and explained that, due to all her personal assets being held in H&I Grain, there were no current liquid assets backing the personal guaranty, which was required to support a position if there were a margin call, and Ms. Nystrom advised Ms. Steffensen to just "fill it out" and not to provide any further bank information.

20. On November 22, 2011, Phyllis Nystrom called H&I Grain to advise Jared Steffensen that the account was approved and opened with the account number 21910.

21. During the first few months of 2012, Jared Steffensen placed telephonic trade orders by calling Phyllis Nystrom or other brokers with Country Hedging, all of which were audio recorded, and the majority of such orders were to buy or sell 10 or 20 contracts of corn or soybeans futures to hedge against fluctuations in the market for grain that H&I Grain actually had.

22. In March of 2012, Jared Steffensen made a comment to Phyllis Nystrom that he was becoming addicted to trading.

23. In April of 2012, Jared Steffensen inquired about and opened a subaccount numbered 21911 for H&I Grain. The opening of this subaccount was not communicated to the guarantors, and they did not consent to a subaccount being opened.

24. Between May 23 and June 14, 2012, Jared Steffensen inquired about and gained access to the Cheta Pro, also known as Vantage, an electronic system that allowed him to execute his own electronic futures orders himself through an Automated Order Routing System ("AORS"). Upon information and belief, he began entering his own orders using the AORS in June 2012.

25. The AORS included a system of pre-execution limits ("limits"), also known as pre-trade risk ("PTR") controls, to prevent orders being filled by users of Cheta Pro that exceeding preset maximum contracts per order or maximum contracts per day. If the

user attempts to place a trade that exceeds a limit, the trade is supposed to be automatically rejected by the AORS. If a trade is rejected because it exceeds a limit, then in order to place further trades the user must contact a broker to either request an increase in limits, which would be reviewed by the appropriate personnel, or have their trade reviewed and, if accepted, placed by a broker via a telephonic order.

26. The AORS pre-execution controls are required to be imposed by CHS via the National Futures Association ("NFA"). CHS is obligated by both law and its internal operating procedures to follow NFA rules.

27. Plaintiff has a procedure to establish limits for accounts based on order size, position size, margin requirement, and/or other factors determined by Compliance and Plaintiff's senior management. Considerations when establishing limits include the type of business, volume, financials and account history. The limits are active throughout the trading cycle, including overnight, and automatically reset at the start of each trading cycle, as applicable.

28. The Plaintiff has a policy that the AORS and limits will be monitored, and that at no time will any employee misrepresent the performance of the AORS to a customer or any other party. Any customer complaints regarding the AORS must be directed to the AORS administrator for investigation, follow up and remediation, and must be logged.

29. The limits were generally assigned based on whether the account was a commercial account or individual/producer account, but could be adjusted upward or downward with approval of the AORS administrator. The generally assigned or standard limit for commercial clients of Country Hedging in 2012 was no more than 99 contracts per order and/or 500 per day. Changes to the standard limits, either up or down, must be approved by the Compliance Manager or the President of Country Hedging.

30. Linda Bryden is the Chief Compliance Officer and AORS administrator for Plaintiff at its office in Inver Grove Heights, Minnesota.

31. Prior to September 12, 2012, the limit for the H&I Grain accounts was 10 contracts per order and 25 contracts per day.

32. Between June 19, 2012, and September 12, 2012, the AORS rejected at least seven orders that exceeded the limits.

33. On September 12, 2012, the per-day limit was quadrupled to 100, and the per-order limit was increased by a factor of five to 50. This increase in the limits was recommended by Phyllis Nystrom and approved by Linda Bryden. This change in the limit was not communicated to Duane or JoAnn Steffensen, and they did not consent to this change in the limit.

34. If Steffensens had been advised about any of the increases in limits, they would have directed H&I Grain to close the account and revoked the guaranty, as the higher limits would allow speculative trading.

35. On September 12, 2012, Phyllis Nystrom notified Jared Steffensen of the new limit set on the account and encouraged him that he was getting the hang of trading futures.

36. Between September 12, 2012 and May 27, 2013, Jared Steffensen placed electronic trades telephonically and using the AORS, and the majority of such orders were to buy or sell 10 or 20 contracts of corn or soybeans futures.

37. Between September 13, 2012 and May 28, 2013, upon information and belief, no orders were rejected because they exceeded the pre-execution limits.

38. On May 29, 2013, the per-day limit was increased to 200, which is eight times the initial risk-based limit established for the H&I Grain account, and the per-order limit remained at 50 per order. The increase in the limits on May 29, 2013 was approved by Linda Bryden after two orders were rejected on May 29, 2013 for exceeding the limit. The change in the limit was not communicated to Duane or JoAnn Steffensen, and they did not consent to this change in the limit.

39. Between May 29, 2013 and June 2, 2014, Jared Steffensen placed electronic trade orders using the AORS, and the majority of such orders were to buy or sell 10 or 20 contracts of corn or soybeans futures.

40. Between May 29, 2013 and June 3, 2014, at least seven (7) orders were rejected because they exceeded the limits.

41. On June 3, 2014, Phyllis Nystrom called Jared Steffensen on a recorded line and asked, "Do we need to take a look at increasing your limits?" Jared Steffensen responded, "I don't know." Phyllis Nystrom asked, "Do you just want to leave them as is?" Jared responded, "I'll probably just get in trouble." Phyllis Nystrom responded, "Okay, we'll leave them as is."

42. Nevertheless, rather than leave the limits "as is," on June 3, 2014, the per-day limit was increased to 300, which is twelve times the initial risk-based limit established for the H&I Grain account, and the per-order limit remained at 50. This increase in the limits was approved by Linda Bryden and was requested by Phyllis Nystrom. The change in the limit was not communicated to Duane or JoAnn Steffensen, and they did not consent to this change in the limit.

43. Between June 3, 2014 and March 18, 2015, Jared Steffensen continued to place electronic trades using the AORS, the majority of such orders were to buy or sell between 10 and 40 contracts of corn or soybeans futures, and the frequency of such trades began to increase dramatically. Jared Steffensen also began speculating in wheat futures, which is not a commodity that H&I Grain deals with regularly at the elevator.

44. Between June 3, 2014 and March 18, 2015, at least fifteen (15) orders were rejected because they exceeded the limits.

45. On March 18, 2015, the per-day limit was increased to 500, which is twenty times the initial limit established for the H&I Grain account, and the per-order limit remained at 50. The increase in the limits was approved by Linda Bryden. The change in the limit was not communicated to Duane or JoAnn Steffensen, and they did not consent to this change in the limit.

46. Phyllis Nystrom knew of the size, nature and extent of H&I Grain's rural business, as she had visited the office in rural South Dakota personally.

47. Phyllis Nystrom knew that Jared Steffensen was speculating in the H&I Grain account, as the rural operation clearly did not have sufficient grain to cover 500 contracts, or 2.5 million bushels, per day.

48. In January, 2016, Phyllis Nystrom was promoted to a supervisory position, and H&I Grain's account was referred internally to Jenna Roe.

49. In January, 2016, Plaintiff transitioned its accounts to a new trading platform.

50. Between March 18, 2015 and February 8, 2016, at least seventeen (17) orders were rejected because they exceeded the limits.

51. No limits were imposed on the account after February 8, 2016.

52. With the new trading platform coming online, the limits for several customers, including H&I Grain's account, were removed and/or changed.

53. Linda Bryden was aware that the limits would be removed and/or changed, but did not document the change or notify anyone of the change.

54. Plaintiff has a policy that when new systems are being put in place, accounts are being transitioned, and clients are engaged in unusual, speculative, or high volume trading behavior, heightened supervision of the customer and broker is required.

55. In the first half of 2016, Phyllis Nystrom attempted to provide heightened supervision of the H&I Grain account, but other employees in the Inver Grove Heights office anonymously complained that she was "micromanaging" subordinates such as Jenna Roe. Phyllis Nystrom was demoted rather than being permitted to perform heightened supervision.

56. On April 25, 2016, Jared Steffensen entered a 400 contract order. After entering the order, Jared Steffensen called Jenna Roe, who was a broker at the Inver Grove Heights, Minnesota office, and asked why the limit had failed to reject the order, since it exceeded 50. Jenna Roe misrepresented to Jared Steffensen that the limit for his account had been reset to 500. Jared Steffensen asked that the limit be reduced to 100 contracts. Jenna Roe misrepresented to Jared Steffensen that she would see to it that the limit was reduced to 100.

57. Jenna Roe did not bring the issue of the 50 per order limit being reset to 500 to her supervisor or compliance manager's attention.

58. Jenna Roe did not see to it that the limit was reduced to 100 as directed by Jared Steffensen.

59. H&I Grain was Jenna Roe's largest customer by volume of trades, and the account generated approximately $800,000 in commission for the Plaintiff in 2015.

60. Between April 25, 2016 and July 2016, Jared Steffensen executed a massive number of trades. The limits failed to reject orders, regardless of how large, and Jared Steffensen was able to enter a virtually unlimited number of orders per day.

61. As a result of the large loss on April 25, 2016, Jared Steffensen stopped eating and sleeping regularly and focused all of his time and energy into trading as much as he could to try to recoup losses sustained as a result of the failure to reject the "fat-fingered" transaction.

62. On or about July 11, 2016, the H&I Grain account was frozen due to massive trading losses the previous week that resulted in a margin call that could not be met by the liquidity in the account.

63. Some of the losses were due to orders being inadvertently placed electronically the first full week of July 2016..

64. The Defendants first learned of the trading losses on or about July 11, 2016. The Steffensens did not consent to any of the changes for the limits on the account.

65. The massive losses in 2016 depleted the H&I Grain operating account and maxed out H&I Grain's line of credit, which was tied to that account.

66. The trading losses of H&I Grain totaled between six and ten million dollars.

67. At all relevant times, Steffensens were intended creditor beneficiaries of the arrangement between H&I Grain and CHS.

**COUNT I – FRAUD / DECEIT**

68. All preceding paragraphs are realleged.

69. The Plaintiff and its employees orchestrated and implemented a fraudulent scheme by which they intentionally defrauded H&I Grain out of their funds by encouraging and thereafter facilitating high risk, high limit, speculative trading by Jared Steffensen, rather than market protection of actual grain contracts that H&I Grain had with South Dakota farmers, the extent of which Plaintiff knew or should have known, by increasing pre-execution limits established on the brokerage account for H&I Grain with the intent that Jared Steffensen engage in higher volume speculative trades without notice to the guarantors, by failing to enforce electronic order entry trading

limits imposed on H&I Grain's account designed to prevent a customer from engaging in high volume speculative trading, by failing to enforce order entry trading limits as instructed by H&I Grain, and by discouraging or preventing Phyllis Nystrom from providing required heightened supervision of Jenna Roe and the H&I Grain account, all for the improper purpose of increasing broker commissions on trades.

70. Defendants have been damaged and are entitled to recover their losses.

71. Based on the outrageous nature of Plaintiff's willful and wanton conduct, Defendants are entitled to punitive damages.

**COUNT II – NEGLIGENT MISREPRESENTATION**

72. All preceding paragraphs are realleged.

73. Due to the Plaintiff and its representatives' special expertise with regard to the grain commodity markets and AORS, the Plaintiff and/or its representatives had a special relationship of trust or confidence with H&I Grain and Defendants, which created a duty to impart full and correct information.

74. In connection with the brokerage trade account, the Plaintiffs falsely represented to H&I Grain and the Defendants that there were maximum day and order limits in place in 2016 and that the limits would be imposed by the Plaintiff to prevent intentional or unintentional high volume orders.

75. Some limits were actually imposed until February 2016, but not imposed thereafter.

76. On occasion prior to February 2016, the pre-execution controls failed to reject orders in excess of said limits.

77. H&I Grain specifically asked that certain limits be imposed on April 25, 2016, but in the months following said request, no limits were imposed on the orders that were being submitted.

78. H&I Grain and the Defendants justifiably relied on the false representations and omissions of the Plaintiff's representatives.

79. Plaintiff's representatives knew or should have known that H&I Grain and the Defendants would rely upon the false statements and material omissions for the particular purpose of investing H&I funds through the Plaintiff, generating commissions for the Plaintiff.

80. As a result of the false representations and material omissions, Defendants have suffered damages, namely the loss of their investments in H&I Grain, and Plaintiff has derived substantial profits.

81. Based on the outrageous nature of Plaintiff's willful and wanton conduct, Defendants are entitled to punitive damages.

## COUNT III – BREACH OF FIDUCIARY DUTY

82. All preceding paragraphs are realleged.

83. CHS had substantial discretion and control over the risk management controls in place for the processing and limiting of automated orders, established policies and procedures whereby CHS implemented such risk management controls to limit the risk exposure of itself and its users.

84. This discretion and control gave rise to a fiduciary duty and duty of care on the part of CHS to its users and any intended third party creditor beneficiaries.

85. CHS occupied a superior position with respect to their management and control of the limits on the automated systems.

86. CHS's superior position necessitated that Defendants and H&I Grain repose their trust and confidence in CHS to fulfill its duties.

87. CHS held itself out as providing limits to prevent entry of large orders which might expose its users to additional risk, and evinced an understanding that they were fiduciaries in this regard by blocking certain orders that exceeded the order limits.

88. Defendants and H&I Grain reasonably and foreseeably relied on such representations, and trusted CHS to impose said limits.

89. CHS breached their fiduciary duties by failing to enforce the limits on the H&I Grain account, failing to conduct adequate due diligence and monitoring with respect to the account and the purported limits.

## COUNT IV – THIRD-PARTY BENEFICIARY CONTRACT CLAIMS FOR BREACH OF CONTRACTS

90. All preceding paragraphs are realleged.

91. Steffensens are intended third-party beneficiaries of contracts entered into between Plaintiff and H&I Grain.

92. The benefits to Steffensens under the agreements between CHS and H&I Grain were immediate, not merely incidental, in that the only motivation for becoming a guarantor was to provide bona fide hedging of assets belonging to H&I Grain, of which they are the sole shareholders.

93. The agreement between H&I Grain and CHS contained an implied covenant of good faith and fair dealing, which was breached when Jenna Roe made misrepresentations regarding the AORS and pre-execution controls on April 25, 2016, which caused damages set forth herein.

94. The agreement specifically required CHS to comply with such laws and regulations relevant to the Commodity Exchange Act. CHS breached the agreement in that CHS failed to comply with all regulations promulgated thereby, and did not comply with National Futures Association rules. CHS's breach caused the damages set forth herein.

**COUNT V – NEGLIGENCE AND GROSS NEGLIGENCE**

95. All preceding paragraphs are realleged.

96. CHS had a special relationship with Defendants and H&I Grain that gave rise to a duty to exercise due care in the management of the AORS, PTR controls, and the execution or rejection of commodity futures orders in connection with the H&I Grain accounts. CHS and its representatives Phyllis Nystrom and Jenna Roe knew or should have known that Defendants and H&I Grain were relying on CHS to manage the AORS and PTR controls, the management of which was entrusted to CHS and could not be changed, up or down, without CHS's chief compliance officers written approval, and Defendants and H&I Grain did reasonably and foreseeably rely on CHS to exercise such care by entrusting their assets to the account.

97. CHS grossly failed to exercise due care, and acted in reckless disregard of its duties, and thereby injured H&I Grain and Steffensens. CHS and its representatives, Jenna Roe and Phyllis Nystrom, failed to exercise the degree of prudence, caution, and good business practice that would be expected of any reasonable investment professional. CHS failed to monitor and supervise Jenna Roe or Phyllis Nystrom, and failed to monitor the account of H&I Grain for risk, unusual or suspicious speculative activity, and failed to monitor the PTR controls to ensure that they were functioning to protect the user and the firm. But for the failure of CHS, the losses alleged herein would not have occurred.

98. As a direct and proximate result of CHS's gross negligence with respect to Steffensens' assets invested in H&I Grain, Steffensens have lost all, or substantially all of their investments in H&I Grain.

**COUNT VI – BREACH OF FIDUCIARY DUTY**

99. All preceding paragraphs are realleged.

100. CHS had substantial discretion and control over its AORS and the systems used to administer trades on behalf of its customers.

101. This discretion and control gave rise to a fiduciary duty and duty of care on the party of CHS to its customers, as CHS occupied a superior position over its customers with respect to their management and control over the AORS and the systems used to execute customers' intended or unintended trades, this superior position necessitated that customers repose their trust and confidence in CHS to fulfill their ministerial duties as they relate to the operation of the trading platform, Defendants and H&I Grain did place their trust in the same by investing in the account with CHS, and CHS

held themselves out as providing superior and sophisticated electronic trading services, and evinced an understanding that they fiduciaries of the investors in setting up the system. H&I Grain and Defendants reasonably and foreseeably relied on such representations made by Phyllis Nystrom and Jenna Roe, and trusted in CHS's purported expertise and skill in administering the electronic trading system.

102. CHS as the agent of H&I Grain, had a duty to fulfill the mechanical, ministerial requirements of the purchase or sale as directed by H&I Grain and Defendants.

103. CHS represented to H&I Grain that the limits that were placed on the account, and was directed by H&I Grain not to increase the limits and/or to decrease the limits so that large trades could not be entered.

104. CHS breached its fiduciary duties by not following the direction that was given with regard to the limits on the account.

**COUNT VII – CIVIL CONSPIRACY**

105. All preceding paragraphs are realleged.

106. CHS and Jared Steffensen engaged in a civil conspiracy to commit fraudulent concealment.

107. Jared Steffensen and CHS had a duty to disclose to Steffensens that limits on the account were being increased, exposing the Steffensens to more risk. Jared Steffensen willfully concealed and suppressed facts with regard to the account so that he could make increasingly high risk trades, which both desired to do to increase commissions and potential profits on trades. The undisclosed information was not something that Steffensens could have discovered by acting with reasonable care due to the active attempts to conceal facts from them. Steffensens relied on the omissions to their loss.

**COUNT VIII – ESTOPPEL**

108. All preceding paragraphs are realleged.

109. On April 25, 2016, Jenna Roe, acting in the course of her employment and on behalf of CHS, promised to H&I Grain that the limits on the H&I Grain account would be reset to 100.

110. Said promise was made without any intention of performing.

111. It was reasonable to rely on said promise, and H&I Grain did so rely.

112. By reason of the above circumstances, justice requires that CHS be estopped from denying that trades on the H&I Grain account, day or order, in excess of 100 were not to be executed.

WHEREFORE, Counterclaimants request the following:

a) Compensatory, consequential, and general damages in an amount to be determined at trial;

b) Disgorgement and restitution of all earnings, profits, compensation and benefits received by CHS as a result of their unlawful acts and practices;

c) Punitive damages on account of CHS's willful and wanton disregard of counterclaimants' rights;

d) Costs and disbursements of the action;

e) Pre- and post-judgment interest;

f) Reasonable attorneys' fees; and

g) Such other and further relief as this Court may deem just and proper.

Dated this ____ day of June, 2017.

HELSPER, MCCARTY & RASMUSSEN, P.C.

Richard J. Helsper
Donald M. McCarty
Benjamin L. Kleinjan
*Attorneys for Defendants*
*Duane Steffensen & JoAnn Steffensen*
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Brookings, SD 57006
(605)692-7775

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the ____ day of June, 2017, he served a true and correct copy of the foregoing Defendants' AMENDED ANSWER AND COUNTERCLAIMS on the Plaintiff's attorney by placing a copy in the U.S. Postal Service via first class at the following address:

Stephen D. Bell
Dorsey & Whitney, LLP
1400 Wewatta, Ste. 400
Denver, CO 80202

_____
Richard J. Helsper
Donald M. McCarty
Benjamin L. Kleinjan

## DEMAND FOR JURY TRIAL

Defendants hereby demands a trial by jury on all issues as a matter of right in the above matter.

HELSPER, McCARTY & RASMUSSEN, P.C.

_____
Richard J. Helsper
Donald M. McCarty
Benjamin L. Kleinjan