THE BUSINESS COURT OF TEXAS

FIRST DIVISION

NATALIE FUNCHEON, CHRIS SUMTER, and JEREMIAH COLLINS, *Plaintiffs*, v. PRIME DATA CENTERS, LLC, DATA REALTY HOLDINGS CORP., NICHOLAS LAAG, and ULRICH PELZ, *Defendants*	§ § § § § § § § § § §	Cause No. 26-BC01B-0078

PLAINTIFFS' PRELIMINARY (INFORMAL) DRAFT JURY-CHARGE FLOWCHART MAP

Plaintiffs submit this preliminary draft map and flowchart of the anticipated jury charge based on the live pleadings currently existing: (1) Plaintiffs' Original Petition, (2) Defendants' Original Answer and Affirmative Defenses, (3) Defendants' Original Counterclaim Against Natalie Funcheon, and (4) Funcheon's Original Answer, Verified and Specific Denials, Special Exceptions, and Affirmative Defenses. This is not a proposed final charge. Plaintiffs preserve all objections to the submission of any defense or counterclaim and the right to amend,

supplement, or revise this informal initial draft as the pleadings, rulings, and evidence develop. Plaintiffs reserve all rights and waive none.

Roadmap – The Case on One Page

Prime contractually owed these three early employees (Plaintiffs) phantom equity expressly measured by Net Asset Value ("NAV"), Prime's value grew from roughly $140 million to more than $6 billion, and Prime paid Plaintiffs $0 on their units. Everything else in the charge follows from that.

STEP 1 – COURT RULES (Rule 166(g) or MSJ): The Employment Agreements ("EAs") are unambiguous. NAV is the express valuation metric. PSP1/PSP2 are not part of any EA. The units vested, and in what amount for each Plaintiff

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STEP 2 – COURT OR JURY: Did Prime fail to pay each Plaintiff's vested phantom units and Exhibit B compensation?

▼ **If YES**

STEP 3 – COURT OR JURY: How many vested units, what current NAV value, and what other unpaid compensation?

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STEP 4 – COURT OR JURY: Did Laag and Pelz defraud Sumter in the Comstock buyout? If so, resulting actual and exemplary damages.

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STEP 5 – COURT: Defendants' counterclaims against Funcheon are resolved as a matter of law (preemption; Section 11(b) authorization; no DRH tort pleaded; business judgment rule; no deletion damages; Prime's prior material breach excused further performance and/or bars enforcement or relief). Anything that survives is submitted narrowly.

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STEP 6 – COURT: Attorneys' fees, declaratory relief, TUFTA avoidance, alter ego, and judgment.

I. Plaintiffs' Claims

A. Breach of Contract (All Plaintiffs v. Prime)

FOR THE COURT (Rule 166(g) / MSJ/ legal rulings)

- The EAs are unambiguous. Construing an unambiguous contract is for the Court, not the jury.
- Section 3.3 made each Plaintiff a participant in the Exhibit C Incentive Plan "immediately upon execution." No later plan, Board vote, or valuation formula is a condition to Plaintiffs' rights.
- Exhibit C requires vested units to be valued using its NAV metric. The EBITDA/net-debt formulas in PSP1 and PSP2 are not part of any EA; no Plaintiff signed either; and Section 10.2 permits amendment only by written consent of both parties.
- Section 4.2 requires Prime, upon termination "for any reason," to pay all accrued and vested benefits. The EAs contain no forfeiture, clawback, or leaver provision.
- Prime is the contracting party; the liability of DRH, Laag, and Pelz for the contract judgment is determined through alter ego and TUFTA.
- Prime liable for breach of contract through failing to pay vested units to Plaintiffs.
- Amount of vested units (damages) if based on application of contract interpretation and enforcement to undisputed fact or irrefutable evidence.

Predicate fact question (only if needed): Which EA governs?

Question 1A – Funcheon Revised EA: Did Prime, through Nicholas Laag, induce Natalie Funcheon to sign the revised Employment Agreement by a material misrepresentation that its original Exhibit C contained "discrepancies" requiring correction?

If YES, the original Exhibit C governs. If NO, the revised Exhibit C governs.

Question 1B – Sumter 2023 EA: Did Prime, through Nicholas Laag, induce Chris Sumter to sign the July 10, 2023 Employment Agreement by falsely representing that a new EA was required to close the Ares transaction?

If YES, the May 31, 2021 EA governs Sumter's rights.

Liability (if not ruled on as matter of law)

Question 2 – Exhibit C (Phantom Equity): Did Prime Data Centers, LLC fail to comply with Exhibit C of the applicable Plaintiff's Employment Agreement by failing to pay that Plaintiff for his or her vested phantom units?

Answer separately for Funcheon, Sumter, and Collins. Undisputed: Prime paid each Plaintiff $0 on his or her units.

Question 3 – Exhibit B (Cash Compensation): Did Prime Data Centers, LLC fail to comply with Exhibit B of the applicable Plaintiff's Employment Agreement by failing to pay compensation owed thereunder?

Funcheon: guaranteed and annual bonuses. Sumter: leasing commissions (including the Lambda, Meta, GMI, and Nvidia transactions), origination/acquisition and performance fees, and bonuses. Collins: Exhibit B compensation to be proven at trial.

Defendants' affirmative defenses (Defendants' burden; submit only if supported by legally sufficient evidence)

Question 4 – Prior Material Breach: Before Prime's failure to comply, did the applicable Plaintiff fail to comply with a material obligation of his or her Employment Agreement?

Must precede the breach at issue. Later conduct cannot retroactively excuse compensation that had already vested and accrued. No Plaintiff's vested compensation is conditioned on any later event.

Question 5 – Waiver / Estoppel / Ratification: Did the applicable Plaintiff intentionally relinquish, or engage in conduct unequivocally inconsistent with, his or her right to be paid under Exhibit C?

Proposed instruction: *Section 10.2 of the EA provides that any provision may be waived only by written consent of the parties, and that no waiver by conduct is a continuing waiver. Continuing to work, or receiving an unsigned plan, is not a waiver.*

Damages

Question 6 – Contract Damages: What sum of money, if paid now in cash, would fairly and reasonably compensate the applicable Plaintiff for his or her damages, if any, that resulted from Prime's failure to comply?

Element (answer separately for each Plaintiff)	Measure
a. Vested Exhibit C phantom units	Number of vested units (no fewer than the Court's floor) multiplied by NAV per unit as defined in Exhibit C
b. Unpaid Exhibit B compensation	Unpaid bonuses, commissions, and acquisition/performance fees owed under Exhibit B

Question 7 – Attorneys' Fees: What is a reasonable fee for the necessary services of Plaintiffs' attorneys, stated in dollars and cents?

Submitted for trial, appeal to the court of appeals, and the Supreme Court of Texas (Tex. Civ. Prac. & Rem. Code ch. 38; EA § 10.5). The Court determines entitlement under § 10.5.

B. Alternative Claims: Promissory Estoppel, Quantum Meruit, Unjust Enrichment, Money Had and Received

FOR THE COURT (Rule 166(g) / MSJ/ legal rulings)
• Submit only if the Court or jury finds that no enforceable EA governs the compensation at issue. If Questions 2–6 are answered for Plaintiffs, skip to Part C.

Question 8 – Promissory Estoppel: Did Defendants promise the applicable Plaintiff phantom equity, did that Plaintiff reasonably and

substantially rely on the promise to his or her detriment, and was that reliance foreseeable to Defendants?

Question 9 – Quantum Meruit: Did the applicable Plaintiff perform compensable services for Defendants, which Defendants accepted under circumstances reasonably notifying them that the Plaintiff expected to be paid?

Question 10 – Unjust Enrichment / Money Had and Received: Do Defendants hold money or a benefit that, in equity and good conscience, belongs to the applicable Plaintiff?

Question 11 – Amount: What sum of money represents the reasonable value of the services, promise, or benefit at issue?

C. Sumter – Comstock Fraud and Fraudulent Inducement (Sumter v. Laag and Pelz)

FOR THE COURT (Rule 166(g) / MSJ / legal rulings)

- Sumter sues individually for the loss of his own 50% Comstock interest and his buyout.
- Limitations is Defendants' affirmative defense; the discovery rule and fraudulent concealment defeat it, and any disputed predicate fact goes to the jury (Question 14).

Question 12 – Fraud: Did Nicholas Laag or Ulrich Pelz commit fraud against Chris Sumter?

Proposed instruction: *Fraud occurs when (a) a party makes a material misrepresentation, (b) the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, (c) the misrepresentation is made with the intention that it should be acted on by the other party, and (d) the other party justifiably relies on the misrepresentation and thereby suffers injury. The representations at issue: that Comstock required additional capital; that Sumter had to contribute approximately $17 million to keep his 50% interest; and that Laag and Pelz's side had secured or contributed its corresponding share. Fraud also occurs when a party fails to disclose a material fact within its knowledge, knowing the other party is ignorant of the fact*

and does not have an equal opportunity to discover it, intending to induce the other party to act, and the other party suffers injury.

Question 13 – Damages: What sum of money would fairly and reasonably compensate Chris Sumter for his damages, if any, proximately caused by such fraud?

Elements: (a) the value of the Comstock interest taken from him, less the approximately $4.9 million paid; (b) the value of the Prime equity he lost the opportunity to roll into Prime.

Question 14 – Discovery Rule: By what date should Chris Sumter, in the exercise of reasonable diligence, have discovered the facts giving rise to his Comstock claim?

Plaintiffs' position: no earlier than June 2026, when he first learned the true financing structure, which was within Defendants' exclusive knowledge.

D. Exemplary Damages

Question 15 – Predicate: Do you find by clear and convincing evidence that the harm to Chris Sumter resulted from fraud or malice by Nicholas Laag or Ulrich Pelz?

Question 16 – Amount: What sum of money, if any, should be assessed against each of Laag and Pelz as exemplary damages?

E. TUFTA, Alter Ego, and Collection Remedies

FOR THE COURT (Rule 166(g) / MSJ / legal rulings)

- The Court determines avoidance, attachment of DRH assets, declaratory relief that the original EAs and Exhibit C remain binding, and the legal effect of any veil-piercing findings.

Question 17 – Fraudulent Transfer: Did Prime or another Defendant make the identified transfer with actual intent to hinder, delay, or defraud Plaintiffs, or without receiving reasonably equivalent value while unable to pay its debts as they became due?

Question 18 – Alter Ego / Actual Fraud: Did Laag or Pelz use Prime or DRH to perpetrate an actual fraud on Plaintiffs primarily for his own direct personal benefit?

II. Defendants' Counterclaims against Funcheon

Defendants' counterclaims rest on one premise: that Funcheon "stole" confidential information. The documents at issue concern her own compensation, which her contract expressly allowed her to keep. These claims should be resolved by the Court as a matter of law.

FOR THE COURT (Rule 166(g) / MSJ / legal rulings)

- TUTSA preemption: Prime's fiduciary-duty, HACA, and civil-conspiracy claims all rest on alleged misappropriation of confidential information and are displaced by Tex. Civ. Prac. & Rem. Code § 134A.007(a).
- Contractual authorization: Section 11(b) of the Confidentiality Agreement entitles Funcheon, upon termination, "to retain non-Trade Secret documents concerning his or her employment-related wages and benefits." Exercising an express contract right is not a breach.
- DRH has no claim: DRH is not a party to the Agreements, Funcheon was never its employee, and DRH pleads no underlying tort, so its stand-alone conspiracy claim fails.
- Expense approvals: barred by the business judgment rule; no self-dealing is pleaded (the expenses were incurred by others).
- Laptop deletions: no damages, because the documents were and remain in Prime's possession.
- Prime's prior material breach: Prime's failure to pay vested units bars it from enforcing the Agreements and from injunctive relief or specific performance.
- Equitable forfeiture/disgorgement, injunction, specific performance, and spoliation remedies are for the Court.

FOR THE COURT (Rule 166(g) / MSJ / legal rulings)

Only claims that survive the Court's rulings are submitted. If none survive, the jury answers no questions.

F. Breach of Contract (Prime v. Funcheon) – if submitted

Question 19 – Breach: Did Natalie Funcheon fail to comply with her Employment Agreement or Confidentiality Agreement?

Proposed instruction: *You are instructed that, upon termination, Funcheon was entitled to retain non-Trade Secret documents concerning her employment-related wages and benefits. Retaining such documents is not a failure to comply.*

Question 20 – Prime's Prior Material Breach: Did Prime Materially commit prior material breach of the same contract, excusing Funcheon from further obligation to comply with same?

Funcheon's verified denial and First Defense. Prime's failure is undisputed: it paid her $0 on her units.

Question 21 – Damages: If Funcheon was required to comply, and the actions were outside of exercise of her express contractual rights, what damages did Prime suffer and what sum of money would fairly and reasonably compensate Prime for its damages, if any, that resulted from such failure to comply?

Instruct that Prime may not recover for documents that remain in its possession or for its litigation expenses.

G. Breach of Fiduciary Duty / Duty of Loyalty – if not preempted

FOR THE COURT (Rule 166(g) / MSJ / legal rulings)

- Whether Funcheon owed Prime a fiduciary duty, and its scope. She owed no duty to DRH. An employee may prepare to leave, consult counsel, and pursue her own legal claims against her employer.

Question 22 – Breach: Did Natalie Funcheon fail to comply with her duty of loyalty to Prime?

Instruct per Section 11(b), as in Question 19. Expense approvals excluded under the business judgment rule.

Question 23 – Damages: What sum of money would fairly and reasonably compensate Prime for its damages, if any, proximately caused by such failure?

Forfeiture predicate (only if the Court requests findings): Was the breach clear and serious? When did it occur? What compensation did Funcheon receive during that period? Plaintiffs' position: forfeiture of compensation Funcheon earned, after Prime withheld that very compensation, would be grossly disproportionate.

H. Harmful Access by Computer Act – if not preempted

Question 24 – Liability: Did Natalie Funcheon knowingly access a Prime computer, network, or system knowing that she did so without Prime's effective consent?

Prime gave her the credentials and access she used as Vice President – Head of Human Resources.

I. Civil Conspiracy – if not preempted

Question 25 – Conspiracy: Was Natalie Funcheon part of a conspiracy, with a specific intent and meeting of the minds, to commit an underlying tort against Prime that damaged Prime?

Submit only if a jury question on an underlying tort is answered "Yes." A breach of contract cannot support conspiracy.

J. Exemplary Damages Against Funcheon

Question 26 – Predicate and Amount: Submit only if the jury awards actual damages on a surviving tort. Clear and convincing evidence and unanimity required (Tex. Civ. Prac. & Rem. Code §§ 41.003, 41.008).

K. Funcheon's Attorneys' Fees

Question 27 – Fees: What is a reasonable fee for the necessary services of Funcheon's attorneys in defending against the counterclaims?

Entitlement under EA § 10.5 and Confidentiality Agreement § 14 (prevailing party) is for the Court.

L. Matters Not Properly Submitted

- PSP forfeiture or repayment: Defendants have pleaded no such counterclaim. No Plaintiff signed PSP1 or PSP2, and the EAs contain no forfeiture or clawback provision.
- Spoliation: an evidentiary matter for the Court, not a jury question; no spoliation counterclaim is pleaded.
- Claims against Sumter or Collins: none are pleaded.

III. Simplified Verdict Flowchart

Question	If YES	If NO
Q2/Q3 – Did Prime fail to pay vested units or Exhibit B compensation?	Go to Q4	Skip to Q8 (alternative claims) only if no enforceable EA
Q4/Q5 – Defensive issues (Defendants' burden)	Stop for that Plaintiff's contract claim	Go to Q6 (damages) and Q7 (fees)
Q12 – Did Laag or Pelz defraud Sumter?	Go to Q13, Q14, and Q15	Skip to Q17
Q15 – Fraud or malice by clear and convincing evidence (unanimous)?	Go to Q16	Skip to Q17
Q19/Q22/Q24 – Counterclaims (only if the Court submits them)	Go to excuse/damages questions	Prime takes nothing; go to Q27

DATED: November 4, 2026

Respectfully submitted,

ROGGE DUNN GROUP, PC

/s/ Alec E. Pedigo

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R. ROGGE DUNN
State Bar No. 06249500
E-Mail: dunn@roggedunngroup.com
ALEC E. PEDIGO
State Bar No. 24102344
E-Mail:
pedigo@roggedunngroup.com
500 N. Akard St., Suite 1900
Dallas, Texas 75201
Telephone: (214) 888-5000
Facsimile: (214) 220-3833

and

DOUGLAS B. LIPSKY
(Pro Hac Vice to be filed)
doug@lipskylowe.com
TRAVIS PIERRE-LOUIS
(Pro Hac Vice to be filed)
travis@lipskylowe.com
BLAKE L. FERRIS
(Pro Hac Vice to be filed)
blake@lipskylowe.com

LIPSKY LOWE LLP
420 Lexington Avenue, Suite 1830
New York, New York 10170-1830
Telephone: 212.392.4772

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, Alec E. Pedigo, hereby certify that a true and correct copy of the above and foregoing instrument was served on the Parties' counsel of record pursuant to the Rules on this 4th day of November 2026 as follows:

Timothy A. Rybacki, Esq.
Texas State Bar No. 24056248
trybacki@littler.com
LITTLER MENDELSON, P.C.
1301 McKinney Street, Suite 1900
Houston, TX 77010
Telephone: 713.951.9400
Facsimile: 713.951.9212

Ross G. Reyes, Esq.
Texas State Bar No. 24105707
rgreyes@littler.com
Andrew B. Beck, Esq.
Texas State Bar No. 24127866
abbeck@littler.com
LITTLER MENDELSON, P.C.
2001 Ross Avenue, Suite 1500
Dallas, TX 75201.2931
Telephone: 214.880.8100
Facsimile: 214.880.0181

COUNSEL FOR DEFENDANTS/COUNTER-CLAIMANTS

☐ **VIA E-SERVICE**
☐ **VIA OVERNIGHT**
☐ **VIA FIRST CLASS MAIL**
☑ **VIA EMAIL:** trybacki@littler.com
☑ **VIA EMAIL:** rgreyes@littler.com
☑ **VIA EMAIL:** abbeck@littler.com

/s/ Alec E. Pedigo
ROGGE DUNN
ALEC E. PEDIGO