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4 IN THE CIRCUIT COURT FOR THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH

6 SANDRA ANDERSEN and BRITTANY
7 JURJ, Individually, and Derivatively on
8 behalf of Nominal Defendants Shoestring
9 Valley Holdings, Inc., f/k/a Andersen
10 Construction Company, Inc., and Rosan,
11 Inc.,

12 Plaintiffs,

13 v.

14 JOEL ANDERSEN; DAVID ANDERSEN;
15 STEPHEN ANDERSEN; WILLIAM
16 ECKHARDT; BRIDGE DEVELOPMENT
17 LLC, an Oregon limited liability company;
18 295 PUALOA NANI LLC, an Oregon
19 limited liability company; AIRE
20 GENERATIONS FUND 1, LLC, a
21 Delaware limited liability company; and
22 AIRE GENERATIONS FUND
23 MANAGER, LLC, a Delaware limited
24 liability company;

25 Defendants,

26 and

27 SHOESTRING VALLEY HOLDINGS,
28 INC., f/k/a ANDERSEN CONSTRUCTION
29 COMPANY, INC., an Oregon corporation;
30 and ROSAN, INC., an Oregon corporation,

31 Nominal Defendants.

32 Plaintiffs Sandra Andersen and Brittany Jurj, individually, and derivatively on behalf of
33 Nominal Defendants Shoestring Valley Holdings, Inc. and Rosan, Inc., for their complaint allege
34 as follows:

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Case No.

PLAINTIFFS' COMPLAINT

DEMAND FOR JURY TRIAL

Prayer: \$ 3,000,000 or more and less than \$10,000,000

Fee Authority: ORS 21.160(1)(d)

1 **NATURE OF ACTION**

2 1.

3 Since the death of Andrew Andersen in 2008, Defendants Joel Andersen, David
4 Andersen, and Stephen Andersen, with the aid and assistance of other members of the
5 management of Andersen Construction Company, Inc., have systematically and fraudulently
6 transferred assets, business opportunities, and money away from both Andersen Construction
7 Company (in January 2018, Defendants David Andersen and Stephen Andersen changed the
8 name of Andersen Construction to Shoestring Valley Holdings, Inc., but, for ease of reference,
9 Plaintiffs hereinafter refer to Andersen Construction and Shoestring Valley Holdings, Inc.,
10 collectively, as “Andersen Construction”) and Rosan, Inc. (“Rosan”) for their own personal
11 benefit. They have transferred those assets, opportunities, and money to entities that are owned
12 or otherwise controlled, at least in part, by one or more of the individual Defendants. They have
13 also solicited investments from others into their own companies by misrepresenting that assets of
14 Andersen Construction and Rosan were, in fact, assets of other companies that they owned and
15 controlled by themselves. And, they have paid themselves millions of dollars in annual salary,
16 including the issuance of “phantom stock,” while paying smaller amounts to Plaintiffs, minority
17 shareholders of Andersen Construction and Rosan.

18 They took all of those actions with the knowledge that Plaintiff Sandra Andersen (a
19 member of a protected class in Oregon) was a trusting mother and grandmother, and Plaintiff
20 Brittany Jurj was a trusting daughter and sister.

21 **PARTIES, JURISDICTION AND VENUE**

22 2.

23 Plaintiff Sandra Andersen is a resident of Portland, Oregon and, as an individual over-
24 sixty-five years old, qualifies for protection under ORS 124.100.

25 3.

26 Plaintiff Brittany Jurj is a resident of Boise, Idaho.

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4.

Defendants Joel Andersen, David Andersen, Stephen Andersen, and William (“Bill”) Eckhardt (collectively, the “individual Defendants”) are all residents of Portland, Oregon.

5.

Nominal Defendants Rosan and Andersen Construction (together, the “Nominal Defendants”), are both Oregon corporations with their principal places of business in Portland, Oregon.

6.

Defendants Bridge Development LLC and 295 Pualoa Nani LLC are Oregon limited liability companies with principal places of business in Portland, Oregon.

7.

Defendants Aire Generations Fund 1, LLC and Aire Generations Fund Manager, LLC are Delaware limited liability companies with principal places of business in Portland, Oregon.

8.

This lawsuit involves Defendants’ activities related to various business entities and transactions in Oregon.

9.

This Court has jurisdiction over the parties pursuant to ORCP 4 A(4) because they are engaged in substantial activities, including the operation of the business entities at issue, within the State of Oregon. Each of those business entities has a principal place of business in Portland, Oregon. This Court also has jurisdiction over the parties pursuant to ORCP 4 C because the claimed injury to Plaintiffs occurred within the State of Oregon and arose out of acts or omissions made in this State and/or pursuant to ORCP 4 D because the claims alleged arise out of acts or omissions made outside of this State, but were based on activities conducted within this State by or on behalf of Defendants.

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10.

This Court has subject matter jurisdiction by virtue of its general jurisdiction and its jurisdiction over the parties.

11.

Venue is proper because, among other things, this action arises out of acts and/or omissions which occurred within Multnomah County, Oregon.

BACKGROUND

A. The Family Background

12.

In 1950, Howard Andrew Andersen (“Andrew Andersen”) formed Andersen Construction Company, a closely-held commercial construction company based in Portland, Oregon.

13.

In 1982, Plaintiff Sandra Andersen married Andrew Andersen. As Andrew Andersen had three children from his previous marriage, Sandra Andersen became step-mother to Defendant David Andersen, Defendant Stephen Andersen, and Nancy Andersen. Plaintiff Sandra Andersen cared for Andrew Andersen’s children and grandchildren as if they were her own. Andrew Andersen owned and operated Andersen Construction until his death in 2008. Since Andrew Andersen’s passing, and even after her remarriage, Plaintiff Sandra Andersen has sought to maintain her role as a mother and grandmother to Andrew Andersen’s children and grandchildren. Defendant David Andersen has three children, including Defendant Joel Andersen and Plaintiff Brittany Jurj.

14.

Andersen Construction is owned by three individuals: Defendant David Andersen; Defendant Stephen Andersen; and Plaintiff Sandra Andersen. Defendants David Andersen and Stephen Andersen are the controlling shareholders of Andersen Construction, owning a majority

1 of the company's shares. David Andersen owns 3,200 voting common shares and Defendant
2 Stephen Andersen owns 400 voting common shares of Andersen Construction stock. Plaintiff
3 Sandra Andersen owns 1,600 voting and 1,400 nonvoting common shares of Andersen
4 Construction stock; her total stock holdings represent 45% of total ownership in Andersen
5 Construction and 31% of the voting ownership.

6 15.

7 In 1996, Andrew Andersen formed Rosan, a closely-held real estate development and
8 management company based in Portland, Oregon. Rosan owns and manages business interests
9 and real property located in Oregon and Washington. Plaintiffs Sandra Andersen and Brittany
10 Jurj are minority shareholders of Rosan, collectively owning less than 40%.

11 16.

12 Currently, Defendant Joel Andersen is the President of Andersen Construction.
13 Defendant David Andersen is the Chief Executive Officer and Chairman of the Board of
14 Directors of Andersen Construction, and Defendant Bill Eckhardt is both the Chief Financial
15 Officer and Secretary of Andersen Construction. In these roles, these individuals control the
16 company's leadership, including its operational and fiscal management and controls.

17 17.

18 Defendants Joel Andersen, David Andersen, Stephen Andersen, and Bill Eckhardt have,
19 and/or have had, control over Andersen Construction's Board of Directors. Until 2018,
20 Defendants Joel Andersen, David Andersen, Stephen Andersen, and Bill Eckhardt occupied four
21 of the five seats on Andersen Construction's Board of Directors. Defendants Joel Andersen,
22 David Andersen, and Bill Eckhardt now occupy three of the four seats on Andersen
23 Construction's Board of Directors. With this control over the company's Board of Directors, the
24 individual Defendants have, and/or have had, the ultimate authority and responsibility for
25 oversight over Andersen Construction.

26 ///

1 18.

2 As the officers of Rosan, Defendants David Andersen, Stephen Andersen, and Bill
3 Eckhardt also have control over the fiscal management and operation of the company and its
4 related entities. Defendant David Andersen is a member of the two-person Board of Directors
5 and Vice President of Rosan. Defendant Stephen Andersen is the President of Rosan. Defendant
6 Bill Eckhardt is the Treasurer of Rosan.

7 **B. Defendants formed a number of additional business entities, used those entities to**
8 **benefit themselves, and harmed Andersen Construction, Rosan, and their**
9 **shareholders.**

10 19.

11 As Defendant Stephen Andersen recently admitted, he, along with Defendants Joel
12 Andersen, David Andersen, and Bill Eckhardt, have used their roles and control of both
13 Andersen Construction and Rosan to engage in illegal and fraudulent activity in the management
14 and control of those companies and their related entities. Despite their secrecy and lack of
15 candor with the Plaintiffs, Plaintiffs have been able to identify examples of Defendants' efforts
16 to enrich themselves at the companies' and minority shareholders' expense.

17 **1. Bridge Development LLC**

18 20.

19 In September 2013, and for its own benefit as a company, Andersen Construction
20 acquired land in Eugene, Oregon to develop an apartment building to house students attending
21 the University of Oregon (the "Eugene Project").

22 21.

23 On behalf of Andersen Construction, the individual Defendants developed the Eugene
24 Project in a manner that caused Andersen Construction to absorb much, if not all, of the project's
25 financial risk. For example, the individual Defendants caused Andersen Construction to obtain a
26 \$14 million line of credit, secured with cash and corporate guarantees. Because the cash used for
these purposes was already allocated for other projects of Andersen Construction clients,

1 Andersen Construction would have been required to satisfy the financial obligations if the
2 Eugene Project had failed and the bank had called on the cash security.

3 22.

4 Not only did Defendants Joel Andersen, David Andersen, and Stephen Andersen place
5 Andersen Construction at risk with respect to the Eugene Project, but they did so for the sole
6 benefit of a different, newly-formed company that they alone control and own. In December
7 2014, Defendant Joel Andersen organized Bridge Development LLC (“Bridge Development”).
8 Defendants Joel Andersen, David Andersen, and Stephen Andersen are the sole owners of
9 Bridge Development.

10 23.

11 Andersen Construction completed development of the Eugene Project in January 2015.
12 That same year, instead of retaining ownership in this asset (and any financial upside in the
13 project’s income, including, for instance, management, rental fees, and increased value), the
14 individual Defendants caused Andersen Construction to sell the Eugene Project to Bridge
15 Development, for approximately \$9.2 million, which, upon information and belief, is much less
16 than its fair market value.

17 **2. Aire Generations Fund 1, LLC and Aire Generations Fund Manager, LLC**

18 24.

19 In 2017, Defendant Joel Andersen created Aire Generations Fund 1, LLC and Aire
20 Generations Fund Manager, LLC (collectively, “Aire”), two real-estate investment companies.
21 Aire is, on information and belief, an acronym for “Athletes in Real Estate,” and, through it,
22 Defendant Joel Andersen solicits investments from wealthy, professional athletes. As set forth
23 below, Defendant Joel Andersen utilizes Aire to, among other things, siphon away corporate
24 opportunities of Andersen Construction and Rosan for his personal benefit, or for the benefit of
25 other individual Defendants.

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25.

In January 2018, on behalf of Aire, Defendant Joel Andersen filed a Notice of Exempt Offering of Securities with the United States Securities and Exchange Commission. In that Notice, Defendant Joel Andersen represented that he sought an initial securities offering of \$20 million, with a minimum per investor buy-in of \$500,000.

26.

In connection with that offering, Defendant Joel Andersen represented that Aire uses money from its investors to develop properties, and then, unlike other real estate investment companies, retains ownership over those properties for long-term investment. Defendant Joel Andersen further represented that he would be solely responsible for legitimately acquiring the assets for Aire.

27.

Defendant Joel Andersen has represented that Aire’s current investment portfolio includes properties actually owned by Andersen Construction and Rosan (e.g., the Eugene Project).

28.

Contrary to assertions that he would legitimately purchase all the assets for Aire, upon information and belief based on his own representations, Defendant Joel Andersen instead wrongfully transferred assets that belonged to Andersen Construction and Rosan. Specifically, on Aire’s website, Defendant Joel Andersen solicits professional athletes and potentially others to invest in properties that Aire develops and owns, and identifies Andersen Construction’s and Rosan’s assets as part of Aire’s supposed investment portfolio.

3. 295 Pualoa Nani, LLC

29.

In 2011, the individual Defendants, on behalf and for the benefit of Andersen Construction, purchased, for \$1.4 million, a residential property in Maui, Hawai’i. In March

1 2016, the individual Defendants listed the property for sale on behalf of Andersen Construction.
2 After reducing the sale price to \$2.2 million, they eventually took the property off the market in
3 September 2017.

4 30.

5 Two weeks later, Defendant David Andersen filed Articles of Organization with the
6 Oregon Secretary of State for a newly-formed limited liability company called 295 Pualoa Nani,
7 LLC (“295 Pualoa Nani”).

8 31.

9 The Operating Agreement of 295 Pualoa Nani lists Defendants Joel Andersen and David
10 Andersen as the sole owners. And, although it states that Defendants Joel Andersen and David
11 Andersen each contributed \$50,000 as initial capital contributions into that company, Defendant
12 Joel Andersen contributed no money, and Defendant David Andersen contributed only five
13 dollars.

14 32.

15 In December 2017, Defendants Joel Andersen and David Andersen, acting on behalf of
16 Andersen Construction and its shareholders, sold Andersen Construction’s property to their
17 company, 295 Pualoa Nani. When executing that “sale,” however, they did not, as required by
18 law, report it to the State of Hawai’i, and the deed of trust remains in the name of Andersen
19 Construction. Neither did they have Andersen Construction pay the required Hawai’i state taxes
20 on the sale proceeds.

21 33.

22 In addition to exposing Andersen Construction to unnecessary risk and liability in the
23 Hawai’i transaction, Defendants Joel Andersen and David Andersen financed the purported sale
24 on terms that heavily favored them personally, and disadvantaged Andersen Construction.
25 Specifically, they provided Andersen Construction with two promissory notes: (1) a \$393,329
26 note from 295 Pualoa Nani, at 3% interest, and (2) a note for the remaining balance from

1 Defendant Joel Andersen, which has a meager 2.5% interest rate through December 2027. Upon
2 information and belief, Andersen Construction has not received any cash from the sale.

3 34.

4 The individual Defendants effectively forced Andersen Construction to pay for the sale of
5 its own property, and then leased it back to Andersen Construction. In January 2018, under the
6 direction of at least Joel Andersen and David Andersen, Andersen Construction agreed to lease
7 back the property that it had just sold to 295 Pualoa Nani for \$10,000 per month (more than
8 enough to cover 295 Pualoa Nani's and Joel Andersen's monthly payments for their "notes" and
9 make a profit). That lease runs through December 2023.

10 **4. Andersen Construction Foundation**

11 35.

12 In 2016, Defendants Joel Andersen and David Andersen created the Andersen
13 Construction Foundation (the "Foundation"), an Oregon nonprofit corporation. Andersen
14 Construction is the sole member of the Foundation. Additionally, the Foundation is funded, at
15 least in large part, with money from Andersen Construction.

16 36.

17 Defendants Joel Andersen and David Andersen named themselves and their spouses as
18 members of the Board of Directors of the Foundation, which they control. As such, upon
19 information and belief, Defendants Joel Andersen and David Andersen have used their Board
20 membership to use money from Andersen Construction for personal trips, which include trips to
21 further the business relationships of Aire or other financial interests.

22 **C. Defendants generally have mismanaged Andersen Construction and improperly**
23 **excluded Plaintiff Sandra Andersen in a number of ways, for their individual**
24 **benefit.**

25 37.

26 The Board of Directors approved excessive compensation to the individual Defendants in
2017, and also, upon information and belief, in 2018. Defendant Joel Andersen received nearly

1 \$3.2 million in compensation from Andersen Construction in fiscal year 2017. Defendant David
2 Andersen received \$2.3 million in compensation. In contrast, both of those parties received \$1
3 million and \$725,345, respectively, in fiscal year 2015. Unlike their excessive salaries,
4 Andersen Construction's Board of Directors, controlled by the individual Defendants, decided to
5 distribute a total of only \$500,000 to the company's shareholders.

6 38.

7 Defendants Joel Andersen, David Andersen, and Stephen Andersen, with the knowledge
8 and approval of Defendant Bill Eckhardt, all have forced Andersen Construction to provide
9 construction services for their personal residences and other real property belongings, or for the
10 benefit of their friends and other relatives. In so doing, upon information and belief, Andersen
11 Construction has received below market rates for this work, or no benefit.

12 39.

13 Upon information and belief, the individual Defendants have created a number of foreign
14 business entities, which they have used to wrongfully transfer and hide Andersen Construction's
15 assets from the company and its shareholders. This includes, but is not limited to, creating
16 multiple entities purportedly to perform services (such as staffing, information technology, and
17 insurance) that Andersen Construction formerly provided for itself. Additionally, upon
18 information and belief, the individual Defendants have used some of the entities that they created
19 for the purpose of evading various labor laws, including, but not limited to, prevailing wage
20 laws.

21 40.

22 Additionally, Defendants David Andersen, Joel Andersen, and Stephen Andersen have
23 obtained numerous signatures from Plaintiff Sandra Andersen by providing her only the
24 signature pages of various agreements, and either affirmatively misrepresenting or omitting the
25 true nature of those agreements. For example, along with the assurance that the documents
26 would have no implication to her personally, or otherwise that the documents were of benefit to

1 Andersen Construction and/or Rosan, the individual Defendants repeatedly presented only the
2 signature page of various tax documents for Plaintiff Sandra Andersen for signature, without
3 providing further context or otherwise explaining to her the nature of those documents or the
4 implication of her signature.

5 **D. Defendants also have fraudulently mismanaged Rosan, for the sole benefit of**
6 **themselves, and to the detriment of its shareholders.**

7 **1. The Q21 Apartments**

8 41.

9 In 2014, Rosan initially purchased a parcel of real property on the corner of NW 21st
10 Avenue and NW Quimby Street in Portland, Oregon for its benefit as an investment company.

11 42.

12 Defendants David Andersen, Stephen Andersen, and Bill Eckhardt decided to develop the
13 property into a high-end residential apartment complex (the “Q21 Apartments”). In order to do
14 that, these Defendants used various other properties owned by Rosan as collateral for loans, and,
15 with the knowledge and approval of Defendant Joel Andersen, paid Andersen Construction less
16 than market construction rates to develop the property.

17 43.

18 Plaintiff Brittany Jurj discovered that Defendants David Andersen and Stephen Andersen
19 had planned to develop the Q21 Apartments and then, despite Rosan being more than capable of
20 managing the property, which was at least in part its purpose, transferred management of the
21 Q21 Apartments to one of their other entities (Bridge Development). When Plaintiff Brittany
22 Jurj asked Defendant David Andersen about this obvious breach of Defendants’ duties to Rosan
23 and its shareholders, he promised her that Rosan would maintain full management
24 responsibilities (and the corresponding profits) in the Q21 Apartments. Plaintiff Brittany Jurj
25 reasonably relied on the representation of her father and joint shareholder.

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1 44.

2 Despite Defendant David Andersen's representation to Plaintiff Brittany Jurj, while
3 Rosan was developing the apartment complex, Defendant Joel Andersen created, without
4 disclosing to Plaintiffs, a new assumed business name for Bridge Development: Q21
5 Apartments. And as soon as Rosan completed development of the Q21 Apartments, (as with the
6 Eugene Project) the individual Defendants, on behalf of Rosan and its shareholders, transferred
7 the management of the Q21 Apartments to Bridge Development.

8 45.

9 Defendant Joel Andersen is falsely representing that his new real estate investment
10 scheme, Aire, owns the Q21 Apartments as part of its investment portfolio. Additionally,
11 Defendants David Andersen, Stephen Andersen, and Bill Eckhardt, provided Defendant Joel
12 Andersen with a large, corner apartment in the Q21 Apartments building, for him to live with his
13 family. Upon information and belief, Andersen Construction and Rosan largely absorbed the
14 costs of renovating Defendant Joel Andersen's apartment, and Defendant Joel Andersen does not
15 pay market rates for living in the building.

16 **E. Both Plaintiffs Sandra Andersen and Brittany Jurj exercise their statutory rights to**
17 **demand records from the entities.**

18 46.

19 On October 22, 2018, upon learning about the existence of Defendants' wrongful
20 conduct, Plaintiffs began to seek access to corporate documents, under ORS 60.774, ORS
21 60.777, ORS 63.771, ORS 63.777, and various corporate agreements.

22 47.

23 Among other things, Plaintiffs requested copies of the following records: (1) minutes of
24 Rosan Board of Directors or shareholder meetings, relating to any transfer of property or loan
25 between Rosan and Defendants (or any entity in which Defendants have an interest in); (2)
26 records of any action taken by the Rosan Board of Directors or shareholders relating to any

1 transfer of property or loan between Rosan and Defendants (or any entity in which Defendant
2 have an interest in); (3) any accounting records of Rosan related to any loans, debts, guaranties,
3 or transfers of money or property in the past five years; (4) all monthly and annual internally
4 prepared financial statements of Rosan; and (5) any accounting records of Andersen
5 Construction related to any loans, debts, guarantees, or transfers of property or money in the past
6 five years.

7 48.

8 As of the date of the filing of this Complaint, Defendants have failed to respond or
9 provide complete information related to those Requests.

10 **FIRST CLAIM FOR RELIEF**

11 **(Breach of Fiduciary Duty)**

12 **Count I – Rosan: Plaintiffs Sandra Andersen and Brittany Jurj, individually, against**
13 **Defendants David Andersen, Stephen Andersen, and Bill Eckhardt**

14 49.

15 Plaintiffs incorporate paragraphs 1-48 as if fully set forth herein.

16 50.

17 As directors and officers of Rosan, Defendants David Andersen, Stephen Andersen, and
18 Bill Eckhardt owed fiduciary duties of loyalty, good faith, and fair dealing to Plaintiffs, as
19 shareholders of Rosan.

20 51.

21 Those Defendants each breached their fiduciary duties owed to Plaintiffs, by using their
22 control of Rosan for their sole benefit, wrongfully excluding Plaintiffs from participating in the
23 decision-making of the company, and/or otherwise not informing Plaintiffs with respect to the
24 actions they have taken on Rosan's behalf. Further, these Defendants did not take actions based
25 on a legitimate business purpose.

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52.

The conduct of those Defendants has damaged Plaintiffs by devaluing their ownership interests in Rosan, in an amount greater than \$1,000,000 and in an exact amount to be proven at trial.

Count II – Rosan: Plaintiffs Sandra Andersen and Brittany Jurj, derivatively on behalf of Rosan, against Defendants David Andersen, Stephen Andersen, and Bill Eckhardt

53.

Plaintiffs incorporate paragraphs 1-52 as if fully set forth herein.

54.

Defendants David Andersen, Stephen Andersen, and Bill Eckhardt are the controlling directors and officers of Rosan. As such, they were not disinterested and independent for purposes of responding to a pre-suit litigation demand. Further, those Defendants’ actions (and any decision to not bring suit for those actions) were not the product of valid business judgment, as their breaches of fiduciary duty and duty of loyalty were solely for their personal advantage rather than for the benefit of the corporation. As a result, a pre-suit demand would have been futile.

55.

As directors and officers of Rosan, Defendants David Andersen, Stephen Andersen, and Bill Eckhardt were in a fiduciary relationship with the corporation, which fiduciary duties required them to discharge their duties in good faith.

56.

Those Defendants each breached their fiduciary duties owed to Rosan, by using their control of Rosan for their sole benefit, transferring corporate opportunities and assets away from Rosan, misrepresenting the nature of specific transactions to Plaintiffs, and, thereby, harming the corporation. Further, those Defendants did not take their actions based on a legitimate business purpose.

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57.

As a result of the conduct of those Defendants, Rosan has been damaged in an amount greater than \$1,000,000 and in an exact amount to be proven at trial.

58.

Additionally, Plaintiffs are entitled to an award of reasonable attorney fees and costs under the common-fund doctrine and the substantial-benefit theory. *Crandon Capital Partners v. Shelk*, 342 Or 555, 157 P3d 176 (2007).

SECOND CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

Count I – Andersen Construction: Plaintiff Sandra Andersen, individually, against the individual Defendants

59.

Plaintiff Sandra Andersen incorporates paragraphs 1-58 as if fully set forth herein.

60.

As majority voting shareholders, directors, and officers of Andersen Construction, the individual Defendants owed fiduciary duties of loyalty, good faith, fair dealing, and disclosure to Plaintiff Sandra Andersen.

61.

The individual Defendants breached these fiduciary duties by using their control of Andersen Construction for their sole benefit and wrongfully excluding Plaintiff Sandra Andersen from participating in the decision-making of the company. They further breached their duties by unnecessarily wasting corporate assets. Further, the individual Defendants did not take any of their actions based on a legitimate business purpose.

62.

The individual Defendants’ conduct has damaged Plaintiff Sandra Andersen by devaluing her ownership interest in the company and failing to provide her with the derivative income

1 owed to her as a shareholder, in an amount greater than \$1,000,000 and in an exact amount to be
2 proven at trial.

3 **Count II – Andersen Construction: Plaintiff Sandra Andersen, derivatively, on behalf of**
4 **Andersen Construction, against the individual Defendants**

5 63.

6 Plaintiff Sandra Andersen incorporates paragraphs 1-62 as if fully set forth herein.

7 64.

8 The individual Defendants are the majority voting shareholders, directors, and officers of
9 Andersen Construction. As such, the individual Defendants were not disinterested or
10 independent for purposes of responding to a pre-suit litigation demand. Further, the individual
11 Defendants' actions (and any decision not to bring suit for those actions) were not the product of
12 valid business judgment, as the individual Defendants' breaches of fiduciary duty and duty of
13 loyalty were for their personal advantage rather than for the benefit of the corporation. As a
14 result, a pre-suit demand would have been futile.

15 65.

16 As majority shareholders, directors, and officers of Andersen Construction, the individual
17 Defendants were in a fiduciary relationship with Andersen Construction, which fiduciary duties
18 required them to discharge their duties in good faith.

19 66.

20 The individual Defendants breached these fiduciary duties by using their control of
21 Andersen Construction to their benefit and wrongfully excluding Plaintiff Sandra Andersen from
22 participating in the decision-making of the company. They further breached their duties by
23 unnecessarily wasting corporate assets. Further, the individual Defendants did not take any of
24 their actions based on a legitimate business purpose.

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67.

As a result of the individual Defendants’ conduct, Andersen Construction has been damaged in an amount greater than \$1,000,000 and in an exact amount to be proven at trial.

68.

Additionally, Plaintiff Sandra Andersen is entitled to an award of reasonable attorney fees and costs under the common-fund doctrine and the substantial-benefit theory. *Crandon Capital Partners v. Shelk*, 342 Or 555, 157 P3d 176 (2007).

THIRD CLAIM FOR RELIEF

(Shareholder Oppression)

Count I – Rosan: Plaintiff Sandra Andersen and Brittany Jurj against Defendants David Andersen, Stephen Andersen, and Bill Eckhardt

69.

Plaintiffs incorporate paragraphs 1-68 above as if fully alleged herein.

70.

Defendants David Andersen, Stephen Andersen, and Bill Eckhardt illegally conspired with each other and Defendant Joel Andersen to advance their individual financial interests at the expense of Plaintiffs. Specifically, those Defendants abused their positions as directors and officers of Rosan, to make unilateral business decisions, which prejudiced Plaintiffs as shareholders. Those Defendants took those actions solely for their own benefit and at the expense of the best interests of Plaintiffs as shareholders of Rosan.

71.

The oppressive actions of those Defendants’ were made in bad faith.

72.

As a sufficient remedy for the oppressive acts of Defendants David Andersen, Stephen Andersen, and Bill Eckhardt, Plaintiffs are entitled to damages in an amount to be proven at trial, but no less than \$1,000,000.

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73.

Additionally, the Court should set aside all of Defendants’ fraudulent transfers of Rosan’s assets, remove Defendants as officers and directors of Rosan, appoint a custodian and provisional director to oversee the affairs of Rosan, order a full accounting, order the issuance of distributions (if equitable), and allow Rosan to purchase Defendants’ shares in the corporation.

Count II – Andersen Construction: Plaintiff Sandra Andersen against the individual Defendants

74.

Plaintiff Sandra Andersen incorporates paragraphs 1-73 above as if fully alleged herein.

75.

The individual Defendants illegally conspired with each other to advance their individual financial interests at the expense of Plaintiff Sandra Andersen. Specifically, the individual Defendants abused their positions as officers, directors, and majority shareholders of Andersen Construction, to make unilateral business decisions that prejudiced Plaintiff Sandra Andersen as a minority shareholder. Additionally, they refused to pay distributions, and siphoned off profits from Andersen Construction by excessive salaries and payments for nonbusiness reasons. The individual Defendants’ took those actions solely for their own benefit and at the expense of the best interests of Plaintiff Sandra Andersen as a minority shareholder of Andersen Construction.

76.

The individual Defendants’ oppressive actions were made in bad faith.

77.

As a sufficient remedy for the oppressive acts of the individual Defendants, Plaintiff Sandra Andersen is entitled to damages in an amount to be proven at trial, but no less than \$1,000,000.

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78.

Additionally, the Court should set aside all of Defendants’ fraudulent transfers of Andersen Construction’s assets, remove Defendants as officers and directors of Andersen Construction, appoint a custodian and provisional director to oversee the affairs of Andersen Construction, order a full accounting, order the issuance of distributions (if equitable), and allow Andersen Construction to purchase Defendants’ shares in the corporation.

FOURTH CLAIM FOR RELIEF

(Financial Elder Abuse)

Plaintiff Sandra Andersen against the individual Defendants

79.

Plaintiff Sandra Andersen incorporates paragraphs 1-78 as if fully set forth herein.

80.

The individual Defendants, acting individually and on behalf of Rosan and Andersen Construction, appropriated money from Plaintiff Sandra Andersen, a vulnerable person, by inducing her to invest and reinvest in Rosan, Andersen Construction, and their affiliates. Additionally, they wrongfully appropriated money and property from her by fraudulently devaluing her ownership interests in Andersen Construction and Rosan, and refusing to provide her with fair and equitable distributions. Instead, the individual Defendants used Plaintiff Sandra Andersen’s money and property to benefit themselves, through excessive salaries and by transferring the assets of Andersen Construction and Rosan to newly formed-companies that they alone owned.

81.

At relevant times, Plaintiff Sandra Andersen was a “vulnerable person” under ORS 124.100(1)
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82.

Defendants appropriated Plaintiff Sandra Andersen’s money through improper means. Specifically, the individual Defendants, acting individually and on behalf of Rosan and Andersen Construction, misrepresented or wrongfully withheld information related to the corporations, in violation of their fiduciary duties to Plaintiff Sandra Andersen and the companies, and engineered transactions to their benefit and at the expense of Plaintiff Sandra Andersen. When taking those actions, the individual Defendants did so without regard to the fiduciary duties that they owed Plaintiff Sandra Andersen as a minority shareholder of Andersen Construction and Rosan.

83.

Defendants’ conduct as alleged above constituted financial abuse of a vulnerable person in violation of ORS 124.100(2).

84.

As a direct and foreseeable result of Defendants’ acts, Plaintiff Sandra Andersen has been damaged in an amount no less than \$1,000,000.

85.

Plaintiff Sandra Andersen is entitled to reasonable attorney fees pursuant to ORS 124.100(2)(c).

86.

Plaintiff Sandra Andersen is entitled to an amount equal to three times all economic and non-economic damages pursuant to ORS 124.100(2)(a) and (b).

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1 **FIFTH CLAIM FOR RELIEF**

2 **(Third-Person Liability)**

3 **Plaintiffs Against Defendants Stephen Andersen, David Andersen, Joel Andersen, Bill**
4 **Eckhardt, Bridge Development LLC, 295 Pualoa Nani LLC, Aire Generations Fund 1,**
5 **LLC, and Aire Generations Fund Manager, LLC**

6 87.

7 Plaintiffs incorporate paragraphs 1-86 as if fully set forth herein.

8 88.

9 When committing the wrongful acts described above, Defendants each acted in concert
10 with one another and pursuant to a common design. Specifically, Defendants each entered into
11 an agreement with one another, either implied or in writing, to harm Plaintiffs and the Nominal
12 Defendants for the sole benefit of Defendants. Additionally, Defendants took actions to carry
13 out their agreement, by actually entering into transactions for the sole purpose of benefiting
14 themselves, to the detriment of Plaintiffs and the Nominal Defendants.

15 89.

16 Because of their close relationships with each other and Plaintiffs, each Defendant knew
17 that the wrongful actions of the other Defendants constituted a breach of their duties to Plaintiffs.
18 Despite that knowledge, however, each Defendant provided substantial assistance and
19 encouragement to the others, regarding their bad conduct.

20 90.

21 Additionally, the individual Defendants each provided substantial assistance to one
22 another in carrying out their wrongful acts, and, as alleged above, each of the Defendants
23 individual actions constituted a breach of their duties to Plaintiffs and the Nominal Defendants.

24 91.

25 As a result, each Defendant is liable for any harm resulting from the wrongful conduct of
26 the other Defendants. Accordingly, Defendants each are liable to Plaintiffs in an amount no less
than \$1,000,000 in economic loss and no less than \$1,000,000 in noneconomic damages.

1 **SIXTH CLAIM FOR RELIEF**

2 **(Conversion)**

3 **Plaintiffs, derivatively on behalf of Andersen Construction and Rosan, Against Defendants**
4 **Stephen Andersen, David Andersen, Joel Andersen, Bridge Development LLC, 295 Pualoa**
5 **Nani LLC, Aire Generations Fund 1, LLC, and Aire Generations Fund Manager, LLC**

6 92.

7 Plaintiffs incorporate paragraphs 1-91 as if fully set forth herein.

8 93.

9 Defendants Stephen Andersen, David Andersen, and Joel Andersen are the controlling
10 shareholders, directors, and officers of Andersen Construction and Rosan. As such, those
11 Defendants were not disinterested and independent for purposes of responding to a pre-suit
12 litigation demand. Further, those Defendants' actions (and any decision not to bring suit for
13 those actions) were not the product of valid business judgment, as their breaches of fiduciary
14 duty and duty of loyalty were for their personal advantage rather than for the benefit of the
15 corporation. As a result, a pre-suit demand would have been futile.

16 94.

17 Through their misuse and misappropriation of the Nominal Defendants' money, assets,
18 and resources, Defendants Stephen Andersen, David Andersen, Joel Andersen, Bridge
19 Development, 295 Pualoa Nani, and Aire, have intentionally exercised control over property
20 belonging to the Nominal Defendants, thereby depriving the Nominal Defendants of the right to
21 control and use such property.

22 95.

23 As a result of Defendants' conversion, the Nominal Defendants have suffered damages in
24 an amount to be proven at trial of not less than \$1,000,000, plus prejudgment interest accruing as
25 of the date of each conversion.

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96.

Additionally, Plaintiffs are entitled to an award of reasonable attorney fees and costs under the common-fund doctrine and the substantial-benefit theory. *Crandon Capital Partners v. Shelk*, 342 Or 555, 157 P3d 176 (2007).

SEVENTH CLAIM FOR RELIEF

(Unjust Enrichment/Constructive Trust/Equitable Lien)

Plaintiffs, derivatively on behalf of the Nominal Defendants, Against Defendants Stephen Andersen, David Andersen, Joel Andersen, Bridge Development LLC, 295 Pualoa Nani LLC, Aire Generations Fund 1, LLC, and Aire Generations Fund Manager, LLC

97.

Plaintiffs incorporate paragraphs 1-96 as if fully set forth herein.

98.

Defendants Stephen Andersen, David Andersen, and Joel Andersen are the majority voting shareholders directors, and officers of Andersen Construction and Rosan. As such, Defendants were not disinterested and independent for purposes of responding to a pre-suit litigation demand. Further, Defendants’ actions were not the product of valid business judgment, as Defendants’ tortious behavior was for their personal advantage rather than for the benefit of the corporation. As a result, a pre-suit demand would have been futile.

99.

Defendants have wrongfully transferred and retained the assets and property of both Andersen Construction and Rosan.

100.

At the time of the wrongful transfers, Defendants fully understood the nature of the transactions that they entered into, and, nonetheless, accepted the benefit of those transactions.

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101.

The transfer of property was entered into and induced by Defendants’ fraud and material misrepresentations. Accordingly, it would be unjust to allow Defendants to retain the benefit of their fraudulent transfers.

102.

Plaintiffs, therefore, are entitled to an order requiring Defendants to compensate Andersen Construction and Rosan for their losses related to the wrongful transfer of assets, in an amount no less than \$1,000,000.

103.

Additionally, Plaintiffs are entitled to an award of reasonable attorney fees and costs under the common-fund doctrine and the substantial-benefit theory. *Crandon Capital Partners v. Shelk*, 342 Or 555, 157 P3d 176 (2007).

EIGHTH CLAIM FOR RELIEF

(Accounting)

Plaintiffs, derivatively on behalf of Nominal Defendants

104.

Plaintiffs incorporate paragraphs 1-103 as if fully set forth herein.

105.

Andersen Construction and Rosan are entitled to an accounting of the funds, assets, and benefits that Defendants Joel Andersen, Stephen Andersen, and David Andersen have misappropriated from the date of Andrew Andersen’s death in 2008 through the present, and for a full accounting of the Nominal Defendants’ books and records.

106.

Additionally, Plaintiffs are entitled to an award of reasonable attorney fees and costs under the common-fund doctrine and the substantial-benefit theory. *Crandon Capital Partners v. Shelk*, 342 Or 555, 157 P3d 176 (2007).

1 **NINTH CLAIM FOR RELIEF**

2 **(Court-ordered Inspection of Records)**

3 **Against Defendants Rosan and Andersen Construction**

4 107.

5 Plaintiffs incorporate paragraphs 1-106 as if fully set forth herein.

6 108.

7 Under ORS 60.774, Plaintiffs have a right to inspect the minutes of Board of Directors
8 and shareholders meetings, records of action taken without a meeting, and all accounting records
9 of Rosan and Andersen Construction.

10 109.

11 Despite receiving a valid request for inspection of records, Defendants, through Rosan
12 and Andersen Construction have denied Plaintiffs of their rights to inspection.

13 110.

14 Therefore, pursuant to ORS 60.781, Plaintiffs are entitled to an order requiring Rosan and
15 Andersen Construction, at their cost, to allow the inspection and copying of the requested
16 records.

17 111.

18 Pursuant to that same statute, Plaintiffs are entitled to an award of reasonable attorney
19 fees and costs.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray for relief as follows:

- 22 1) Removal of Defendants as officers and directors of Rosan and Andersen
23 Construction;
- 24 2) A full accounting of Rosan and Andersen Construction;
- 25 3) Damages, including treble damages under ORS 124.100, in the amount to be
26 proven at trial, but in no event less than \$3,000,000;

- 1 4) An award of reasonable attorney fees and costs; and
2 5) Any other relief that the Court deems equitable and necessary under the
3 circumstances of this case.

4 DATED: June 6, 2019

PERKINS COIE LLP

5
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