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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

MACDONALD HOAGUE & BAYLESS, a
Washington corporation,

Plaintiff,

v.

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

Case No.: 16-2-04055-1 SEA

ANSWER AND COUNTERCLAIM FOR
DECLARATORY RELIEF

Defendants the Sheridan Law Firm, P.S. (“SLF”), John “Jack” Sheridan (“Sheridan”), and Jane Doe Sheridan (“Doe”), collectively referred to as, “Defendants,” in answer to Plaintiffs MacDonald Hoague & Bayless’ (“MHB”) complaint admit, deny, assert affirmative defenses, and counterclaim as follows. All allegations not specifically admitted are denied.

I. PARTIES

1.1 Admit.

1.2 Admit.

1.3 Admit that John P. Sheridan ("Sheridan") is an attorney and a member of the Washington State Bar, and that Sheridan is the sole owner of SLF. Admit that from

1 January 2013 to July 2014, Sheridan was an MHB shareholder, but deny the remaining
2 allegations in paragraph 1.3 of the Complaint.

3 1.4 Admit that Sheridan and Jane Doe Sheridan are spouses and together
4 constitute a marital community, but deny the remaining allegations in paragraph 1.4 of the
5 complaint.

6 II. JURISDICTION

7 2.1 Admit.

8 2.2 Admit that both law firms transact business in King County, and that the
9 allegations contained in the complaint arose in King County, but deny the remaining
10 allegations in paragraph 2.2 of the complaint.

11 III. FACTS

12 3.1 Admit.

13 3.2 Admit that effective January 1, 2013, Sheridan joined MHB as a
14 shareholder. Admit that Sheridan executed a "Buy Sell" Agreement, the terms of which
15 speak for themselves, but deny the remaining allegations in paragraph 3.2 of the complaint.

16 3.3 Admit that on or about January 16, 2013 Sheridan executed a Transitional
17 Directorship Agreement ("TDA"). The terms of the agreement are set forth in the
18 agreement, so there is no need to admit or deny the content, since the document speaks for
19 itself. Deny the remaining allegations in paragraph 3.3 of the complaint.

20 3.4 The terms of the TDA are set forth in the agreement, so there is no need to
21 admit or deny the content, since the document speaks for itself. Deny the remaining
22 allegations in paragraph 3.4 of the complaint.

23 3.5 Admit that Sheridan executed the Buy Sell Agreement and the TDA, the
24 terms of which are set forth therein, and so there is no need to admit or deny the content,
25 since the documents speak for themselves. Deny the remaining allegations in paragraph 3.5

1 of the complaint.

2 3.6 Deny.

3 3.7 Admit that MHB paid Sheridan as a shareholder of the firm. Admit that as a
4 shareholder, Sheridan like all other shareholders, was provided with an office, and the
5 support and services of paralegals, investigators, legal assistants, and associate counsel, all
6 of whom were MHB employees. Sheridan is without sufficient knowledge to admit or
7 deny that between January 1, 2013 and July 31, 2014, MHB paid Sheridan over \$150,000
8 in salary and benefits and therefore denies the same.

9 3.8 Deny that each case resulted in a defense verdict adverse to MHB's clients.
10 Admit that during his tenure at MHB, Sheridan tried several cases to a verdict, including
11 *Bichindaritz v. State*, which was a Public Records Act case. On September 6, 2013,
12 Sheridan obtained a verdict of \$723,290.50 against the State and on October 30, 2013,
13 Sheridan obtained attorney fees and costs in the *Bichindaritz* case in the amount of
14 \$102,958.03. The *Bichindaritz* judgments bore interest at 12%. The State filed an appeal.
15 Sheridan took no part in defending the appeal. When Sheridan left MHB, he left the
16 *Bichindaritz* case with MHB shareholders who exclusively handled the appeal, including
17 all legal research, all briefing and the oral argument. MHB were her only attorneys for the
18 appeal of the judgments obtained by Sheridan, totaling over \$826,000 at 12% interest.
19 During the appeal, MHB did not seek advice or participation by Sheridan or the SLF.
20 MHB lost the appeal (*Bichindaritz v. Univ. of Washington*, 185 Wash. App. 1055 (2015)),
21 and as a result, Dr. Bichindaritz and MHB received nothing. Had MHB not lost the
22 *Bichindaritz* appeal, MHB would have collected 40% of the verdict and attorney fees
23 totaling well over \$300,000.00, plus 40% of the fees incurred on appeal, plus interest. No
24 portion of those proceeds would have been paid to SLF or Sheridan, because Sheridan
25 retained no interest in the case. After having lost the appeal at the Court of Appeals, MHB

1 dropped Dr. Bichindaritz as a client, rather than seeking further review by the Supreme
2 Court. As to the allegation that under MHB's internal fee allocation system, from January
3 1, 2013 until July 31, 2014, Sheridan was responsible for a negative income to the firm,
4 exclusive of Sheridan's own salary and benefits paid by MHB, and exclusive of the
5 expenses associated with overhead and staffing provided by MHB, Defendants are without
6 sufficient knowledge to admit or deny the allegation, and therefore deny same. Sheridan
7 admits that Sheridan brought new clients into the firm, billed hourly for some of the work
8 performed, all of which was paid to MHB, settled cases while at MHB, the proceeds of
9 which were paid to MHB, gave clients who he brought in to other shareholders, who then
10 settled those cases, which profited MHB. When Sheridan left, by agreement with the other
11 shareholders, he left behind several clients who had come to MHB owing to Sheridan's
12 presence. On information and belief, some of those cases settled, which profited MHB
13 (Sheridan received no payment for any cases left with MHB), but MHB shareholders took
14 at least one of those cases to a jury trial and lost at trial. Also, after Sheridan left MHB, in
15 cases that he won or settled in which MHB had worked on the case, Sheridan diligently
16 ensured that MHB received its quantum meruit share of all hourly fees and all unpaid
17 costs, including from *Boyer v. State*, in which Sheridan, on December 26, 2014, paid MHB
18 the sum of \$153,448.81; from *Chaussee v. State*, in which Sheridan, on June 6, 2015, paid
19 MHB the sum of \$118,230.15. Those sums represented the total amount of attorney fees
20 and unpaid costs incurred by MHB while Sheridan was an MHB shareholder. In
21 *Tamosaitis v. URS*, Sheridan paid MHB the sum of \$82,220.27, which represented the total
22 amount of attorney fees and unpaid costs incurred by MHB in the federal *Tamosaitis*
23 litigation, which is the litigation that settled. On May 9, 2016, SLF won the appeal in *City*
24 *of Seattle v. Swanson*, No. 72344-8-I, 2016 WL 2643309 (Wash. Ct. App. May 9, 2016),
25 which will net MHB another \$150,000.00 representing MHB's quantum meruit share of all

1 hourly fees and all unpaid costs in attorney fees for hours worked in the case by Sheridan
2 and others during the time Sheridan was with MHB. Given all these payments to MHB,
3 deny that MHB lost money as a result of Sheridan's tenure there. Deny the remaining
4 allegations in paragraph 3.8 of the complaint.

5 3.9 Admit that Sheridan left MHB giving one month's notice after Managing
6 Partner Joe Schaeffer advised him that MHB would not be taking "big cases" in the
7 foreseeable future. Sheridan joined MHB primarily so he could try large value personal
8 injury cases, including medical malpractice cases, and during his tenure at MHB, no such
9 cases were brought into the firm, and the only large case, which was a police misconduct
10 case, was farmed out to another firm to take the case to trial with MHB shareholders as
11 second chairs. That information, combined with other factors, including the announcement
12 by MHB associate Beth Tuschner, that she would be leaving in July, prompted Sheridan
13 to leave as well at that time, since Ms. Tuschner had been assigned to work with
14 Sheridan, and he would have had to train a new associate. During Sheridan's tenure at
15 MHB between January 1, 2013 and July 31, 2014, at least two shareholders left the firm
16 before Sheridan, and on information and belief, at least one shareholder returned her shares
17 and became "of counsel" instead of a shareholder. Deny the remaining allegations in
18 paragraph 3.9 of the complaint.

19 3.10 Admit that Sheridan and SLF began representing Dr. Tamosaitis in 2010.
20 The terms of the Tamosaitis fee agreement are set forth in the agreement, so there is no
21 need to admit or deny the content; the document speaks for itself. Deny the remaining
22 allegations in paragraph 3.10 of the complaint.

23 3.11 The terms of the Tamosaitis fee agreement are set forth in the agreement, so
24 there is no need to admit or deny the content, since the document speaks for itself. Deny
25 the remaining allegations in paragraph 3.11 of the complaint.

1 3.12 Admit.

2 3.13 Admit.

3 3.14 Admit.

4 3.15 Admit that Sheridan left MHB giving one month's notice after Managing
5 Partner Joe Schaeffer advised him that MHB would not be taking "big cases" in the
6 foreseeable future. Sheridan joined MHB primarily so he could try large value personal
7 injury cases, including medical malpractice cases, and during his tenure at MHB, no such
8 cases were brought into the firm, and the only large case, which was a police misconduct
9 case, was farmed out to another firm to take the case to trial with MHB shareholders as
10 second chairs. That information, combined with other factors, including the announcement
11 by MHB associate Beth Tuschner, that she would be leaving in July, prompted Sheridan
12 to leave as well at that time, since Ms. Tuschner had been assigned to work with
13 Sheridan, and he would have to break in a new MHB associate. During Sheridan's tenure
14 at MHB between January 1, 2013 and July 31, 2014, at least two shareholders left the firm
15 before Sheridan, and on information and belief, at least one shareholder returned her shares
16 and became "of counsel" instead of a shareholder. Since Sheridan left in 2014, at least two
17 more shareholders left MHB. Deny the remaining allegations in paragraph 3.15 of the
18 complaint.

19 3.16 Admit that by agreement Sheridan and the MHB shareholders sent letters to
20 clients inviting them to choose either SLF or MHB as their attorneys, and the terms of
21 which otherwise speak for themselves. Deny the remaining allegations in paragraph 3.16
22 of the complaint.

23 3.17 Defendants are without sufficient knowledge to admit or deny if Tamosaitis
24 sent a copy of the election form to MHB, and therefore deny same. Admit Tamosaitis
25 elected SLF. Admit that other clients also selected SLF over MHB. Admit that in *Rufin v.*

1 City, Ms. Rufin selected MHB to be her counsel, but the MHB shareholders declined her
2 as a client, and when Sheridan sought to have the two firms provide Ms. Rufin with joint
3 representation, the MHB shareholders refused. Deny the remaining allegations in
4 paragraph 3.17 of the complaint.

5 3.18 Admit that after Sheridan left MHB in July 2014, on August 12, 2015,
6 **more than one year later**, the federal case settled for \$4.1 million. MHB played no part
7 in the settlement or in the litigation after Sheridan left. Admit that SLF was paid
8 \$1,557,485.00 from the proceeds of the settlement. Admit that MHB was paid \$81,515.00
9 from the proceeds of the settlement in accordance with *Fetty v. Wenger*, 110 Wn. App.
10 598, 600, 36 P.3d 1123, 1124 (2001), *as amended on denial of reconsideration* (Mar. 27,
11 2002), citing, *Kimball v. Pub. Util. Dist. No. 1 of Douglas Cty.*, 64 Wn.2d 252, 258, 391
12 P.2d 205, 209 (1964). Deny the remaining allegations in paragraph 3.18 of the complaint.

13 3.19 Admit.

14 3.20 Deny. Admit that SLF allocated a quantum meruit amount for fees earned in
15 the federal litigation, which reflected MHB's final accounting to the client, and which was
16 the same calculation made by MHB in drafting the final accounting in *Chaussee v. State*.
17 Admit that in both accountings, MHB claimed only a quantum meruit amount, and
18 accepted payment of same. In neither accounting did MHB claim a percentage of the
19 contingent fee. Deny the remaining allegations in paragraph 3.20 of the complaint.

20 3.21 Deny. Admit that MHB cashed the check in September 2015, but only
21 raised a question as to whether the state hours should also be paid for the first time in
22 November 2015. Admit that MHB did not claim a percentage of the contingent fee in any
23 communications prior to this time. Deny the remaining allegations in paragraph 3.21 of
24 the complaint.

25 3.22 Deny. Admit that MHB has not claimed, until now, any right to a

1 contingent share of any cases. Deny the remaining allegations in paragraph 3.22 of the
2 complaint.

3 3.23 Deny.

4 3.24 Deny.

5 3.25 Deny.

6 3.26 Deny.

7 3.27 Admit that MHB has asked that funds be placed in trust, and that
8 Defendants have declined to do so. Deny that Defendants have any obligation to do so. Deny
9 the remaining allegations in paragraph 3.27 of the complaint.

10 **IV. CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

12 **(Against Sheridan)**

13 4.1 Defendants hereby incorporate their prior denials set forth in paragraphs 1.1
14 through 3.26 of the complaint by reference.

15 4.2 Admit that Sheridan signed the Buy Sell Agreement and TDA, the terms of
16 which speak for themselves. Deny the remaining allegations in paragraph 4.2 of the
17 complaint.

18 4.3 Admit that Sheridan signed the Buy Sell Agreement and TDA, the terms of
19 which speak for themselves. Deny the remaining allegations in paragraph 4.2 of the
20 complaint.

21 4.4 Deny.

22 4.5 Deny.

23 4.6 Deny.

24 **SECOND CAUSE OF ACTION: BREACH OF GOOD FAITH AND FAIR**

25 **DEALING**

1 **(Against Sheridan)**

2 4.7 Defendants hereby incorporate their prior denials set forth in paragraphs 1.1
3 through 4.6 of the complaint by reference.

4 4.8 Admit that Sheridan signed the Buy Sell Agreement and TDA, the terms of
5 which speak for themselves. Deny that the contracts apply here, but admit that all contracts
6 include an implied duty of good faith and fair dealing. Deny the remaining allegations in
7 paragraph 4.8 of the complaint.

8 4.9 Deny.

9 4.10 Deny.

10 **THIRD CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY**

11 **(Against Sheridan)**

12 4.11 Defendants hereby incorporate their prior denials set forth in paragraphs 1.1
13 through 4.10 of the complaint by reference.

14 4.12 Deny.

15 4.13 Deny.

16 4.14 Deny.

17 4.15 Deny.

18 **FOURTH CAUSE OF ACTION: ACCOUNTING**

19 **(Against all defendants)**

20 4.16 Defendants hereby incorporate their prior denials set forth in paragraphs 1.1
21 through 4.14 of the complaint by reference.

22 4.17 Deny.

23 4.18 Deny.

24 4.19 Deny.

25 4.20 Deny.

1 **FIFTH CAUSE OF ACTION: DECLARATORY RELIEF**

2 **(Against all defendants)**

3 4.21 Defendants hereby incorporate their prior denials set forth in paragraphs 1.1
4 through 4.19 of the complaint by reference.

5 4.22 Deny.

6 4.23 Deny.

7 **SIXTH CAUSE OF ACTION: UNJUST ENRICHMENT**

8 **(Against all defendants)**

9 4.24 Defendants hereby incorporate their prior denials set forth in paragraphs 1.1
10 through 4.22 of the complaint by reference.

11 4.25 Deny.

12 4.26 Deny.

13 4.27 Deny.

14 **SEVENTH CAUSE OF ACTION: CONSTRUCTIVE TRUST**

15 **(Against all defendants)**

16 4.28 Defendants hereby incorporate their prior denials set forth in paragraphs 1.1
17 through 4.26 of the complaint by reference.

18 4.29 Deny.

19 4.30 Deny.

20 4.31 Deny.

21 **V. REQUEST FOR RELIEF**

22 5.1 Deny.

23 5.2 Deny.

24 5.3 Deny.

25 5.4 Deny.

- 1 A. That the defendants' claims be dismissed with prejudice;
- 2 B. That the defendants be awarded attorney's fees and costs to the extent permitted
- 3 by law;
- 4 C. For such other and further relief as the Court may deem just and proper.

5 **COUNTERCLAIM OF DEFENDANTS SHERIDAN AND SLF**

6 **IX. FACTS**

7 9.1 Jack Sheridan and the Sheridan Law Firm, P.S. represented Dr. Walter

8 Tamosaitis from 2010 until 2015. Initially SLF represented Dr. Tamosaitis on an hourly

9 basis, but on September 13, 2010, the representation became contingent. SLF filed a

10 complaint with OSHA under the ERA and TSCA. In the administrative forum, the

11 complainant had no right to conduct discovery.

12 9.2 Sheridan's strategy was to file a parallel state court action, which would

13 allow Dr. Tamosaitis to conduct discovery, which he could then provide to the OSHA

14 investigator, and decide down the road, which case to bring forward to trial.

15 9.3 On September 13, 2010, Dr. Tamosaitis filed a lawsuit against URS,

16 Bechtel National Inc. ("BNI"), and individual defendants alleging civil conspiracy and

17 tortious interference ("State case"). The State case was removed to federal court and

18 remanded back on January 31, 2011.

19 9.4 The State case was aggressively litigated by the defendants, which included

20 an unsuccessful challenge to plaintiff's civil conspiracy claim.

21 9.5 In the course of the State case discovery process, Sheridan conducted or

22 defended over 25 depositions in several different states, and he and his staff obtained and

23 reviewed tens of thousands of discovery documents, including a smoking gun email that

24 showed a DOE manager's participation in the decision to remove Dr. Tamosaitis from his

25

1 position. That smoking gun email prompted Sheridan to amend the administrative claim to
2 add DOE as a respondent.

3 9.6 Since Dr. Tamosaitis was still employed at URS, and for most of the time
4 since his removal, he was suffering every day having been assigned a basement office and
5 given no work to do, Sheridan made the decision to drop URS from the State case and to
6 proceed against BNI on the tortious interference theory. Sheridan's thinking was that
7 splitting the defendants would result in them pointing the finger at each other, instead of
8 having them speak in one voice, as had been the case in the State case.

9 9.7 Sheridan filed the federal ERA whistleblower complaint ("federal case") on
10 November 9, 2011.

11 9.8 On January 10, 2012, the State case was dismissed at summary judgment.
12 The dismissal was affirmed by the Court of Appeals on July 1, 2014. *Tamosaitis v. Bechtel*
13 *Nat., Inc.*, 182 Wn. App. 241, 327 P.3d 1309, *review denied*, 181 Wn.2d 1029, 340 P.3d
14 229 (2014).

15 9.9 In the State case SLF billed almost 1,000 hours through 2012. In the federal
16 case SLF billed almost 300 hours through 2012.

17 9.10 Between the date that Tamosaitis retained SLF on April 13, 2010, and the
18 date that Sheridan joined MHB on January 1, 2013, the SLF billed approximately 1,477
19 hours pursuant to a contingent fee agreement with Dr. Tamosaitis. Some of those hours
20 were billable to the Tamosaitis Federal case, even though billed in the State case, because
21 they were spent conducting or defending more than twenty depositions in various cities,
22 and those depositions were used to prosecute the Federal case.

23 9.11 In the State case, on October 26, 2010, Sheridan deposed Jean Dunkirk in
24 Kennewick, WA; MHB did not participate in preparing, conducting, or traveling to this
25 deposition, and neither paid nor advanced costs associated with the deposition.

1 9.12 In the State case, on March 29, 2011 Sheridan deposed William Gay in
2 Kennewick, WA; MHB did not participate in preparing, conducting, or traveling to this
3 deposition, and neither paid nor advanced costs associated with the deposition.

4 9.13 In the State case, on April 20, 2011, Sheridan deposed Frank Russo in
5 Kennewick, WA; MHB did not participate in preparing, conducting, or traveling to this
6 deposition, and neither paid nor advanced costs associated with the deposition.

7 9.14 In the State case, on April 21, 2011, Sheridan deposed Dennis Hayes in
8 Kennewick, WA; MHB did not participate in preparing, conducting, or traveling to this
9 deposition, and neither paid nor advanced costs associated with the deposition.

10 9.15 In the State case, on April 26, 2011, Sheridan deposed Barbara Rusinko in
11 Frederick, MD; MHB did not participate in preparing, conducting, or traveling to this
12 deposition, and neither paid nor advanced costs associated with the deposition.

13 9.16 In the State case, on May 16, 2011, Sheridan deposed Steven Barnes in
14 Kennewick, WA; MHB did not participate in preparing, conducting, or traveling to this
15 deposition, and neither paid nor advanced costs associated with the deposition.

16 9.17 In the State case, on May 16, 2011, Sheridan deposed Donna Busche in
17 Kennewick, WA; MHB did not participate in preparing, conducting, or traveling to this
18 deposition, and neither paid nor advanced costs associated with the deposition.

19 9.18 In the State case, on May 17, 2011, Sheridan deposed Frederick Damerow
20 in Kennewick, WA; MHB did not participate in preparing, conducting, or traveling to this
21 deposition, and neither paid nor advanced costs associated with the deposition.

22 9.19 In the State case, on May 17, 2011, Sheridan deposed Robert French in
23 Kennewick, WA; MHB did not participate in preparing, conducting, or traveling to this
24 deposition, and neither paid nor advanced costs associated with the deposition.

25 9.20 In the State case, on May 25, 2011, Sheridan deposed Gregory Ashley, in

1 Seattle, WA; MHB did not participate in preparing or conducting this deposition, and
2 neither paid nor advanced costs associated with the deposition.

3 9.21 In the State case, on June 22, 2011, Sheridan deposed Cami Krumm in
4 Kennewick, WA; MHB did not participate in preparing, conducting, or traveling to this
5 deposition, and neither paid nor advanced costs associated with the deposition.

6 9.22 In the State case, on June 22, 2011, Sheridan deposed Terry Walton in
7 Kennewick, WA; MHB did not participate in preparing, conducting, or traveling to this
8 deposition, and neither paid nor advanced costs associated with the deposition.

9 9.23 In the State case, on July 14, 2011, Sheridan deposed Frank Russo for the
10 second time in Kennewick, WA; MHB did not participate in preparing, conducting, or
11 traveling to this deposition, and neither paid nor advanced costs associated with the
12 deposition.

13 9.24 In the State case, on August 22, 2011, Sheridan deposed Richard Edwards
14 in Aiken, South Carolina; MHB did not participate in preparing, conducting, or traveling to
15 this deposition, and neither paid nor advanced costs associated with the deposition.

16 9.25 In the State case, on August 24, 2011, Sheridan deposed Leo Sain in
17 Knoxville, TN; MHB did not participate in preparing, conducting, or traveling to this
18 deposition, and neither paid nor advanced costs associated with the deposition.

19 9.26 In the State case, on August 30, 2011, Sheridan deposed David Kosson in
20 Nashville, TN; MHB did not participate in preparing, conducting, or traveling to this
21 deposition, and neither paid nor advanced costs associated with the deposition.

22 9.27 In the State case, on August 31, 2011, Sheridan deposed Mike Kluse in
23 Kennewick, WA; MHB did not participate in preparing, conducting, or traveling to this
24 deposition, and neither paid nor advanced costs associated with the deposition.

25 9.28 In the State case, on October 18, 2011, Sheridan defended the deposition of

1 Walter Tamosaitis in Kennewick, WA; MHB did not participate in preparing, defending,
2 or traveling to this deposition, and neither paid nor advanced costs associated with the
3 deposition.

4 9.29 In the State case, on October 19, 2011, Sheridan defended the deposition of
5 Walter Tamosaitis in Kennewick, WA; MHB did not participate in preparing, defending,
6 or traveling to this deposition, and neither paid nor advanced costs associated with the
7 deposition.

8 9.30 In the State case, on October 21, 2011, Sheridan defended the deposition of
9 Perry Meyer in Kennewick, WA; MHB did not participate in preparing, defending, or
10 traveling to this deposition, and neither paid nor advanced costs associated with the
11 deposition.

12 9.31 In the State case, on October 27, 2011, Sheridan defended the deposition of
13 Sandra Tamosaitis in Kennewick, WA; MHB did not participate in preparing, defending,
14 or traveling to this deposition, and neither paid nor advanced costs associated with the
15 deposition.

16 9.32 Some of the hours SLF devoted to the State case were spent obtaining and
17 reviewing over 150,000 pages of discovery documents to find evidence supporting Dr.
18 Tamosaitis' claims. MHB did not participate in the work that went into obtaining any of
19 those documents.

20 9.33 The deposition testimony and documents obtained by SLF in the State case
21 were used to prosecute the federal case.

22 9.34 Some of the hours SLF devoted to the State case were spent drafting
23 pleadings to compel discovery that was used in the Federal case.

24 9.35 In the State case, on March 25, 2011, SLF conceived and drafted a motion
25 to compel BNI to produced documents; MHB did not conceive, research, draft, or

1 otherwise participate in the work related to this pleading.

2 9.36 In the State case, on May 4, 2011, SLF moved to compel Russo to attend a
3 second day of depositions; MHB did not conceive, research, draft, or otherwise participate
4 in the work related to this pleading.

5 9.37 In the State case, on May 27, 2011 SLF obtained an order requiring BNI to
6 produced Russo for a second day of deposition; MHB did not conceive, research, draft, or
7 otherwise participate in the work related to this pleading.

8 9.38 In the State case, on November 9, 2011, SLF conceived, drafted, and filed
9 the federal Complaint against URS and the Department of Energy alleging violations of the
10 ERA; all of the evidence supporting the Federal case had been obtained by SLF in the state
11 litigation.

12 9.39 In the State case, SLF drafted the September 2010 state complaint; MHB
13 did not conceive, research, draft, or otherwise participate in the work related to this
14 pleading.

15 9.40 In the State case, SLF responded to the October 2010 URS motion to
16 dismiss in State case; MHB did not conceive, research, draft, or otherwise participate in the
17 work related to this pleading.

18 9.41 In the State case, SLF responded to the October 2010 Notice of removal to
19 federal court and motion for remand; MHB did not conceive, research, draft, or otherwise
20 participate in the work related to this pleading.

21 9.42 In the State case, SLF responded to the February 2011 BNI motion to
22 dismiss in State case; MHB did not conceive, research, draft, or otherwise participate in the
23 work related to this pleading.

24 9.43 In the State case, SLF obtained the July 2011 State Court order denying
25 defendants' motion to dismiss; MHB did not conceive, research, draft, or otherwise

1 participate in the work related to this pleading.

2 9.44 In the State case, SLF conceived and drafted the August 2011 plaintiff
3 motion to drop civil conspiracy claim and to drop URS; MHB did not conceive, research,
4 draft, or otherwise participate in the work related to this pleading.

5 9.45 In the State case, SLF responded to the December 2011 BNI summary
6 judgment motion; MHB did not conceive, research, draft, or otherwise participate in the
7 work related to this pleading.

8 9.46 In the State case, SLF drafted the January 2012 appeal of state court
9 summary judgment dismissal; MHB did not conceive, research, draft, or otherwise
10 participate in the work related to this pleading.

11 9.47 In the State case, SLF drafted the June 2012 appellate brief filed to State
12 Court of Appeals; MHB did not conceive, research, draft, or otherwise participate in the
13 work related to this pleading.

14 9.48 In the State case, SLF drafted the October 2012 Reply brief in state appeal;
15 MHB did not conceive, research, draft, or otherwise participate in the work related to this
16 pleading.

17 9.49 None of the hours billed after the January 2012 summary judgment
18 dismissal of the State case against URS were billable to the Federal case, because those
19 efforts did not contribute to proving the Federal case, and thus were not “attorney fees
20 reasonably incurred.” *DeFord v. Sec’y of Labor*, 700 F.2d 281, 284 (6th Cir. 1983); 42
21 U.S.C.A. § 5851.

22 9.50 In the Federal case, in July 2010, SLF drafted the DOL complaint alleging
23 violations of the Energy Reorganization Act, 15 USC ¶2622; MHB did not conceive,
24 research, draft, or otherwise participate in the work related to this pleading.

25 9.51 In the Federal case, in November 2011 SLF drafted and filed the URS/DOE

1 federal complaint and attached a 300 page appendix of evidence accumulated in the State
2 case; MHB did not conceive, research, draft, or otherwise participate in the work related to
3 this pleading.

4 9.52 In the Federal case, in February 2012, Judge Suko stayed all discovery in
5 the federal proceeding in response to DOE motion to stay discovery, which was opposed
6 by SLF; MHB did not conceive, research, draft, or otherwise participate in the work related
7 to this pleading.

8 9.53 In the Federal case, in March 2012, SLF opposed URS's motion to strike
9 the jury; MHB did not conceive, research, draft, or otherwise participate in the work
10 related to this pleading.

11 9.54 In the Federal case, in March 2012, SLF opposed DOE's motion to dismiss;
12 MHB did not conceive, research, draft, or otherwise participate in the work related to this
13 pleading.

14 9.55 In the Federal case, in March 2012, SLF opposed URS's motion first
15 motion for summary judgment; MHB did not conceive, research, draft, or otherwise
16 participate in the work related to this pleading.

17 9.56 In the Federal case, in August 2012, SLF opposed URS's second motion for
18 summary judgment; MHB did not conceive, research, draft, or otherwise participate in the
19 work related to this pleading.

20 9.57 In the Federal case, in November 2012, after Judge Suko granted all of
21 defendants' motions and dismissed the case, SLF filed an appeal to the 9th Circuit. Beth
22 Touschner and Joe Schaeffer drafted the 9th Circuit brief with Sheridan's input using facts
23 and documents obtained in the State case, and Sheridan argued the Federal case before the
24 9th Circuit.

25 9.58 After Sheridan left MHB, SLF continued to work on the Tamosaitis case

1 once the appeal was won and the case was remanded. SLF billed an approximately 112
2 additional hours after remand for work done on the federal case.

3 9.59 In the Federal case, SLF conceived and drafted the April 2015 scheduling
4 order; MHB did not conceive, research, draft, or otherwise participate in the work related
5 to this pleading.

6 9.60 In the Federal case, SLF conceived and drafted the May 2015 notice of
7 intent to file ERA complaint in federal court; MHB did not conceive, research, draft, or
8 otherwise participate in the work related to this pleading.

9 9.61 In the Federal case, SLF conceived and drafted the May 2015 plaintiff's
10 initial disclosures; MHB did not conceive, research, draft, or otherwise participate in the
11 work related to this pleading.

12 9.62 In the Federal case, SLF conceived and drafted the July 2015 plaintiff's
13 second amended complaint; MHB did not conceive, research, draft, or otherwise
14 participate in the work related to this pleading.

15 9.63 In the Federal case, SLF conceived and drafted the July 2015 mediation
16 statement and Sheridan attended the mediation and advocated for Tamosaitis at the
17 mediation; MHB did not conceive, research, draft, or otherwise participate in the work
18 related to the mediation.

19 9.64 In the Federal case, SLF conceived and drafted the August 2015 notice of
20 settlement; MHB did not conceive, research, draft, or otherwise participate in the work
21 related to this pleading.

22 9.65 At the time of the Federal case settlement, MHB sought payment for 407.4
23 hours of work on the federal case totaling \$82,220.27 (fees and costs), which was paid to
24 MHB on September 18, 2015 in full.

25 9.66 At the time of the Federal case settlement MHB sought payment for 171.9

1 hours of work on the state appeal totaling \$72,922.50. This amount was not paid since it
2 was not work that contributed to proving the Federal case, and thus were not “attorney fees
3 reasonably incurred.” *DeFord v. Sec’y of Labor*, 700 F.2d 281, 284 (6th Cir. 1983); 42
4 U.S.C.A. § 5851.

5 9.67 When Sheridan left MHB, he and the other partners agreed that they would
6 let the clients decide which firm would represent them after the dissolution. They followed
7 the WSBA’s “Friendly” partner leaving checklist.

8 9.68 Since his departure, Sheridan and MHB have followed the same process: if
9 MHB had not rejected a particular client, and the client elected SLF instead of MHB, then
10 MHB would be entitled to their reasonable hours worked on the case under
11 quantum meruit. The two firms had worked seamlessly to ensure that MHB’s hourly fees
12 and costs were incorporated into SLF’s fee petitions. The process has been that after
13 Sheridan won a case, MHB would submit its hours to him, most of which were either
14 Sheridan’s hours or his staff’s hours, and Sheridan would work to obtain those hours and
15 pay the proceeds to MHB upon receipt.

16 9.69 In *Boyer v. State*, Sheridan won a jury verdict in late 2014. MHB submitted
17 its hours, and the court awarded fees and costs. Sheridan gave MHB its share representing
18 the quantum meruit amount in the amount of \$153,448.81.

19 9.70 In *Chaussee v. State*, again after winning another jury verdict in 2015,
20 Sheridan submitted a fee petition, which included fees and costs for work done while he
21 was at MHB, and paid MHB its share representing the quantum meruit amount once he got
22 paid. The payment to MHB was for \$118,230.15. MHB did not seek a percentage of the
23 SLF contingent fee.

24 9.71 MHB cashed the Chaussee check for \$118,230.15 (“Chaussee check”). In
25 the time before MHB cashed the Chaussee check, MHB never engaged in settlement

1 discussions with Sheridan.

2 9.72 In the time before MHB cashed the Chaussee check, MHB never demanded
3 that Sheridan, SLF, or Tamosaitis pay an amount greater than the amount of the Chaussee
4 check.

5 9.73 A problem arose between MHB and SLF, because the Tamosaitis case
6 settled, and there were two cases—the State case, which was lost, and the federal case,
7 which settled. Had the federal case proceeded through trial instead of settling, and had Dr.
8 Tamosaitis prevailed, SLF would have submitted a fee petition under the ERA, which
9 would have included MHB hours, the Court would have awarded fees in accordance with
10 the law, and SLF would have dispersed the fees accordingly.

11 9.74 After receiving word from Sheridan that the Tamosaitis Federal case had
12 settled, MHB shareholder Andrew Chan sent Sheridan an email attaching the MHB
13 proposed final accounting, which included fees generated in both the State and Federal
14 cases totaling \$154,437.50. Sheridan asked Mr. Chan to redo the draft and delete the state
15 fees, because they only pertained to the state appeal following dismissal of the State case at
16 summary judgment, which was unsuccessful. Mr. Chan said he would consider Sheridan’s
17 position. This was not a settlement discussion. It was simply a discussion of a billing
18 error.

19 9.75 MHB sent Sheridan a breakdown of the MHB billing. Pages 1-10 contain
20 the State fee billings, which total \$72,922.50, and pages 11-20 contain the billings for fees
21 incurred for work done on the Federal case, which was settled. The Federal case billings
22 totaled \$81,515.

23 9.76 After the settlement check cleared, Sheridan sent MHB a check in the
24 amount of \$82,220.27 (“Tamosaitis settlement check”), which represented all
25 unreimbursed costs and the attorney fees for the federal case done at MHB.

1 9.77 MHB cashed the Tamosaitis settlement check.

2 9.78 On May 9, 2016, SLF won the appeal in *City of Seattle v. Swanson*, No.
3 72344-8-I, 2016 WL 2643309 (Wash. Ct. App. May 9, 2016), which will net MHB another
4 \$150,000.00 representing MHB’s quantum meruit share of all hourly fees and all unpaid
5 costs in attorney fees for hours worked in the case by Sheridan and others during the time
6 Sheridan was with MHB.

7 **X. CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION: DECLARATORY RELIEF**

9 10.1 Defendants reallege and incorporate by reference paragraphs 8.1 to 8.78.

10 10.2 There exists a current, justiciable controversy between the parties as to the
11 amount of attorneys' fees to which MHB is entitled to receive as compensation for its work
12 on the State case.

13 10.3 Based on the allegations herein, defendants are entitled to a declaratory
14 judgment finding that MHB has no right to attorneys' fees for its work on the State case.

15 **XI. DEMAND FOR JURY**

16 Plaintiff hereby demands that this case be tried before a jury of twelve.

17 **XII. PRAYER FOR RELIEF**

18 12.1. A declaration of the respective rights of the parties regarding the State case
19 attorney fees sought by MHB.

20 12.2. Attorney fees and costs.

21 12.3. Such other relief as the Court deems just and equitable.

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1 Respectfully submitted this 23rd day of May, 2016.

2 SHERIDAN LAW FIRM, P.S.

3
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