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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MacDONALD HOAGUE & BAYLESS, a
Washington corporation,

Plaintiff,

v.

THE SHERIDAN LAW FIRM, P.S., a
Washington corporation; AND JOHN P.
SHERIDAN, JANE DOE SHERIDAN and
their marital community,

Defendants.

NO. 16-2-04055-1 SEA

FIRST AMENDED COMPLAINT FOR
BREACH OF CONTRACT, BREACH OF
GOOD FAITH AND FAIR DEALING,
BREACH OF FIDUCIARY DUTY,
DECLARATORY JUDGMENT, UNJUST
ENRICHMENT, ACCOUNTING AND
CONSTRUCTIVE TRUST

Plaintiff MacDonald Hoague & Bayless, by and through its counsel of record, Smith & Hennessey PLLC, for its causes of action against defendants The Sheridan Law Firm, P.S. (also known as the Law Office of John P. Sheridan, P.S.), John P. Sheridan and Jane Doe Sheridan, alleges as follows:

I. PARTIES

1.1 MacDonald Hoague & Bayless (“MHB”) is a Seattle law firm and a Washington corporation.

1.2 The Sheridan Law Firm, P.S. (“SLF”) is a Seattle law firm and a Washington professional services corporation.

1 1.3 John P. Sheridan (“Sheridan”) is an attorney and a member of the Washington
2 State Bar. Upon information and belief, Sheridan is the sole owner of SLF. From January 2013
3 to July 2014, Sheridan was a Shareholder, Officer and Director of MHB.

4 1.4 Upon information and belief, Sheridan and Jane Doe Sheridan are spouses and
5 together constitute a marital community residing in King County, Washington.

6 **II. JURISDICTION AND VENUE**

7 2.1 Jurisdiction is conferred upon this Court by RCW 2.08.010, and RCW 7.24.010,
8 .020, and .050, the Uniform Declaratory Judgment Act.

9 2.2 Venue is proper in King County pursuant to RCW 4.12.020 and/or RCW 4.12.025
10 because all parties reside and/or transact business in King County, the two corporate parties have
11 offices in King County, and the causes of action set forth herein arose in King County.

12 **III. FACTS**

13 **A. Sheridan’s Tenure at MHB.**

14 3.1 Prior to joining MHB, Sheridan practiced law under the auspices of SLF, which
15 also was known as the Law Office of John P. Sheridan, P.S. In the course of his practice,
16 Sheridan performed legal services for multiple clients, including Walter Tamosaitis and Stephen
17 Chaussee, pursuant to fee agreements between SLF and each client.

18 3.2 As of January 1, 2013, Sheridan joined MHB as a stockholder director. Sheridan
19 did so by executing a “Buy Sell” Agreement with the other stockholder directors of MHB.

20 3.3 Among other things, Sheridan’s relationship with MHB also was governed by a
21 Transitional Directorship Agreement (“TDA”), which Sheridan executed on or about January 16,
22 2013. A copy of the TDA is attached as Exhibit A hereto. Paragraph 2 of that agreement
23 provides:

24 Division of Fees of Cases Brought to MHB: For any current case
25 that Mr. Sheridan brings to MHB, fees from any recovery will be
26 divided pro rata based on the amount of work performed before and
 after January 1, 2013. Fees generated from work performed prior to
 January 1, 2013, will be paid to the Law Offices of Jack Sheridan.
 Fees generated from work performed on January 1, 2013 or later

1 will be paid to the MHB Business account to be distributed per the
2 Director Compensation Plan.

3 Exhibit A at 1.

4 3.4 Paragraph 7 of the TDA provides:

5 Jack Sheridan agrees to provide notice of his move to MHB to all
6 current or past clients as required by law or ethics rules. MHB will
7 provide administrative assistance in this process as needed. Mr.
8 Sheridan will obtain a consent from all active clients to have MHB
act as counsel, and shall append or supplement all client fee
agreements to reflect the terms of the above representation
agreement.

9 Exhibit A at 2.

10 3.5 The Buy Sell Agreement, TDA, and all other agreements that govern Sheridan's
11 relationship with MHB hereinafter are referred to, collectively, as the "Agreement."

12 3.6 Upon information and belief, Sheridan failed to amend or supplement the fee
13 agreements between SLF and its clients, including Tamosaitis and Chaussee, to reflect the fact
14 that MHB would be providing representation to these clients, despite Sheridan's contractual
15 agreement and fiduciary responsibility to do so.

16 3.7 MHB paid Sheridan as a Director of the firm, according to the terms of the TDA.
17 MHB also provided Sheridan with an office, and the support and services of paralegals,
18 investigators, legal assistants, and associate counsel, whose salaries were paid by MHB.
19 Between January 1, 2013 and July 31, 2014, MHB paid Sheridan over \$150,000 in salary and
20 benefits.

21 3.8 During his tenure at MHB, Sheridan tried four cases to a verdict. Each case
22 resulted in a defense verdict adverse to MHB's clients. Under MHB's internal fee allocation
23 system, from January 1, 2013 until July 31, 2014, Sheridan was responsible for a negative
24 income to the firm, exclusive of Sheridan's own salary and benefits paid by MHB, and exclusive
25 of the expenses associated with overhead and staffing provided by MHB.

26 3.9 As further set forth below, Sheridan withdrew from his directorship position at
MHB effective July 1, 2014, and terminated his employment with MHB effective July 31, 2014.

1 **B. The Tamosaitis Matter.**

2 3.10 Sheridan, through SLF, began representing Walter Tamosaitis (“Tamosaitis”) in
3 or about 2010. A copy of the Retainer Agreement between SLF and Tamosaitis dated September
4 13, 2010, is attached as Exhibit B hereto. It provides, in part, as follows:

5 If the case settles after the date of this contract, or if the Client prevails
6 more than sixty calendar days before the date of trial, the Client agrees to
7 pay the firm a contingent fee of one third (33-1/3%) of any gross recovery.
8 In the event the Client prevails sixty calendar days or less from the date of
9 trial, the Client agrees to pay the Firm a contingent fee of forty percent
(40%) of any gross recovery. The Firm shall receive the contingent fee in
addition to any multiplier awarded by the court.

10 Option to take Attorney fees in Lieu of Contingent Fee: The Firm, in its
11 sole discretion, has the option of taking either the contingent fee from the
12 gross recovery or the attorney fees awarded or negotiated, if any, which
could, in certain circumstances, result in the Firm receiving attorney fees
greater than 40% of the gross recovery.

13 Exhibit B at 5 (emphasis original).

14 3.11 Paragraph 20 of the Contingent Fee Retainer Agreement between SLF and
15 Tamosaitis provides:

16 20. Any Additional Terms: under this agreement, the Firm will
17 provide representation in the DOL forum and in a state court filing with the
18 realization that the state court proceeding could be removed to federal court
19 by defendant. Of the hourly fees already paid, the Firm agrees to repay
\$10,000 of those fees to client from the proceeds of any settlement or at the
time the Firm receives payment after obtaining a favorable award at trial.

20 Exhibit B at 9 (emphasis and punctuation original).

21 3.12 Before Sheridan joined MHB, SLF, on behalf of Tamosaitis, commenced several
22 actions, including a proceeding before the Department of Labor (“Tamosaitis Administrative
23 Action”), a state court action (“Tamosaitis State Action”), and a federal court action
24 (“Tamosaitis Federal Action”) (collectively, the “Tamosaitis Matter”). The Tamosaitis State
25 Action was dismissed on summary judgment, and SLF, on behalf of Tamosaitis, sought appellate
26 review. The Tamosaitis Federal Action also was dismissed and Tamosaitis, through SLF,
appealed that decision to the Ninth Circuit Court of Appeals.

1 3.13 The Tamosaitis Matter was ongoing at the time Sheridan joined MHB. From
2 January 1, 2013 to July 31, 2014, all work on the Tamosaitis Matter was done by lawyers
3 employed and paid by MHB, including Sheridan himself. During that timeframe, MHB
4 attorneys and paralegals spent a total of 235.9 hours working on the Tamosaitis Federal Action,
5 and 171.9 hours working on the Tamosaitis State Action.

6 3.14 Other matters previously handled by SLF were ongoing at the time Sheridan
7 joined MHB. From January 1, 2013 to July 31, 2014, all work on such matters was done by
8 lawyers employed and paid by MHB, including Sheridan himself.

9 **C. Sheridan's Departure From MHB.**

10 3.15 Effective July 1, 2014, Sheridan withdrew from his directorship position at MHB.
11 He remained as an employee of the firm for one month and then resigned his employment
12 effective July 31, 2014.

13 3.16 MHB and Sheridan jointly sent letters to clients represented by Sheridan,
14 including Tamosaitis and Chaussee, to inform them of Sheridan's departure, explain their options
15 with respect to future representation, and provide a means to respond on a form stating their
16 election.

17 3.17 Tamosaitis did not return the election form to MHB. However, according to
18 Sheridan, Tamosaitis elected to be represented by SLF, and not MHB. Certain other clients,
19 including Chaussee, also transferred their matters (collectively, the "Transferred Cases") from
20 MHB to SLF.

21 **D. The Fee Dispute.**

22 3.18 After his departure from MHB, Sheridan settled the Tamosaitis Matter for \$4.1
23 million. SLF was paid a contingency fee in the amount of \$1,640,000 from the settlement
24 proceeds.

25 3.19 SLF has stated that it spent a total of 1,589.86 hours in connection with the
26 Tamosaitis Matter (inclusive of 1,188.4 hours on the Tamosaitis State Action and Tamosaitis

1 Administrative Action prior to January 1, 2013; 289.2 hours on the Tamosaitis Federal Action
2 prior to January 1, 2013; and 112.26 hours on the Tamosaitis Federal Action after July 31, 2014).

3 3.20 MHB has spent a total of 407.4 hours in connection with the Tamosaitis Matter
4 (inclusive of 171.9 hours on the Tamosaitis State Action, and 235.5 hours on the Tamosaitis
5 Federal Action).

6 3.21 Following settlement, Sheridan advised MHB that its share of the fee in the
7 Tamosaitis Matter was only \$81,515. SLF issued a check to MHB in the amount of \$82,220.27,
8 which included \$81,515, plus a small amount of costs that had not yet been paid to MHB by
9 Tamosaitis. The amount of \$81,515 is equal to the number of hours spent by MHB attorneys and
10 timekeeping staff on the Tamosaitis Federal Action only (excluding MHB work in the
11 Tamosaitis State Action) multiplied by their respective hourly billing rates.

12 3.22 SLF performed this allocation without regard to the number of hours spent by
13 SLF on any portion of the Tamosaitis Matter, or SLF's hourly rates. As a result, SLF has
14 retained well over \$1.5 million in attorneys' fees, which represents a vastly disproportionate
15 amount of the total attorneys' fee when compared to the percentage of time spent by SLF on the
16 Tamosaitis Matter, and specifically, the Tamosaitis Federal Action.

17 3.23 MHB accepted the \$81,515 as a partial payment, and notified Sheridan of its
18 disagreement with this proposed fee allocation.

19 3.24 In addition to the Tamosaitis Matter, SLF has allocated contingency fees it has
20 collected after July 31, 2014 in other Transferred Cases. SLF's allocations were performed
21 without regard to the amount of time spent by SLF, SLF's hourly billing rates, or any court
22 determination with respect to the reasonableness of attorney fees charged by SLF.

23 3.25 MHB is entitled to a pro-rata, equitable share of the attorneys' fees received by
24 SLF in all Transferred Cases where SLF has collected or stands to collect a contingency fee,
25 including, without limitation, the Tamosaitis Matter. This allocation should be performed based
26 on the amount of work performed by each firm.

1 3.26 MHB also is entitled to its rightful share of attorneys' fees received by SLF in all
2 other Transferred Cases.

3 3.27 Pursuant to Rule 1.15A of the Washington Rules of Professional Conduct, MHB
4 has requested that SLF and/or Sheridan maintain the amounts in dispute in trust pending the
5 resolution of this action. Sheridan, on behalf of SLF, has declined to do so with respect to the
6 full quantum of funds in dispute, and instead has agreed to maintain only a portion of the
7 disputed funds in the amount of \$73,000 in trust.

8 IV. CAUSES OF ACTION

9 FIRST CAUSE OF ACTION: 10 BREACH OF CONTRACT (Against Sheridan)

11 4.1 Plaintiff realleges and incorporates by reference paragraphs 1.1 through 3.27 of
12 this Complaint.

13 4.2 A valid, binding Agreement exists between MHB and Sheridan in connection
14 with Sheridan's status as a shareholder, officer and director of MHB between January 2013 and
15 July 2014. That Agreement provides for allocation of attorneys' fees received by Sheridan
16 and/or SLF after January 1, 2013, in cases brought by Sheridan to MHB in January 2013, on a
17 pro rata basis, based on the amount of work performed by SLF and MHB, respectively.

18 4.3 That Agreement further requires Sheridan to obtain consent from clients to have
19 MHB act as counsel, and to amend or supplement all client fee agreements to reflect the terms of
20 the Agreement between Sheridan and MHB.

21 4.4 Sheridan breached the Agreement by his conduct alleged herein, including but not
22 limited to failing to amend or supplement client fee agreements as required, and failing to
23 allocate attorneys' fees in cases brought by Sheridan to MHB on a pro-rata basis.

24 4.5 At all relevant times, MHB has fully performed all stipulations, conditions and
25 covenants which are part of the Agreement between Sheridan and MHB.

26 4.6 As a direct and proximate result of Sheridan's breaches, MHB has sustained
damages in an amount to be determined at trial.

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**FOURTH CAUSE OF ACTION:
ACCOUNTING
(Against All Defendants)**

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4.16 Plaintiff realleges and incorporates by reference paragraphs 1.1 through 4.15 of this Complaint.

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4.17 As a result of Defendants' conduct as alleged herein, there are now and will in the future be amounts due from Defendants to MHB.

4.18 MHB presently is unaware of the precise total amount that is and will be due from Defendants.

4.19 By virtue of the facts alleged herein, the unknown balance owed to MHB from Defendants cannot be ascertained without an accounting. MHB hereby demands an accounting from each Defendant and all supporting information necessary to permit MHB to determine the amounts due.

4.20 MHB is entitled to a judicial accounting of all the amounts due to it and to payment in full of the amounts due.

**FIFTH CAUSE OF ACTION:
DECLARATORY RELIEF
(Against All Defendants)**

4.21 Plaintiff realleges and incorporates by reference paragraphs 1.1 through 4.20 of this Complaint.

4.22 There exists a current, justiciable controversy between the parties as to the amount of attorneys' fees to which MHB and SLF, respectively, are entitled to receive as compensation for their work in the Transferred Cases, including, without limitation, the Tamosaitis Matter.

4.23 Based on the allegations herein, Plaintiff is entitled to a declaratory judgment affirming its entitlement to a pro-rata share of attorneys' fees received by Defendants in all contingency-basis Transferred Cases, including, without limitation, the Tamosaitis Matter, based on the amount of work performed by MHB and SLF, respectively, on each matter.

1 **SIXTH CAUSE OF ACTION:**
2 **UNJUST ENRICHMENT**
3 (Against All Defendants)

4 4.24 Plaintiff realleges and incorporates by reference paragraphs 1.1 through 4.23 of
5 this Complaint.

6 4.25 By their acts and/or omissions herein alleged, Defendants have been unjustly
7 enriched at the expense of Plaintiff.

8 4.26 Defendants knowingly have received or will receive a benefit, including but not
9 limited to attorneys' fees, which have been earned by MHB for work previously performed by
10 MHB, under circumstances making it inequitable for Defendants to retain the benefit.

11 4.27 As a direct and proximate result of Defendants' unjust enrichment, Plaintiff is
12 entitled to restitution in an amount to be proven at trial.

13 **SEVENTH CAUSE OF ACTION:**
14 **CONSTRUCTIVE TRUST**
15 (Against All Defendants)

16 4.28 Plaintiff realleges and incorporates by reference paragraphs 1.1 through 4.27 of
17 this Complaint.

18 4.29 Defendants' wrongful acts and/or omissions, as alleged herein, have caused or
19 will cause Defendants to possess funds to which they are not entitled, including funds which
20 have been earned by MHB for work that was performed by MHB, and for which Sheridan
21 received compensation from MHB prior to his departure from MHB.

22 4.30 As a result of the acts and/or omissions alleged herein, Defendants have been
23 unjustly enriched at MHB's expense, and possess, or are expected to come to possess, funds
24 which in equity and fairness should be disgorged to MHB.

25 4.31 MHB is therefore entitled to imposition of a constructive trust over such funds,
26 and transfer of the same to MHB.

V. REQUEST FOR RELIEF

WHEREFORE, having fully alleged its causes of action, Plaintiff requests the following
relief:

