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No. 72123-2-I

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

NORIO MITSUOKA,

Appellant,

v.

FUMOTO ENGINEERING OF AMERICA, INC., a Washington
Corporation, NAOYUKI YAMAMOTO, an individual, FUMOTO
GIKEN CO., LTD, a Japanese Corporation,

Respondents.

BRIEF OF APPELLANT MITSUOKA

David E. Reed, WSBA # 7014
Theresa Pruett, WSBA #26063
Reed Pruett Walters PLLC
10900 NE 4th Street, Suite 2300
Bellevue, WA 98004
(425) 646-6760

Sidney Tribe, WSBA #33160
Talmadge/Fitzpatrick
2775 Harbor Ave. SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Attorneys for Appellant Norio Mitsuoka

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A. INTRODUCTION

In this notice pleading state, plaintiffs do not have to include in their complaints every fact that they intend to prove at trial in order to survive a CR 12(b)(6) motion. In fact, the standard for dismissing a complaint under that rule is generous, and allows the trial court to consider not only the facts in the complaint, but also any hypothetical facts consistent with the complaint.

Norio Mitsuoka was terminated from his position at a company he founded and owned a 12.5% interest without cause and without remuneration or notice. He alleged in his complaint that he had express contracts that he would only be fired for cause, and that he had a business expectancy of continuing in his position as long as the company was profitable.

Despite filing a detailed complaint that stated numerous claims under Washington law, the trial court dismissed it under CR 12(b)(6). The court applied the summary judgment standard, rather than the 12(b)(6) standard, and refused to consider hypothetical facts. The trial court also seemed to believe that Mitsuoka was obliged to state facts identical to a particular case to state a claim, rather than stating facts that fit the elements of the legal tests of his claims.

The trial court erred in dismissing the complaint, and in refusing Mitsuoka leave to amend to meet the trial court's overly rigorous pleading standard. The decision should be reversed.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error

1. The trial court erred in dismissing Mitsuoka's complaint for failing to state a claim under CR 12(b)(6) in its order dated May 23, 2014.
2. The trial court erred in denying Mitsuoka's motion for reconsideration of its CR 12(b)(6) dismissal in its order dated June 19, 2014.
3. The trial court erred in declining to consider Mitsuoka's motion for leave to amend his complaint in its order dated June 19, 2014.

(2) Issues Related to Assignments of Error

1. Does a complaint alleging that the plaintiff had an express contract assuring him employment with termination only for just cause, and that the plaintiff was dismissed without just cause, state a claim for wrongful termination and breach of contract? (Assignments of Error 1, 2)
2. Does a complaint alleging that a Japanese company and CEO who have an exclusive distributorship agreement with a U.S. company, but then undermine the U.S. company's minority shareholder and president to benefit the son of the Japanese company's CEO, state a claim for tortious interference with a business expectancy, intentional interference with contractual relations, and /or minority shareholder oppression? (Assignments of Error 1, 2)

3. Does a trial court abuse its discretion in denying a motion for reconsideration of a 12(b)(6) dismissal, when the court dismissed the case because particular facts were absent from the complaint, and those facts are then included in an amended complaint? (Assignment of Error 2)
4. Does a trial court abuse its discretion in refusing to consider a motion to amend a complaint under CR 15 when a case is in its earliest stages and there is no demonstrated prejudice to the opposing party? (Assignment of Error 3)

C. STATEMENT OF THE CASE

Because this is an appeal from a 12(b)(6) dismissal, the only relevant record is Mitsuoka's complaint, as well as any *hypothetical* facts consistent with the complaint, including any new facts raised for the first time on appeal. *Halvorson v. Dahl*, 89 Wn.2d 673, 675, 574 P.2d 1190 (1978). Although the trial court's original dismissal order related to Mitsuoka's second amended complaint, his proposed third amended complaint was presented in conjunction with the trial court's reconsideration of that dismissal. Thus, this fact section is taken from Mitsuoka's proposed third amended complaint, which is at CP 25-47 and Appendix A.¹

¹ The second amended complaint does not appear on the superior court docket because it was originally filed in federal court. CP 208. Thus, in designating the clerk's papers, counsel for Mitsuoka designated the interlineated version of the second amended complaint that shows the difference between the second and (proposed) third amended complaints. CP 49-73. For the Court's convenience a clean copy of the second amended

(1) Origins of Business Relationship and Contract Formation

Mitsuoka graduated from Tokyo University in 1977. CP 26. After graduation, he went to work for the largest Japanese advertising agency, Dentsu, which at the time was the highest paying company in Japan. In 1981, Mitsuoka moved from Japan to the United States to work for a Dentsu joint venture, Young & Rubicam/Dentsu. CP 26. At the time he was a Japanese citizen. He became a U.S. citizen in 2011 and now maintains a dual citizenship. CP 26. Yamamoto is a Japanese citizen and has resided in Japan his entire life. Yamamoto and his company Defendant FGC had an oil drain valve product that was marketed and sold in Japan. CP 26.

In late 1983, Mitsuoka was introduced to Yamamoto through a mutual friend and learned that Yamamoto and his company FGC were looking for a US distributor for his oil changer valves. CP 26. Mitsuoka was looking for an opportunity to start his own business (as in the American dream) although he had a well paying job. When they began discussions, Mitsuoka was a native speaker of Japanese but also spoke English. CP 26. He also had substantial expertise in developing markets for new products. Yamamoto and Mitsuoka exchanged letters, and in March of 1984 Yamamoto and his wife came to visit Mitsuoka in Los

complaint is at Appendix B.

Angeles to discuss the business opportunities. CP 27. They immediately became very close friends. At that time, both were citizens of Japan, shared the traditions, culture, business and employment assumptions of their Japanese heritage, where “lifetime” and “just-cause employment” are assumed, where termination of employment for no cause is rare, and subject to legal sanctions. CP 27. This relationship continued for more than 2 decades. CP 27.

During Yamamoto’s stay, he and Mitsuoka spent many hours talking about the future business and way of life. CP 27. On a number of occasions they had a dialogue like the following:

Yamamoto: Are you really sure you want to sacrifice your great career and devote your life to something like this unknown valve?

Mitsuoka: Yes, I see a great potential in this product, and I learned a lot about marketing and advertising for new products in my ad agency career, so I’m ready to make the full commitment. I want to make this my lifetime work.

Yamamoto: OK. I like you. I will give you my full support and help you all the way. I will guarantee that you will not regret your decision. You can be the exclusive distributor for as long as you want to sell the valves.

CP 27. Yamamoto also told Mitsuoka “I’m sure you will succeed, but if anything goes wrong, don’t worry, I can take care of the life of you and your family....” CP 27.

When Yamamoto returned to Japan after 3-4 days, he wrote Mitsuoka a letter on March 28, 1984 and stated “I fell in love with your personality.” CP 27. Before the corporate structure of their business deal was formed, Mitsuoka and Yamamoto agreed that Mitsuoka would start a new company either as a sole proprietor or other entity form, and that such company would be the exclusive dealer of the valve in the US. The exclusive dealership agreement supplemented the broader agreement between the two men. CP 27. The exclusive dealer arrangement was memorialized in part in a document handwritten by Yamamoto titled “Agreement” and dated May 10, 1984. The Agreement stated in part:

“ A [FGC] shall provide B [New Mitsuoka enterprise] with exclusive agency ship to import to and distribute in the United States, Oil Changer Valves which [FGC] produces in Japan, for unlimited time (*as long as [new Mitsuoka enterprise] wishes to sell the product*) . . . (emphasis added).

[FGC] is forbidden to transfer this Agreement to any other party, and its binding force shall extend to [FGC] and its successors.”

CP 28.

Mitsuoka agreed to: (1) be the exclusive U.S. distributor, (2) quit his lucrative job, (3) dedicate his personal financial resources for the duration of the company, as may be necessary (e.g., going without a salary the first six months, personally guaranteeing loans, loaning money to the

company), (4), dedicate his expertise and (5) make a long term commitment to the new company. In exchange, the “distributorship” arrangement was for employment with just-cause termination. CP 28.

(2) FEA Formation, Exclusive Dealership Agreement, and Mitsuoka’s Reasonable Expectation as a Shareholder

Yamamoto and Mitsuoka originally thought that Mitsuoka would be a sole proprietor distributing the valves, but because of product liability, it was decided that Mitsuoka would form a corporation. CP 28. The business was first incorporated as “TATM Corporation db/a Fumoto Engineering of America” (“FEA”) in 1984 in California. At the time of formation, Mitsuoka was a fifty percent shareholder, and another party (who FCG later bought out of his ownership interest) was the equal fifty percent shareholder. CP 28.

Mitsuoka invested his time and money to form FEA and become a shareholder. FCG and Hamai Industries would later join Mitsuoka as shareholders of FEA. CP 28. Mitsuoka’s reasonable expectations, spoken and unspoken, at the time of formation and when FGC and Hamai Industries were brought on as shareholders was that (1) he originally would be working as a distributor of the oil valve products, (2) he would be responsible for developing the US market for the oil valves, (3) he would operate the newly formed company on an autonomous basis, that he

would receive no compensation for his efforts, (4) in the beginning, that he may be required to contribute additional cash or loans to the company in order to keep it going (all beyond the contemplated services for the job of selling valves), (5) he would be developing a US market, and (6) the job would be his as long as there was no just-cause for his termination as an employee. CP 28.

Yamamoto made statements to Mitsuoka during his visit, in his letters, in emails, and in documents that manifest Yamamoto's understanding that Mitsuoka would be President of FEA and thus beneficiary of FEA's exclusive distributorship agreement unless just cause existed for his termination. CP 29. Yamamoto also manifested his assent to the just-cause employment by his subsequent conduct that he knew or had reason to know that Mitsuoka would infer his assent. CP 29. Specifically, Yamamoto knew at the time FEA was first formed, that it was undercapitalized and that Mitsuoka would not be paid a salary for the time being and that Mitsuoka would need to infuse additional capital and commit personal financial resources to the success of the company for the duration of the company. CP 29. Yamamoto's 28-year acquiescence of control and profit to Mitsuoka and his failure to provide financial resources when the company was faltering (such as in 2008) is conduct

consistent with and manifests his intent and assent to the agreement that Mitsuoka would have just-cause employment. CP 29.

(3) Having Secured Just-Cause Termination Protection, Mitsuoka Worked Without Salary and Personally Guaranteed Company Debts

When the initial effort to market and sell the FGC valves in the US began, the effort lacked sufficient funds to pay salaries of employees, including Mitsuoka, until there were profits. CP 29. As a result, Mitsuoka was not paid for his work in the beginning. He agreed to work despite a lack of compensation as consideration for the future expectation of stable employment and the promise of just-cause termination. CP 29. In addition to the contemplated services of selling and marketing the oil drain valves. In furtherance of this additional consideration beyond contemplated services, for the first six months of his employment, Mitsuoka worked for FEA full time without salary. CP 29. This period of service without being paid would only have taken place, and would take place again in the future, because the parties, including Mitsuoka, agreed to just-cause employment. CP 29.

Mitsuoka would supply other consideration in addition to the contemplated services, as well. For example, on or around 1987, business was poor and two other employee shareholders of the company were arranging to be bought out by FGC and Yamamoto. CP 29. With

Yamamoto's knowledge and approval Mitsuoka personally guaranteed payment of a \$200,000 debt owed by FEA which was necessary for the out-going shareholders' stock to be purchased by Yamamoto. CP 29-30. Mitsuoka's financial aid to FEA went beyond the requirements of his job. CP 30. He provided a personal guarantee for a \$150,000 line of credit to FEA, which benefited FEA because it allowed FEA to reduce costs and increase profit margin by not having to establish an outside source or credit facility for a line of credit at a higher commercial interest rate and on less favorable terms. CP 30. If FEA defaulted on the line of credit, Mitsuoka would be personally financially liable. CP 30.

Mitsuoka personally loaned \$390,000 to FEA over the course of his employment. CP 34. The line of credit and loans Mitsuoka provided to FEA also reduced the personal credit available to him. These were personal risks and detriments to Mitsuoka. CP 34. Each of these examples was a benefit to FEA, contributing to its profitability, and a detriment to Mitsuoka. CP 34.

When Mitsuoka moved to Washington State, FEA was re-incorporated as a Washington corporation, effective April 29, 1991. CP 30. This was the same company and assumed all obligations, and all property, beneficial relationships, customers, business expectancies, the exclusive distributorship with defendant FGC, and other aspects of its

California predecessor TATM, including the same just-cause employment relationship with FEA as Mitsuoka had with TATM. CP 30. Mitsuoka remained President of the re-incorporated FEA. CP 30. By the time of re-incorporation, the other shareholders of TATM were gone, leaving share ownership as follows:

| <u>Shareholder</u> | <u>Percentage of share ownership</u> |
|--------------------|--------------------------------------|
| FGC | 62.5% |
| Hamai Industries | 25% |
| Mitsuoka | 12.5% |

CP 30.

Hamai Industries continued to supply the oil drain valves to FGC as its sole manufacturer. CP 31. During Mitsuoka's time as President, FGC supplied FEA in the US with oil drain valves as FEA's sole supplier, and by agreement between FEA and FEJ, FEA was exclusively the representative of FGC's products in the United States, and elsewhere, but not in Japan. CP 31.

At the time FEA was first incorporated California, and continuing through re-incorporation in Washington and thereafter, Mitsuoka agreed to serve and to continue to serve as President and work for FEA in exchange for just-cause employment and as the President of FEA so long as Mitsuoka chose. CP 31. The company was successful. In addition to the

Distribution Agreement and discussions with Yamamoto, evidence of this agreement of just-cause employment and Mitsuoka's ongoing personal investment in and additional consideration to FEA is the parties' subsequent course of dealing, the course of performance and other acts or omissions evidenced the just-cause arrangement, including the following:

- a. Mitsuoka was FEA's sole employee since its re-incorporation in 1991 in Washington, until recent years.
- b. Mitsuoka had sole responsibility for the operations and management of FEA.
- c. Neither FCG nor Hamai Industries exercised dominion over or control of FEA, as a shareholder or director while Mitsuoka worked as President and employee.
- d. Other than FCG's original investment in FEA, no further infusion of capital or cash was made while Mitsuoka worked as President and employee. Neither FCG nor Hamai Industries made loans, provided personal or corporate guarantees for loans or assumed debt for FCG.
- e. Under Mitsuoka's management, FEA increased its gross revenue from \$-0- in 1984, to \$500,000 in 1991, to approximately \$3 million in 2012. At the time that Mitsuoka was terminated from FEA, in April of 2013, there was approximately \$500,000 in inventory and \$500,000 in accounts receivable.
- f. Mitsuoka had sole discretion to determine the salary FEA paid to him, which was generally commensurate with Mitsuoka's investment in, growth and profitability of the Company.
- g. In the first six months of the Company's existence in California, FEA did not pay Mitsuoka salary earned.

Because the survival of FEA required it, Mitsuoka was not paid until such time as FEA had sufficient revenue.

h. Later, when the housing market crashed in 2008, and because the survival of the FEA required it, Mitsuoka, unilaterally reduced the salary FEA owed to him because of the severe reduction in revenue and profit caused by the crash; this was consideration in addition to the contemplated service of selling and marketing oil drain valves. For one or two months during that period, Mitsuoka worked full time without any salary.

i. The non-payment and delay in payment of Mitsuoka's salary was a detriment to Mitsuoka and a benefit to FEA. Mitsuoka would not have agreed to delay, reduce or go without payment of his wages as the President or as an employee of FEA if had not agreed to a just-cause employment position.

j. No dividends were demanded, requested or paid to shareholders until May 2012, and no dividends have been paid to shareholders since Mitsuoka's termination. No director or shareholder meetings were held until the day Mitsuoka was terminated.

k. Mitsuoka provided aid to FEA financially beyond the requirements of his job, by, for example, personally guaranteeing substantial financial obligations of the Company, including providing a line of credit. The terms of the lines of credit to FEA were at less than the market interest rate that would otherwise be commercially available without his guarantee, so they were beneficial to the company as well as being a detriment to Mitsuoka.

l. Mitsuoka was the personal guarantor on a \$150,000 line of credit with Bank of America at the time of his termination. This line of credit was opened on July 28, 2000 and closed May 21, 2013, approximately six weeks after Mitsuoka's termination. Neither FEA, nor Hamai Industries ever provided additional financial assistance or provided any personal or corporate guarantees to FEA.

These transactions were beneficial to the company (FEA), known to FEA, as well as being a detriment to Mitsuoka.

m. When FEA was in California, Mitsuoka personally guaranteed a \$200,000 loan that was made to FEA before the California corporation was dissolved and re-incorporated, Mitsuoka incurred substantial personal financial risk until the loan was paid off. This was a detriment to Mitsuoka, known to FEA and Yamamoto, and a benefit to FEA.

CP 31-33.

FEA prospered with Mitsuoka as President. CP 33. The shareholders, especially FGC, received regular reports and information about the income and expenses of FEA, and approved of how business was being conducted, but at no time expressed an interest in operating the company. CP 33. The continued status quo over the 28 years that Mitsuoka was employed by the company shows that the terms of the agreement between parties, implied or otherwise, were well settled. The sales of the Company were profitable, revenues were substantial, and FEA's customers included many of the largest corporations in the US and the world. CP 33.

(4) Yamamoto's Son Comes to the U.S. and Begins Violating FEA's Exclusive Distributorship Agreement

In 2005, one of Yamamoto's two sons, Yuho Yamamoto, decided to attend language school in New York. CP 34. As he did so, he also started selling the FGC valves through his company, Qwik Valve, from

the company's website. Yamamoto requested that the name "Fumoto New York" be permitted to be used for his son's new company. CP 34. Mitsuoka objected to that use, in order to avoid market confusion and avoid violation of an exclusive distributor agreement, and loss of revenue to FEA. CP 34. The new entry of Yamamoto's son into business caused concern for the Plaintiff as President of FEA, since the son's website business was infringing on the exclusive territory of some of FEA's established distributors in New York and elsewhere. Also, there was an issue as to whether the son's business would be supplied by FEA, or if it would buy its valves direct from FGC, thus undercutting FEA's sales in the US, and providing the son's business with a competitive advantage against FEA's other distributors throughout the country. CP 34.

At Yamamoto's direction, FGC sold valves directly to his own son's business in New York, thereby reducing sales revenue and opportunities in the U.S. that would otherwise be available to FEA and breaching the Distribution Agreement, incurring loss of profits. CP 35. Yamamoto acknowledged that it was improper and wrong to direct these sales, but would later resume selling to Fumoto New York, again providing opportunities and revenue to the son's company that were FEA's under the Distribution Agreement. CP 35. Yamamoto's and FGC's decision to favor the business of Yamamoto's son violated the

long-standing agreement between FEA and FGC, transferred business opportunities to the son's business and away from FEA, were self dealing, disloyal and were in violation of the Yamamoto's fiduciary duties as a Director of FEA, RCW 23B.08.300 and as a majority shareholder. CP 35. As a shareholder and director of FEA and by virtue of Yamamoto's communications with Mitsuoka and others, Yamamoto knew (1) of Mitsuoka's business and contractual expectancy, (2) that his actions harmed FEA and reduced the profitability of FEA, and (3) that his actions harmed Mitsuoka's business and contractual expectancy. As he was obliged to do as President of FEA, Mitsuoka continued to resist Yamamoto's efforts to divert sales and business opportunities to his son's business. CP 35.

(5) Yamamoto Misleads FEA Minority Shareholder Hamai Industries, Claiming Mitsuoka Is Being Disloyal

In 2010, one of FEA's distributors proposed developing a different source of valve supply in order to combat currency fluctuation problems that hampered FEA's business in purchasing from valves from Japan. Mitsuoka presented this idea to Yamamoto, and Yamamoto asked Mitsuoka to investigate this possibility. CP 35. Over a period of time following Yamamoto's request, Mitsuoka did investigate alternative sources of valve production and reported his findings to Yamamoto, and

Yamamoto continued to follow the investigation with approval. In the fall of 2012, Mitsuoka had obtained sample alternative valves as part of his investigation, and sent them to Yamamoto. CP 35-36.

However, unknown to Mitsuoka who did not receive notice as a shareholder, in December 2012, a shareholder meeting was held in Japan about the future of FEA. Yamamoto, his son who operated Qwik Valve, a representative of Hamai, and a man named Rick Harder – who had operated a subsidiary company of Hamai Industries in California until its recent failure and who had been in a close business relationship with Hamai Industries – attended the shareholder meeting. CP 36. Mitsuoka, despite being President and shareholder of FEA, was not invited to or notified of the meeting. CP 36.

On or about the time of that meeting or immediately thereafter, Yamamoto, acting in his own personal interest to promote his son's company, intentionally misrepresented the nature and purpose of Mitsuoka's work investigating the alternative sources of valve supply to Mr. Hamai and others. CP 36. Yamamoto stated that Mitsuoka was promoting different source production of valves, that he (Mitsuoka) was disobeying the instructions of Yamamoto in conducting the valve investigation and was being disloyal to Hamai Industries. CP 36. Specifically, Yamamoto stated that Mitsuoka without Yamamoto's

authority was cooperating with a certain Chinese manufacturer to create copy valves. CP 36. These statements were false and Yamamoto knew them to be false. Yamamoto did not inform Mr. Hamai at that time or anytime thereafter that Yamamoto had known and approved Mitsuoka's investigation of alternative valve sources. CP 36.

The false representations and related efforts made by Yamamoto were made to intentionally interfere with Mitsuoka's employment with FEA and facilitate Yamamoto's efforts to terminate Mitsuoka as president and employee of FEA and to further facilitate the development of his son's business free from Mitsuoka's resistance. CP 36. Email communications in 2010, 2011 and 2012 between Mitsuoka and Yamamoto corroborate the fact that (1) Yamamoto approved of Mitsuoka's investigation of an alternative valve source, and (2) that Yamamoto's statements to Hamai and others were false. CP 36-37.

After the December, 2012 meeting, on December 28, 2012, Mitsuoka received an email from Yamamoto with a letter from Yamamoto attached that had been back-dated to August 20, 2010, expressing for the first time that Yamamoto was opposed to the idea of FEA ever investigating or using valves manufactured by an alternative source (which would not be made by Hamai). CP 37. This email letter had not been sent to or received by Mitsuoka on or about August 20, 2010, or any

other date. Yamamoto's two sons confirmed to Mitsuoka that the letter had not in fact been sent that August or anytime thereafter. CP 37. The letter was contrary to Yamamoto's written and oral directions to Mitsuoka over the course of the previous two years. After receiving this letter, Mitsuoka stopped all activity related to sourcing a second valve. CP 37.

(6) Mitsuoka's Wrongful Termination and Expulsion from FEA

On or about March 21, 2013, Harder came up from California and met Mitsuoka. CP 37. Harder told Mitsuoka he was being terminated from his position as President and employee of FEA. Harder further stated that Mitsuoka had done nothing wrong, that he had done a wonderful job running and growing the company. CP 37. He identified no cause for Mitsuoka's termination. Harder stated that he was working as an agent and on instructions from Hamai and Yamamoto. He announced that for the first time in its history, a formal shareholder's meeting of FEA would be called and that Mitsuoka's employment would be terminated. CP 37. Mitsuoka received a notice scheduling the meeting for April 4, 2013. These actions were oppressive to Mitsuoka as a shareholder, and were wrongful to him as an employee. CP 37.

On April 2, 2013, Yamamoto sent a letter to Mitsuoka stating that Mitsuoka's termination was because of Mitsuoka's purportedly

“unauthorized” investigation of an alternative source of valves for the Company to sell which purportedly led to Mitsuoka “allowing” an alternatively sourced valve to be manufactured. CP 37-38. Yamamoto’s stated reason for termination is an allegation that is not true. Mitsuoka’s work related to the alternative source valves was with Yamamoto’s and FGC’s approval. CP 38. On multiple occasions over several years, Yamamoto personally authorized and directed Mitsuoka to undertake an ongoing investigation of alternative sources. Yamamoto promoted this false reason to Hamai and others to gain their cooperation and to further his personal interests in furthering his son’s business. CP 38.

The company meeting of FEA occurred as scheduled. Mitsuoka was terminated as president, director, and as an employee and required to deliver all company property, premises, and records to Harder, who presided at the meeting and was elected President, replacing Mitsuoka. CP 38. Yamamoto’s son was elected as a director to FEA. This all occurred despite Mitsuoka’s 28 years of service to the company, in which he was an original founding investor and of which he still owned 12.5% of the outstanding common stock. CP 38.

Mitsuoka has not been paid dividends for his 12.5% stockholder interest in FEA, nor has his stock been purchased for market value. CP 45. He has simply been expelled from the company without any

remuneration for his ownership interest. Other shareholders continue to profit, only Mitsuoka is excluded. CP 45.

(7) Procedural History

Mitsuoka originally filed suit against Yamamoto, FCG and FEA in King County Superior Court. CP 105, 154. The defendants removed the case to federal court, CP 183, but the case was remanded to state court. CP 193-200. Mitsuoka filed a second amended complaint removing shareholder derivative claims against FEA. CP 49-73, Appendix B. The trial court dismissed Mitsuoka's second amended complaint, concluding that it did not state any claim upon which relief could be granted. CP 1-2. In response to what the trial court had identified at oral argument were the perceived "missing pieces" in the second amended complaint, Mitsuoka simultaneously moved for reconsideration and for leave to amend the complaint to address the trial court's concerns. CP 5-18. The motion for reconsideration was denied, but the trial court declined to consider the motion for leave to amend, without explanation for why the motion was not considered. CP 97-98.

This timely appeal followed. CP 99-104.

D. SUMMARY OF ARGUMENT

Dismissal under CR 12(b)(6) is a drastic remedy to be granted sparingly. It should not be granted unless there are no facts, alleged or

hypothetical, upon which relief may be granted. It should not be treated as a summary judgment motion, or a trial on the merits, nor should complaints be compared to previous cases that went to trial and resolved on the merits to test their legitimacy.

The trial court erred in dismissing Mitsuoka's many valid claims under CR 12(b)(6), and then compounded the error by refusing to reconsider the dismissal after a new complaint, amended to comport with the trial court's erroneous 12(b)(6) standard, was proposed. Finally, the trial court abused its discretion in refusing even to consider Mitsuoka's motion to amend the complaint to meet the trial court's concerns.

E. ARGUMENT

(1) Standard of Review

This Court reviews de novo the propriety of a trial court's dismissal of an action under CR 12(b)(6); *Dave Robbins Constr., LLC v. First Am. Title Co.*, 158 Wn. App. 895, 899, 249 P.3d 625 (2010); *Lam v. Global Med. Sys., Inc.*, 127 Wn. App. 657, 661 n.4, 111 P.3d 1258 (2005). It reviews the trial court's denial of reconsideration for an abuse of discretion. *Rivers v. Washington State Conference of Mason Contractors*, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002). A trial court's action in passing on a motion for leave to amend will not be disturbed on appeal except for a manifest abuse of discretion or a failure to exercise discretion.

Caruso v. Local Union No. 690 of Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., 100 Wn.2d 343, 351, 670 P.2d 240 (1983). Thus, the question of whether the trial court properly declined to consider a CR 15 motion for leave to amend is reviewed for abuse of discretion.

(2) The Trial Court Erred in Dismissing Mitsuoka's Complaint and Denying Reconsideration Under CR 12(b)(6), Because the Complaint Sufficiently States Claims for Breach of Contract, Wrongful Termination, Tortious Interference With a Business Expectancy, Intentional Interference with Contractual Relations, and Shareholder Oppression

(a) A Trial Court Should Only Grant a CR 12(b)(6) Motion If There Is No Set of Facts, Either Contained in the Pleadings or Hypothetical and Consistent with the Pleadings, That Would Entitle the Plaintiff to Relief

Dismissals for failure to state a claim under CR 12(b)(6) are considered a drastic remedy and are granted only sparingly. Karl B. Tegland, *3A Washington Practice: Rules Practice*, CR 12 author's cmts. at 264 (5th ed. 2006). Motions are scrutinized with care, for the effect of granting the motion is to deny the plaintiff his or her day in court. *Id.* at 264; *Fondren v. Klickitat County*, 79 Wn. App. 850, 854, 905 P.2d 928 (1995). For purposes of deciding the motion, all of the factual allegations are accepted as true. *Id.* at 265; *Dennis v. Heggen*, 35 Wn. App. 432, 667 P.2d 131 (1983). Dismissal for failure to state a claim may be granted

only if it appears beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which would entitle the plaintiff to relief. *Haberman v. WPPSS*, 109 Wn.2d 107, 120, 744 P.2d 1032, 750 P.2d 254 (1987); *Orwick v. City of Seattle*, 103 Wn.2d 249, 254, 692 P.2d 793 (1984). A motion to dismiss questions only the legal sufficiency of the allegations in a pleading. *Contreras v. Crown Zellerbach Corp.*, 88 Wn.2d 735, 742, 565 P.2d 1173 (1977). On a motion to dismiss for failure to state a claim, no matter outside the pleadings may be considered. *Brown v. MacPherson's, Inc.*, 86 Wn.2d 293, 297, 545 P.2d 13 (1975).

“[A]ny hypothetical situation conceivably raised by the complaint defeats a CR 12(b)(6) motion if it is legally sufficient to support plaintiff’s claim.” *Halvorson v. Dahl*, 89 Wn.2d 673, 674, 574 P.2d 1190 (1978). Hypothetical facts may be introduced to assist the court in establishing the “conceptual backdrop” against which the challenge to the legal sufficiency of the claim is considered. *Brown*, 86 Wn.2d at 298 n.2; *Bravo v. Dolsen Companies*, 125 Wn.2d 745, 750, 888 P.2d 147 (1995).

Our Supreme Court has held that in determining whether such facts exist, a court may consider a hypothetical situation asserted by the complaining party, not part of the formal record, *including facts alleged for the first time on appellate review* of a dismissal under the rule. *Halvorson*, 89 Wn.2d at 675. Thus, this Court is required to deem as true

any assertions consistent with the complaint, even if made for the first time on appeal. *Bravo*, 125 Wn.2d at 750. Neither prejudice nor unfairness is deemed to flow from this rule, because the inquiry on a CR 12(b)(6) motion is whether any facts which would support a valid claim can be conceived. *See Halvorson*, 89 Wn.2d at 674–75.

The trial court here misapprehended the test applied to a CR 12(b)(6) motion, instead apparently applying the standard for summary judgment:

And I know I'm in 12(b)(6) land, so if – that's understood. But, – so I have to view *it in the light most favorable to the non-moving party. But I'm trying to wrap my brain around the missing pieces, here.*

VRP 48 (emphasis added).

On a 12(b)(6) motion, the trial court is not permitted to confine its examination to only the facts alleged, and then dismiss if there are “missing pieces.” *Halvorson*, 89 Wn.2d at 674–75. Nor is the trial court merely obliged to consider the stated facts in the “light most favorable to the moving party,” which is a summary judgment standard. The trial court is obligated to imagine hypothetical “missing” facts consistent with the complaint that would entitle the plaintiff to relief.

The trial court applied the wrong legal test to Mitsuoka's complaint, and improperly dismissed it. The complaint states several claims upon which relief could be granted.

(b) The Complaint States Causes of Action for Wrongful Termination and Breach of Contract

An employer and employee may have an express or implied agreement that the employee will only be terminated "for cause." *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 223, 685 P.2d 1081 (1984). "Just cause" is a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power. *Baldwin v. Sisters of Providence in Wash., Inc.*, 112 Wn.2d 127, 139, 769 P.2d 298 (1989). A discharge for "just cause" is one which is not for any arbitrary, capricious, or illegal reason and which is based on facts (1) supported by substantial evidence and (2) reasonably believed by the employer to be true. *Id.*

Mitsuoka's complaint alleges that he had an express contract with FEA guaranteeing him just-cause termination. Mitsuoka founded FEA and worked for that company, and had a contractual relationship with FEA. He founded FEA at the express direction of Yamamoto and FCG, who had an understanding of this arrangement both before and after they took controlling interest in FEA. Yamamoto promised Mitsuoka that he,

as founder and President of FEA, would be the exclusive distributor of the valves for as long as he could succeed in selling them. They had a writing memorializing the exclusive distributorship agreement FEA, and therefore Mitsuoka as minority shareholder, would be have exclusive rights to sell FCG's valves for an "unlimited" time. Mitsuoka took actions detrimental to his career and risked his own financial situation in exchange for the promise of employment with FEA, and thus rights to work at the exclusive distributor of FCG valves, with just-cause termination protection.

Also, Mitsuoka's and Yamamoto's actions surrounding the formation of their business relationship and the founding of FEA imply a just-cause termination arrangement. This was not a typical employment situation where an existing company hires a salaried employee for a particular position. Yamamoto was asking Mitsuoka to set up FCG's U.S. business venture where the outcome was uncertain and Mitsuoka's pay hinged on his ability to get FEA up and running and sell FCG's valves. It is implied from the circumstances that Mitsuoka would not have done this upon the belief he could simply be fired by FEA at any time with no recourse.

"For cause" termination restrictions also arise if the employee gives the employer consideration in addition to the contemplated service. *Malarkey Asphalt Co. v. Wyborney*, 62 Wn. App. 495, 505, 814 P.2d

1219, *opinion corrected*, 62 Wn. App. 495, 821 P.2d 1235 (1991). In

Malarkey, this Court held:

[T]he relevant inquiry is whether, in the circumstances of the particular case, the employee's decision to buy into the company, or to loan money to the company, or to divest himself of a prior business interest, or any combination of these factors is the type of decision which would ordinarily be made in the absence of something more than an offer of at-will employment.

Malarkey, 62 Wn. App. at 506.

Mitsuoka has alleged such consideration. Based on the agreement he had when he started employment, he loaned the company hundreds of thousands of dollars and initially went six months without a salary. Mitsuoka's personal guarantee provided to the FEA \$150,000 line of credit was cross-collateralized and cross-defaulted with his personal home mortgage and other accounts maintained at Bank of America.

All of these efforts by Mitsuoka on behalf of the company were contemplated the formation of his employment relationship, and state a claim for just-cause termination restrictions under *Malarkey*. Mitsuoka would not have provided loans and personal guarantees on behalf of FEA if he were not going to have just-cause termination protection. Mitsuoka also would not have worked for six months without pay, guaranteed debt, nor would put himself in any other detrimental financial position to benefit FEA without Yamamoto's statements and representations in the letters,

statements and representations in the pre-FEA discussions, the exclusive distribution agreement, and other conduct that manifested Yamamoto's intent and assent to Mitsuoka's just-cause employment.

In addition to a wrongful termination claim, Mitsuoka has also stated a claim for breach of contract. A party states a claim for breach of contract if (1) the contract imposes a duty, (2) the duty is breached, and (3) the breach proximately causes damage to the claimant. *Larson v. Union Investment & Loan Co.*, 168 Wash. 5, 10 P.2d 557 (1932); *Alpine Industries, Inc. v. Gohl*, 30 Wn. App. 750, 637 P.2d 998 (1981), *review denied*, 97 Wn.2d 1013 (1982).

Mitsuoka alleged express and implied contracts for just-cause termination restrictions, and alleges facts sufficient to state a claim for breach of that contract. Yamamoto/FCG, as majority shareholders of FEA also had a duty to refrain from terminating Mitsuoka from FEA except for just-cause. Instead, they ousted Mitsuoka for trumped-up reasons so that Yamamoto's son could benefit. Mitsuoka was damaged.

Mitsuoka has stated claims for wrongful termination and breach of contract.

- (c) The Complaint States Causes of Action for Tortious Interference with a Business Expectancy, and Tortious Interference with Contractual Relations Between Mitsuoka and FEA

The elements of the claim of tortious interference with a contract or business expectancy are: (1) the existence of the contract or business expectancy; (2) knowledge of the contract or expectancy on the part of the interferer; (3) intentional interference inducing or causing a termination of the contract or expectancy; and (4) resultant damage to the party whose contract or expectancy has been disrupted. *Koch v. Mut. of Enumclaw Ins. Co.*, 108 Wn. App. 500, 506, 31 P.3d 698 (2001), *publication ordered* (Sept. 12, 2001); *Corinthian Corp. v. White & Bollard, Inc.*, 74 Wn.2d 50, 442 P.2d 950 (1968); *Calbom v. Knudtson*, 65 Wn.2d 157, 396 P.2d 148 (1964).

A “business expectancy” includes any prospective contractual or business relationship that would be of pecuniary value. *Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Grp., Inc.*, 114 Wn. App. 151, 158, 52 P.3d 30, 33 (2002), *as corrected* (Sept. 23, 2002); *Restatement (Second) of Torts* § 766B, cmt. c.

A contract implied in fact is an agreement depending for its existence on some act or conduct of the party sought to be charged and arising by implication from circumstances which, according to common understanding, show a mutual intention on the part of the parties to contract with each other. *Young v. Young*, 164 Wn.2d 477, 485, 191 P.3d 1258 (2008).

Mitsuoka had a pecuniary and contract interest in continuing to work for FEA and benefiting from the exclusive distributorship agreement with Yamamoto and FCG. He had a business expectancy, contractual relationship, and shareholder status with FEA, a company that he founded, funded and risked his own financial fortunes upon in the hope of continued financial security. Yamamoto knew of this expectancy. Yamamoto intentionally interfered with it by making misrepresentations to other shareholders, self-dealing between FCG and his son's business to FEA's detriment, and other conduct that interfered with the expectation and contract.

Yamamoto did not act in good faith and breached his duty of loyalty and fair dealing to Mitsuoka. This misrepresentation interfered with Mitsuoka's business expectancy and contractual relations with FEA and caused damage and was done for an improper purpose. Yamamoto did these things in bad faith and to further his own family's fortunes. Because Yamamoto interfered with Mitsuoka's business expectancy and contract relations with FEA, Mitsuoka's goodwill and reputation has been damaged, and he has lost income and benefits he would have otherwise derived from FEA had he remained employed.

This Court should reverse the trial court's CR 12(b)(6) dismissal of Mitsuoka's complaint. Not only does the complaint state claims upon

which relief can be granted, it is far more detailed in its factual recitations than the pleading rules require. Even if this Court believes that Mitsuoka's second amended complaint insufficiently detailed the factual background of the parties, all of the allegations in his third amended complaint are consistent with the second amended complaint and are grounds for reversal.

(d) The Complaint States a Claim for Shareholder Oppression

Washington Courts have not adopted just one specific test for finding “oppressive” shareholder action. In *Robblee v. Robblee*, 68 Wn. App. 67, 841 P.2d 1298 (1992), the Court recognized and adopted two separate and independent tests for shareholder oppression used in other jurisdictions. The first test, referred to as the “reasonable expectations” test, defines oppression as the “violation by the majority of the ‘reasonable expectations’ of the [minority].... ‘Reasonable expectations’ are those spoken and unspoken understandings on which the founders of a venture rely when commencing the venture.” *Robblee*, 68 Wn. App. at 76 (emphasis added.)

The second test is the “fair dealing” test: oppression occurs when there is

burdensome, harsh, and wrongful conduct; a lack of probity and fair dealing in the affairs of the [Corporation] to the

prejudice of some of its members; or a visible departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely.

Robblee, 68 Wn. App. at 76.

Mitsuoka is and has been a minority shareholder in FEA. He owns 12.5% of the stock in the company. He was driven out by the self-interested self-dealing of Yamamoto, the controlling party of majority shareholder FCG. Not only were Mitsuoka's business and contractual expectancies destroyed, but his shareholder rights were not respected. He had a reasonable expectation that his rights as a shareholder would be respected, including being included in all stockholder meetings and decisions. He was not. He has also received no value for his ownership share in FEA, either in the form of dividend payments or a stock repurchase based on the fair market value of his shares.

Regardless of which shareholder oppression test applies, Mitsuoka has stated a claim for shareholder oppression upon which relief can be granted. His reasonable expectations, held from the founding of FEA, were violated. Yamamoto and FCG engaged in harsh and wrongful conduct in expelling Mitsuoka and installing Yamamoto's son, without even compensating Mitsuoka for his minority ownership stake in the company.

(3) The Trial Court Abused Its Discretion in Refusing to Consider Mitsuoka's Request to Amend His Complaint Under CR 15

After the trial court erroneously dismissed his complaint, Mitsuoka filed a joint motion for reconsideration and to amend his complaint under CR 15. CP 5-18. The trial court denied the motion for reconsideration and stated that the motion to amend was not properly before the court and would not be considered. CP 97-98.

CR 15(a) states that leave to amend pleadings “shall be freely given when justice so requires.” The “touchstone for the denial of a motion to amend is the prejudice such an amendment would cause to the nonmoving party.” *Wilson v. Horsley*, 137 Wn.2d 500, 505, 974 P.2d 316 (1999). The purpose of pleadings is to “facilitate a proper decision on the merits,” *Conley v. Gibson*, 355 U.S. 41, 48, 78 S. Ct. 99, 103, 2 L.Ed.2d 80 (1957), and not to erect formal and burdensome impediments to the litigation process. *Caruso v. Local Union No. 690 of Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 100 Wn.2d 343, 349, 670 P.2d 240 (1983).

Rule 15 of the Federal Rules of Civil Procedure, from which CR 15 was taken, “was designed to facilitate the amendment of pleadings except where prejudice to the opposing party would result.” *United States*

v. Hougham, 364 U.S. 310, 316, 81 S. Ct. 13, 18, 5 L.Ed.2d 8 (1960). CR 15 was designed to facilitate the same ends.

Factors which may be considered in determining whether permitting amendment would cause prejudice include undue delay, unfair surprise, and jury confusion. *Wilson*, 137 Wn.2d at 506. For example, undue delay on the part of the movant in proposing the amendment constitutes grounds to deny a motion to amend only “where such delay works undue hardship or prejudice upon the opposing party.” *Appliance Buyers Credit Corp. v. Upton*, 65 Wn.2d 793, 800, 399 P.2d 587 (1965).

However, the central consideration is always prejudice. *Wilson*, 137 Wn.2d at 506. The liberality of this rule was manifest in *Caruso*, where plaintiff was allowed to amend his complaint to add a claim five years and four months after it was originally filed. *Caruso*, 100 Wn.2d at 350-51. This holding is in accord with the holding of many courts that delay, excusable or not, in and of itself is not sufficient reason to deny the motion. *See, e.g., Cornell & Co. v. Occupational Safety & Health Review Comm'n*, 573 F.2d 820, 823 (3d Cir. 1978); *Howey v. United States*, 481 F.2d 1187, 1191 (9th Cir. 1973); *Hanson v. Hunt Oil Co.*, 398 F.2d 578 (8th Cir.1968); *United States v. IBM Corp.*, 66 F.R.D. 223 (S.D.N.Y. 1975); *Fli-Fab, Inc. v. United States*, 16 F.R.D. 553 (D.R.I. 1954).

Here, the trial court did not deny Mitsuoka's motion to amend, it refused even to consider it. Although the standard for reversing the court's ruling is "manifest abuse of discretion," the abuse here is manifest. Nothing in the court rules prohibits a motion to amend after a CR 12(b)(6) dismissal, and the court did not have any tenable grounds for refusing to consider it. Critically, the defendants did not argue that the motion was not properly before the court, they opposed it on its merits. CP 80-85.

On the merits of the motion, there was absolutely no demonstrable prejudice to the defendants in granting it. This case is in its infancy. Mitsuoka acted promptly and without delay. There has been no discovery, nor even a trial date set. The only conceivable prejudice the defendants might suffer is having to defend the case.

Also, Mitsuoka was forced to bring his motion to amend because the trial court failed to do its duty in considering hypothetical facts in addressing the CR 12(b)(6) motion. VRP 48. The trial court seemed to believe that unless this complaint stated all of the same facts as one particular previous case, *Malarkey*, regardless of what facts might be proven in discovery, then the complaint did not state a claim for relief. VRP 58-59.

Washington is a notice pleading state and merely requires a simple concise statement of the claim and the relief sought. CR 8(a); *Pac. Nw.*

Shooting Park Ass'n v. City of Sequim, 158 Wn.2d 342, 352, 144 P.3d 276, 281 (2006). This state has a “liberal notice-pleading standard” that does not generally favor 12(b)(6) dismissal simply because particularized facts are missing from a complaint. *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 175 Wn. App. 840, 869, 309 P.3d 555, 570 (2013) review granted sub nom. *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 179 Wn.2d 1008, 316 P.3d 495 (2014) and *aff'd*, 180 Wn.2d 954, 331 P.3d 29 (2014).

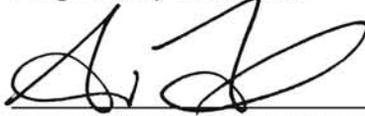
Because the trial court failed in its duty under CR 12(b)(6) in requiring a pleading far more detailed than is required, the trial court manifestly abused its discretion by refusing to at least consider whether Mitsuoka’s third amended complaint met the court’s standard. The motion for leave to amend should have been considered, and granted.

F. CONCLUSION

The trial court misapprehended the CR 12(b)(6) process and applied the wrong standard to Mitsuoka’s complaint. This Court, reviewing the complaint de novo and considering hypothetical facts consistent with that complaint, should reverse and remand this case to proceed on its merits.

DATED this 16th day of November, 2014.

Respectfully submitted,



Sidney Tribe, WSBA #33160
Talmadge/Fitzpatrick
2775 Harbor Ave. SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

David E. Reed, WSBA # 7014
Theresa Pruett, WSBA #26063
Reed Pruett Walters PLLC
10900 NE 4th Street, Suite 2300
Bellevue, WA 98004
(425) 646-6760
Attorneys for Appellant Mitsuoka

APPENDIX

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

NORIO MITSUOKA,

Plaintiff,

v.

FUMOTO ENGINEERING OF AMERICA,
INC., a Washington Corporation, NAOYUKI
YAMAMOTO, FUMOTO GIKEN CO., LTD,
a Japanese Corporation,

Defendants.

Case No. 13-2-23101-8 SEA

[PROPOSED] PLAINTIFF'S THIRD
AMENDED COMPLAINT

COMES NOW, Plaintiff NORIO MITSUOKA, by and through his undersigned attorneys, and submits this THIRD AMENDED COMPLAINT (hereinafter the "Complaint") against the Defendants as follows:

I NATURE OF THE ACTION (THIRD AMENDED)

II. THIS IS A CLAIM BY PLAINTIFF FOR HIS WRONGFUL DISCHARGE AND INTERFERENCE WITH HIS EMPLOYMENT AND AS PRESIDENT OF FUMOTO ENGINEERING OF AMERICA, INC. (FEA, OR DEFENDANT OR COMPANY), AND FOR HIS OPPRESSION AS A MINORITY SHAREHOLDER OF FEA.PARTIES

1. Plaintiff NORIO MITSUOKA is owner of 12.5% of the issued and outstanding shares of the FUMOTO ENGINEERING OF AMERICA, INC. (FEA)
2. Defendant NAOYUKI YAMAMOTO ("Yamamoto") is a resident of Japan.

[PROPOSED] PLAINTIFF'S THIRD AMENDED
COMPLAINT - 1 of 23

Advocates Law Group, PLLC
10900 NE 4th St, Suite 2300
Bellevue, WA 98004
(425) 646-6760: Phone
(425) 642-8260: Fax

1 substantial expertise in developing markets for new products. Yamamoto and Mitsuoko
2 exchanged letters, and in March of 1984 Yamamoto and his wife came to visit Mitsuoko in LA
3 to discuss the business opportunities. They immediately became very close friends. At that
4 time, both were citizens of Japan, shared the traditions, culture, business and employment
5 assumptions of their Japanese heritage, where "lifetime" and "just cause employment" are
6 assumed, where termination of employment for no cause is rare, and subject to legal sanctions.
7 (Employment where termination of the employee may only occur for just cause, is referred to
8 hereinafter as "just cause employment.") This great relationship continued for more than 2
9 decades.

10 10. During Yamamoto's stay, he and Mitsuoko spent many hours talking about the
11 future business and way of life. On a number of occasions they had a dialogue like the following:

12 Y: "Are you really sure you want to sacrifice your great career and devote your
13 life to something like this unknown valve?"

14 N: "Yes, I see a great potential in this product, and I learned a lot about marketing
15 and advertising for new products in my ad agency career, so I'm ready to make
16 the full commitment. I want to make this my lifetime work."

17 Y: "OK. I like you. I will give you my full support and help you all the way. I will
18 guarantee that you will not regret your decision. You can be the exclusive
19 distributor for as long as you want to sell the valves"

20 At one point, Yamamoto said "I'm sure you will succeed, but if anything goes wrong, don't
21 worry, I can take care of the life of you and your family..." When Yamamoto returned to Japan
22 after 3-4 days, he wrote Mitsuoko a letter on March 28, 1984 and stated "I fell in love with your
personality," Before the corporate structure of their business deal was formed, Mitsuoko and
Yamamoto agreed that Plaintiff would start a new company either as a sole proprietor or other
entity form, and that such company would be the exclusive dealer of the valve in the US. The
exclusive dealership agreement supplemented the broader agreement between the two men. The
exclusive dealer arrangement was memorialized in part in a document handwritten by Yamamoto
titled "Agreement" and dated May 10, 1984. The Agreement stated in part:

1 “ A [FGC] shall provide B [FEA] with exclusive agency ship to import to and
2 distribute in the United States, Oil Changer Valves which [FGC] produces in
3 Japan, for unlimited time (as long as [FEA] wishes to sell the product) . . .

4 [FGC] is forbidden to transfer this Agreement to any other party, and its binding
5 force shall extend to [FGC] and its successors.”¹

6 Plaintiff agreed to: (1) be the exclusive U.S. distributor, (2) quit his lucrative job, (3) dedicate his
7 personal financial resources for the duration of the company, as may be necessary (e.g., going
8 without a salary the first six months, personally guaranteeing loans, loaning money to the
9 company), (4), dedicate his expertise and (5) make a long term commitment to the new company.
10 In exchange, the “distributorship” arrangement was for employment with just cause termination.

11 11. **FEA Formation, Exclusive Dealership Agreement, and Plaintiff’s Reasonable**
12 **Expectations as a Shareholder:** Yamamoto and Plaintiff originally thought that Plaintiff would
13 be a sole proprietor distributing the valves, but because of product liability, it was decided that
14 Plaintiff would form a corporation. FEA was first incorporated as TATM Corporation d/b/a
15 Fumoto Engineering of America (FEA) in 1984 in California. At the time of formation, Plaintiff
16 was a fifty percent shareholder, and made an investment of his time and money to form the
17 company and become a shareholder. FCG and Hamai Industries would later join Plaintiff as
18 shareholders of FEA. Plaintiff’s reasonable expectations, spoken and unspoken, at the time of
19 formation and when FGC and Hamai Industries were brought on as shareholders was that he
20 originally would be working as a distributor of the oil valve products, that he would be
21 responsible for developing the US market for the oil valves, that he would operate the newly
22 formed company on an autonomous basis, that he would receive no compensation for his efforts
23 in the beginning, that he may be required to contribute additional cash or loans to the company in
24 order to keep it going, all beyond the contemplated services for the job of selling valves and
25 developing a US market, and that the job would be his as long as there was no just cause for his
26 termination as an employee.

¹ This is an English translation of the handw ritten agreement

1 12. Upon information and belief, Defendants are in possession of evidence
2 documenting Yamamoto's assent to Plaintiff's just cause employment. In addition, Yamamoto
3 statements to Plaintiff during his visit and later in his letters and emails documents and manifests
4 Yamamoto's assent. Yamamoto also manifested his assent to the just cause employment by his
5 subsequent conduct that he knew or had reason to know that Plaintiff would infer his assent.
6 Specifically, Yamamoto knew at the time FEA was first formed, that it was under-capitalized
7 and that Plaintiff would not be paid a salary for the time being and that Plaintiff would need to
8 infuse additional capital and commit personal financial resources to the success of the company
9 for the duration of the company. Yamamoto's 28-year acquiescence of control and profit to
10 Plaintiff and his failure to provide financial resources when the company was faltering (such as
11 in 2008) is conduct consistent with and manifests his intent and assent to the agreement that
12 Plaintiff would have just cause employment.

13 13. **Early Efforts of the Enterprise.** When the initial effort to market and sell the
14 FGC valves in the US began, it was apparent to all that the effort lacked sufficient funds to pay
15 salaries of employees, such as Plaintiff until there were profits. As a result, Plaintiff would not
16 be paid for his work in the beginning. His lack of compensation was therefore consideration in
17 addition to the contemplated services of selling and marketing the oil drain valves. In
18 furtherance of this additional consideration beyond contemplated services, for the first six
19 months of his employment, Plaintiff worked for FEA full time without salary. This period of
20 service without being paid would only have taken place, and would take place again in the
21 future, because the parties, including Plaintiff, agreed to just cause employment. Plaintiff would
22 supply other consideration in addition to the contemplated services, as well. For example, on or
around 1987, business was poor and two other employee shareholders of the company were
arranging to be bought out by FGC and Yamamoto. With Yamamoto's knowledge and approval,

1 Plaintiff personally guaranteed payment of a \$200,000 debt owed by FEA which was necessary
2 for the out-going shareholders' stock to be purchased by Yamamoto.

3 14. **Intent of the Parties.** Plaintiff would not have worked for six months without
4 pay, guaranteed debt, nor would he have done the many other things listed below as additional
5 consideration herein without Yamamoto's statements and representations in the letters,
6 statements and representations in the pre FEA discussions, the exclusive distribution agreement
7 and Yamamoto's other conduct that manifested his intent and assent to Plaintiff's just cause
8 employment. Defendants and Hamai Industries (although only FEA is the Plaintiff's employer)
9 would not have given Plaintiff employment with his salary being all profits of the company, and
10 complete autonomy to operate the company in his sole discretion if he were only to be an at will
11 employee. Nor would Defendants have asked for Plaintiff to go without pay for six months had
12 they not intended and assented that he be an employee subject to termination only for just cause.

13 15. **FEA Moves to Washington State:** When Plaintiff moved to Washington State,
14 the company was re-incorporated as a Washington corporation, effective April 29, 1991. This
15 was the same company and assumed all obligations, and all property, beneficial relationships,
16 customers, business expectancies, the exclusive distributorship with defendant FGC, and other
17 aspects of its California predecessor TATM, including the same just cause employment
18 relationship with FEA as Plaintiff had with TATM. Plaintiff remained President of the re-
19 incorporated FEA. By the time of re-incorporation, the other shareholders of TATM were gone,
20 leaving share ownership as follows:

| Shareholder | Percentage of share ownership |
|--------------------------|-------------------------------|
| FGC | 62.5% |
| Hamai Industries | 25% |
| Plaintiff Norio Mitsuoka | 12.5% |

1 16. Hamai Industries continued to supply the oil drain valves to FGC as its sole
2 manufacturer. During Plaintiff's time as President, FGC supplied FEA in the US with oil drain
3 valves as FEA's sole supplier, and by agreement between FEA and FEJ, FEA was exclusively
4 the representative of FGC's products in the United States, and elsewhere, but not in Japan.

5 17. **FEA Contract of Just Cause Employment:** At the time FEA was first
6 incorporated California, and continuing through re-incorporation in Washington and thereafter,
7 Plaintiff agreed to serve and to continue to serve as President and work for FEA in exchange for
8 just cause employment and as the President of FEA so long as Plaintiff chose. The company was
9 successful. In addition to the Distribution Agreement and discussions with Yamamoto,
10 evidence of this agreement of just cause employment and Plaintiff's ongoing personal investment
11 in and additional consideration to FEA is the parties' subsequent course of dealing, course of
12 performance and other acts or omissions, including without limitation the following:

- 13 a. Plaintiff was FEA's sole employee since its re-incorporation in 1991 in Washington, until
14 recent years.
- 15 b. Plaintiff had sole responsibility for the operations and management of FEA.
- 16 c. Neither FCG nor Hamai Industries exercised dominion over or control of FEA, as a
17 shareholder or director while Plaintiff worked as President and employee.
- 18 d. Other than FCG's original investment in FEA, no further infusion of capital or cash was
19 made while Plaintiff worked as President and employee. Neither FCG nor Hamai
20 Industries made loans, provided personal or corporate guarantees for loans or assumed
21 debt for FCG.
- 22 e. Under Plaintiff's management, FEA increased its gross revenue from \$-0- in 1984, to
 \$500,000 in 1991, to approximately \$3 million in 2012. At the time that Plaintiff was
 terminated from FEA, in April of 2013, there was approximately \$500,000 in inventory
 and \$500,000 in accounts receivable.

- 1 f. Plaintiff had sole discretion to determine the salary FEA paid to him, which was
2 generally commensurate with Plaintiff's investment in, growth and profitability of the
3 Company.
- 4 g. In the first six months of the Company's existence in California, FEA did not pay
5 Plaintiff salary earned. Because the survival of FEA required it, Plaintiff was not paid
6 until such time as FEA had sufficient revenue.
- 7 h. Later, when the housing market crashed in 2008, and because the survival of the FEA
8 required it, Plaintiff, unilaterally reduced the salary FEA owed to him because of the
9 severe reduction in revenue and profit caused by the crash; this was consideration in
10 addition to the contemplated service of selling and marketing oil drain valves. For one or
11 two months during that period, Plaintiff worked full time without any salary.
- 12 i. The non-payment and delay in payment of Plaintiff's salary was a detriment to Plaintiff
13 and a benefit to FEA. Plaintiff would not have agreed to delay, reduce or go without
14 payment of his wages as the President or as an employee of FEA if had not agreed to a just
15 cause employment position.
- 16 j. No dividends were demanded, requested or paid to shareholders until May 2012, and no
17 dividends have been paid to shareholders since Plaintiff's termination. No director or
18 shareholder meetings were held until the day Plaintiff was terminated.
- 19 k. Plaintiff provided aid to FEA financially beyond the requirements of his job, by, for
20 example, personally guaranteeing substantial financial obligations of the Company,
21 including providing a line of credit. The terms of the lines of credit to FEA were at less
22 than the market interest rate that would otherwise be commercially available without his
guarantee, so they were beneficial to the company as well as being a detriment to the
Plaintiff.

1 l. The Plaintiff was the personal guarantor on a \$150,000 line of credit with Bank of
2 America at the time of his termination. This line of credit was opened on July 28, 2000
3 and closed May 21, 2013, approximately six weeks after the Plaintiff's termination.
4 Neither FEA, nor Hamai Industries ever provided additional financial assistance or
5 provided any personal or corporate guarantees to FEA. These transactions were beneficial
6 to the company (FEA), known to FEA, as well as being a detriment to the Plaintiff.

7 m. When FEA was in California, Plaintiff personally guaranteed a \$200,000 loan that was
8 made to FEA before the California corporation was dissolved and re-incorporated,
9 Plaintiff incurred substantial personal financial risk until the loan was paid off. This was a
10 detriment to Plaintiff, known to FEA and Yamamoto, and a benefit to FEA.

11 18. **FEA Growth:** FEA prospered with Plaintiff as President. The shareholders,
12 especially FGC, received regular reports and information about the income and expenses of
13 FEA, and approved of how business was being conducted, but at no time expressed an interest in
14 operating the company. The continued status quo over the 28 years that Plaintiff was employed
15 by the company shows that the terms of the agreement between parties, implied or otherwise,
16 were well settled. The sales of the Company were profitable, revenues were substantial, and
17 FEA's customers included many of the largest corporations in the US and the world.

18 19. **At-Will Contract Modified.** To the extent that Plaintiff's employment with FEA
19 was a contract for "at-will employment, Plaintiff's consideration in addition to the contemplated
20 service of selling and marketing oil drain valves over the years modified the "at-will"
21 employment contract to a contract for just cause employment so long as Plaintiff chose.

22 20. **Plaintiff's Personal Guarantee on Line of Credit and Loans:** Plaintiff's
financial aid to FEA went beyond the requirements of his job. Plaintiff provided a personal
guarantee for a \$150,000 line of credit to FEA, which benefited FEA because it allowed FEA to
reduce costs and increase profit margin by not having to establish an outside source or credit

1 facility for a line of credit at a higher commercial interest rate and on less favorable terms. This
2 was made to Plaintiff's detriment and risk. If FEA defaulted on the line of credit, Plaintiff would
3 be personally financially liable. Plaintiff also personally loaned \$390,000 to FEA over the
4 course of his employment. The line of credit and loans also reduced the personal credit available
5 to Plaintiff. This risk and detriment was a personal risk undertaken by both him and, by virtue of
6 his marital community, his wife. Each of these examples was a benefit to FEA and contributed
7 to the profitability of FEA and a detriment to Plaintiff. Plaintiff would not have agreed to
8 provide loans or personal guarantees on behalf of FEA if he were not going to have just cause
9 employment and be President. Plaintiff also had his personal home mortgage and banking
10 accounts at Bank of America. Upon information and belief, Plaintiff believes that the personal
11 guarantee provided to the FEA \$150,000 line of credit was cross-collateralized and cross-
12 defaulted with his personal home mortgage and other accounts maintained at Bank of America.
13 All of these efforts by Plaintiff on behalf of the company were contemplated in his employment,
14 the reasonable expectations of the parties as investors and shareholders of the corporation and as
15 part of the additional consideration beyond contemplated services that meant Plaintiff was
16 entitled to just cause employment.

17 21. **Fumoto New York Oppression Matter:** In 2005, one of Defendant
18 Yamamoto's two sons, Yuho Yamamoto, decided to attend language school in New York. As he
19 did so, he also started selling the FGC valves from a website he created for that purpose, called
20 www.qwikvalve.com for his company Qwik Valve. Defendant Yamamoto requested that the
21 name "Fumoto New York" be permitted to be used for his son's new company. Plaintiff objected
22 to that use, in order to avoid market confusion and avoid violation of an exclusive distributor
agreement, and loss of revenue to FEA. The new entry of Defendant Yamamoto's son into
business caused concern for the Plaintiff as President of FEA, since the son's website business
was infringing on the exclusive territory of some of FEA's established distributors in New York

1 and elsewhere. In addition, there was an issue as to whether the son's business would be supplied
2 by FEA, or if it would buy its valves direct from FGC, thus undercutting FEA's sales in the US,
3 and providing the son's business with a competitive advantage against FEA's other distributors
4 throughout the country

5 22. **Yamamoto's Self Dealing and Continued Oppression:** At the direction of
6 Yamamoto, FGC sold valves directly to the son's business in New York, thereby reducing sales
7 revenue and opportunities in the US that would otherwise be available to FEA and breaching the
8 Distribution Agreement, incurring loss of profits. Yamamoto acknowledged that it was improper
9 and wrong to direct these sales, but would later resume selling to Fumoto New York, again
10 providing opportunities and revenue to the son's company that were FEA's under the
11 Distribution Agreement. The actions of Yamamoto and FGC in favoring the son's business were
12 in violation of a long standing agreement between FEA and FGC, transferred business
13 opportunities to the son's business and away from FEA, were self dealing, disloyal and were in
14 violation of the elder Yamamoto's fiduciary duties as a Director of FEA, RCW 23B.08.300 and
15 as a majority shareholder. As a shareholder and director of FEA and by virtue of Yamamoto's
16 communications with Plaintiff and others, Yamamoto knew (1) of Plaintiff's business and
17 contractual expectancy, (2) that his actions harmed FEA and reduced the profitability of FEA,
18 and (3) that his actions harmed Plaintiff's business and contractual expectancy. Plaintiff
19 continued to resist the efforts of Defendant Yamamoto to divert sales and business opportunities
20 to the son's business, as he was obliged to do as president.

21 23. **Alternate Valve Source:** In 2010, one of FEA's distributors proposed developing a
22 different source of valve supply in order to combat currency fluctuation problems that hampered
FEA's business in purchasing from valves from Japan, Plaintiff presented this idea to Defendant
Yamamoto, and Yamamoto asked Plaintiff to investigate this possibility. Over a period of time
following Defendant Yamamoto's request, the Plaintiff did investigate alternative sources of

1 valve production and reported his findings to Defendant Yamamoto, and Yamamoto continued to
2 follow the investigation with approval. In the fall of 2012, Plaintiff had obtained sample
3 alternative valves as part of his investigation, and sent them to Defendant Yamamoto.

4 24. **December 2012 Meeting:** Unknown to Plaintiff, in December 2012, a meeting was
5 held in Japan about the future of FEA between Defendant Yamamoto, his son Yuho (via Skype),
6 who operated Qwik Valve, a representative of Hamai, and a man named Rick Harder, who had
7 operated a subsidiary company of Hamai Industries in California until its recent failure and who
8 had been in a close business relationship with Hamai Industries. Plaintiff as President or
shareholder was not invited to or notified of the meeting.

9 25. **Yamamoto's Misrepresentation and Oppression:** On or about the time of that
10 meeting or immediately thereafter, Defendant Yamamoto, acting in his own personal interest to
11 promote his son's company, intentionally misrepresented the nature and purpose of Plaintiff's
12 work investigating the alternative sources of valve supply to Mr. Hamai and others. Defendant
13 Yamamoto stated that Plaintiff was promoting different source production of valves, that he
14 (Plaintiff) was disobeying the instructions of Defendant Yamamoto in conducting the valve
15 investigation and was being disloyal to Hamai Industries. Specifically, Yamamoto stated that
16 Plaintiff without Yamamoto's authority was cooperating with a certain Chinese manufacturer to
17 create copy valves. These statements were false and Defendant Yamamoto knew them to be
18 false. Defendant Yamamoto did not inform Mr. Hamai at that time or anytime thereafter that
19 Yamamoto had known and approved Plaintiff's investigation of alternative valve sources. The
20 false representations and related efforts made by Defendant Yamamoto were made to
21 intentionally interfere with Plaintiff's employment with FEA and facilitate Defendant
22 Yamamoto's efforts to terminate Plaintiff as president and employee of FEA and to further
facilitate the development of his son's business free from Plaintiff's resistance. Email
communications in 2010, 2011 and 2012 between Plaintiff and Yamamoto corroborate the fact

1 that (1) Yamamoto approved of Plaintiff's investigation of an alternative valve source, and (2)
2 that Yamamoto's statements to Hamai and others were false.

3 26. **December 28, 2012 Email:** After the December, 2012 meeting, on December 28,
4 2012, Plaintiff received an email from Defendant Yamamoto with a letter from Yamamoto
5 attached that had been back-dated to August 20, 2010, expressing for the first time that
6 Yamamoto was opposed to the idea of FEA ever investigating or using valves manufactured by
7 an alternative source (which would not be made by Hamai). This email letter had not been sent
8 to or received by Plaintiff on or about August 20, 2010, or any other date. Defendant
9 Yamamoto's two sons confirmed to Plaintiff that the letter had not in fact been sent that August
10 or anytime thereafter. The letter was contrary to Yamamoto's written and oral directions to
11 Plaintiff over the course of the previous two years. After receiving this letter, Plaintiff stopped all
12 activity related to sourcing a second valve.

13 27. **Plaintiff's Wrongful Termination and Oppression:** On or about March 21, 2013,
14 Rick Harder came up from California and met Plaintiff. Mr. Harder told Plaintiff he was being
15 terminated from his position as President and employee of FEA. Mr. Harder further stated that
16 Plaintiff had done nothing wrong, that he had done a wonderful job running and growing the
17 company. No cause was identified by Mr. Harder for Plaintiff's termination. He stated that he
18 was working as an agent and on instructions from Hamai and Defendant Yamamoto. The further
19 point of those instructions was that for the first time in its history, a formal shareholder's meeting
20 of FEA would be called and that Plaintiff's employment would be terminated. A notice was
21 received by Plaintiff scheduling the meeting for April 4, 2013. These actions were oppressive to
22 Plaintiff as a shareholder, and were wrongful to him as an employee.

23 28. **April 2, 2013 Letter:** On April 2, 2013, Defendant Yamamoto sent a letter to
24 Plaintiff stating that Plaintiff's termination was because of Plaintiff's purportedly "unauthorized"
25 investigation of an alternative source of valves for the Company to sell which purportedly led to

1 Plaintiff "allowing" an alternatively sourced valve to be manufactured. Defendant Yamamoto's
2 stated reason for termination is an allegation that is not true. Plaintiff's work related to the
3 alternative source valves was with Defendant Yamamoto's and FGC's approval. On multiple
4 occasions over several years, Yamamoto personally authorized and directed Plaintiff to
5 undertake an ongoing investigation of alternative sources. Yamamoto promoted this false
6 reason to Hamai and others to gain their cooperation and to further his personal interests in
7 furthering his son's business. Defendant Yamamoto did not act in good faith and breached his
8 duty of loyalty and fair dealing to Plaintiff. This misrepresentation interfered with Plaintiff's
9 business expectancy and contractual relations with FEA and caused damage and was done for an
10 improper purpose. Because Yamamoto's stated reason for terminating Plaintiff was untrue and a
11 pretext for diverting FEA business to his son's business, it is not a just cause and is unlawful
12 under Washington law. Even if such a statement were true, which Plaintiff denies, it is not just
13 cause for Plaintiff's termination.

14 29. **April 4, 2013 Shareholder Meeting:** The company meeting of FEA occurred as
15 scheduled. Plaintiff was terminated as president, director, and as an employee and required to
16 deliver all company property, premises, and records to Mr. Harder, who presided at the meeting
17 and was elected President, replacing Plaintiff after his 28 years of service to the company, in
18 which he was an original founding investor and of which he still owned 12.5% of the outstanding
19 common stock. Yamamoto's son was elected as a director to FEA at this time.

20 30. **Business Expectancy:** Plaintiff had a business expectancy and contractual
21 relationship with FEA that Plaintiff would have just cause employment with the Company, and
22 was entitled for this expectancy to not be interfered with. This duty of non-interference applied
even if his employment had been merely "at will." Yamamoto's misrepresentations to other
shareholders, his self-dealing to further his son's business and other conduct interfered with that
expectation and contract. Because Yamamoto interfered with Plaintiff's business expectancy

1 and contract relations with FEA, Plaintiff's goodwill and reputation has been damaged, and he
2 has lost income and benefits he would have otherwise derived from FEA had he remained
3 employed. The right of protection of this business expectancy and the wrongful nature of the
4 interference with the same, is no different whether the employment of Plaintiff is found to be just
5 cause employment, or merely "at will."

6 **VI. FIRST CAUSE OF ACTION**
7 **Intentional Interference with Contractual Relations**
8 **against Defendants Yamamoto and Fumoto Giken**

9 31. Plaintiffs re-allege the allegations and information in all of the preceding paragraphs
10 of this complaint.

11 32. Plaintiff had a valid contractual relationship (either express or implied) with FEA for
12 just cause employment.

13 33. Yamamoto and FCG knew of this contractual relationship and had a duty to not
14 interfere with the contract based in part on FCG and Yamamoto's duty of care, good faith,
15 loyalty and fair dealing as majority shareholder to FEA and to FEA's employee and as director
16 to FEA, but also because his interference was motivated by the improper purpose of diverting
17 FEA's business to his son's business, in breach of his duties to FEA, and because there was no
18 just cause for termination of Plaintiff's employment. Such interference caused FEA to terminate
19 Plaintiff without just cause and in violation of Washington state law.

20 34. Defendant Yamamoto's statements and representations to Hamai and others around
21 the time of the December 2012 meeting in Japan, and thereafter, concerning Plaintiff's
22 investigation of alternative sources of valve manufacture and the actual manufacture of an
alternate valve prototype, described above, were false and misleading, and intended to interfere
and did interfere with Plaintiff's employment as President of FEA. Such actions were for
improper purposes, and were a proximate cause of Plaintiff's termination as employee and

1 president of Defendant FEA. Defendant Yamamoto's statements were made in furtherance of
2 his personal interests in diverting the distribution and sale of FCG valves from FEA to his son's
3 business, which violated the express written and exclusive Distribution Agreement with FEA.
4 These statements also caused FEA to terminate Plaintiff without just cause in violation of
5 Washington state law and to purposefully interfere with Plaintiff's implied and express
6 contractual rights with Defendant FEA.

7 35. Defendant Yamamoto's actual diversion of the distribution and sale of FCG valves
8 from FEA to his son's business, violates the express written and exclusive Distribution
9 Agreement with FEA, as well as breaches Yamamoto's fiduciary duties to FEA, to Plaintiff as
10 shareholder and as employee. Defendant Yamamoto's actions were in furtherance of his
11 personal interests in diverting the distribution and sale of FCG valves from FEA to his son's
12 business and caused FEA to terminate Plaintiff without just cause in violation of Washington
13 state law. Such action purposefully interfered with Plaintiff's implied and express contractual
14 rights with Defendant FEA.

15 36. As a result of Defendants Yamamoto and FGC's wrongful conduct, Plaintiff was
16 injured and entitled to damages for this claim as set forth in the Prayer, below.

17 **IV. SECOND CAUSE OF ACTION**
18 **Tortious Interference with Prospective Advantage or Business Opportunity**
19 **against Defendants Yamamoto and Fumoto Giken**

20 37. Plaintiffs re-allege the allegations and information in all of the preceding paragraphs
21 of this complaint.

22 38. Plaintiff had a valid business expectancy in his employment by FEA, regardless of
whether such employment is later found to be "at will" or just cause employment.

39. Yamamoto and FCG knew Plaintiff was employed by FEA, and they had a duty to not
interfere with that employment for any improper purpose.

1 40. Yamamoto and FCG had a further duty not to interfere because of the duties they
2 owed of care, good faith, loyalty and fair dealing as majority shareholder to FEA to Plaintiff as
3 FEA's employee, to Plaintiff as a minority shareholder,

4 41. The interference of Yamamoto and FCG was motivated by the improper purposes of
5 diverting FEA's business to his son's business, in breach of his duties to FEA, and termination
6 of Plaintiff's employment. Such interference caused FEA to terminate Plaintiff in violation of
7 Washington state law.

8 42. Defendant Yamamoto's statements and representations to Hamai and others around
9 the time of the December 2012 meeting in Japan, and thereafter, concerning Plaintiff's
10 supposedly improper investigation of alternative sources of valve manufacture and the actual
11 manufacture of an alternate valve prototype, described above, were false and misleading, and
12 intended to interfere and did interfere with Plaintiff's employment as President of FEA.
13 Yamamoto's actions were for improper purposes, and were a proximate cause of Plaintiff's
14 termination as employee and president of Defendant FEA. Defendant Yamamoto's statements
15 were made for improper and unfair purposes and in furtherance of his personal interests in
16 diverting the distribution and sale of FCG valves from FEA to his son's business, and violated
17 the express written and exclusive Distribution Agreement with FEA. These statements also
18 caused FEA to terminate Plaintiff in violation of Washington state law and to purposefully
19 interfere with Plaintiff's business expectancy of employment with Defendant FEA.

20 43. Defendant Yamamoto's actual diversion of the distribution and sale of FCG valves
21 from FEA to his son's business, violates the express written and exclusive Distribution
22 Agreement with FEA, as well as breaches Yamamoto's fiduciary duties to FEA, to Plaintiff as
shareholder and as employee. Defendant Yamamoto's actions were made for an improper and
unfair purpose and were in furtherance of his personal interests in diverting the distribution and
sale of FCG valves from FEA to his son's business, in breach of FCG and Yamamoto's duty of

1 care, good faith, loyalty and fair dealing as majority shareholder to FEA and to Plaintiff as a
2 minority shareholder and FEA's employee. Defendants' actions caused FEA to terminate
3 Plaintiff without just cause in violation of Washington state law. Such action purposefully
4 interfered with Plaintiff's business expectancy rights with Defendant FEA.

5 44. Plaintiff's claim under this Cause of Action for tortious interference with business
6 expectancy applies regardless of whether there is found to be a contract of employment, or
7 whether Plaintiff's employment is found to be either just cause or at-will in nature.

8 45. As a result of Defendants Yamamoto and FGC's wrongful conduct, Plaintiff was
9 injured and entitled to damages for this claim as set forth in the Prayer, below.

10 **VIII. THIRD CAUSE OF ACTION**
11 **Wrongful Termination of Plaintiff's Employment**
12 **Implied and Express Contract**
13 **Additional Consideration**
14 **Against Defendant Fumoto Engineering of America**

15 46. Plaintiffs re-allege the allegations and information all of the preceding paragraphs of
16 this complaint.

17 47. Plaintiff's employment was terminable only for just cause for two reasons, one
18 because there was an implied agreement to that effect.

19 48. Secondly, Plaintiff's employment was terminable only for just cause because Plaintiff
20 gave consideration in addition to the contemplated service. If his employment had been "at
21 will" this additional consideration modified the relationship to be just cause employment.

22 49. The presence of either the implied agreement or additional consideration requires
"cause" for termination.

50. Plaintiff's discussions with Yamamoto, Yamamoto's proceeding and subsequent
writings and conduct, the Distribution Agreement, the parties course of dealing and business
custom and usage and other facts specified herein in whole and in part document the parties

1 mutuality, and assent and consideration forming an implied agreement that Plaintiff's
2 employment was terminable only for just cause.

3 51. Plaintiff's relinquishment of other opportunities, investment in the FEA, loans to
4 FEA at favorable rates, credit and loan guarantees, working without pay, and other acts alleged
5 herein, were to his detriment and for the benefit of the company constitute consideration in
6 addition to his contemplated service of distributing valves. To the extent Plaintiff's
7 employment was merely "at will," such additional consideration modified the employment
8 contract making his employment terminable only for just cause. Defendants Yamamoto, FGC
9 and FEA had actual and or constructive knowledge of the consideration in addition to
10 contemplated service. Among other things, Yamamoto's ongoing acquiescence of control and
11 power of FEA to Plaintiff demonstrated Yamamoto's intent and assent to "just cause
12 employment," to the extent his assent is required in such circumstances.

13 52. The "implied/express contract" and "additional consideration to the contemplated
14 service" exception to "at will" employment applies to the employment of Plaintiff. FEA
15 wrongfully terminated Plaintiff because it did not have just cause. Because Plaintiff had an (1)
16 implied/express contract for just cause employment and (2) had provided additional
17 consideration, FEA had a duty of good faith and fair dealing in the performance of that contract.

18 53. The contractual right of just cause employment of the Plaintiff as President of FEA
19 requiring just cause for termination was established by the parties' at the inception of FEA (and
20 its predecessor TATM Corporation of California), and through their course of dealing, course of
21 performance and as implied from the facts and circumstances of his employment. To the extent
22 that such contractual right was not acquired at inception, Plaintiff's consideration in addition to
contemplated service created the same contractual right of just cause employment. By virtue of
the express and implied agreement, FEA had a duty of good faith and fair dealing in the

1 performance of the agreement. Defendant FEA's termination of Plaintiff was a breach of those
2 duties.

3 54. FEA's termination of Plaintiff was in retaliation for Plaintiff's refusal and resistance to
4 Defendants Yamamoto and FGC's actual and intended breaches of fiduciary duties to the FEA
5 and to him as shareholder.

6 55. At the time of his termination and for the proceeding 28 years, Plaintiff was
7 performing his job duties satisfactorily.

8 56. FEA's stated reason for Plaintiff's termination was false and a pretext for retaliation.
9 In addition, it did not constitute just cause, and there was no just cause.

10 57. Defendants, including the FEA, breached a duty of good faith with respect to the
11 employment agreement because Defendants, all of them, had independent duty of good faith
12 and fair dealing to Plaintiff.

13 58. As a result of FEA's wrongful conduct, Plaintiff was injured and entitled to damages
14 for this claim as set forth in the Prayer, below.

15 **VIII. FOURTH CAUSE OF ACTION**
16 **OPPRESSION OF PLAINTIFF AS A MINORITY SHAREHOLDER**

17 59. Plaintiff is and has been a minority shareholder in Defendant Corporation FEA, which
18 is also the employer in the wrongful termination claim herein.

19 60. Plaintiff's reasonable expectations for his benefit and returns from FEA both when the
20 Company was being created and through his 28 years of employment at the company included
21 the following: Plaintiff would contribute his marketing and advertising expertise to developing
22 a market for FGC's valves in the US market, that he would invest some of his own funds in the
Company enterprise, that some of his efforts on behalf of the Company would be unpaid
especially in the beginning, that he may personally need to make loans to the Company,

1 personally guarantee its credit, that there were Japanese cultural expectations he shared with
2 Defendant Yamamoto that Plaintiff would have just cause employment with the Company, that
3 he would have great autonomy in his management of the Company, that there would be no
4 dividends paid, but that Hamai and FGC would get a fair return on their investment by sales to
5 the company, that Plaintiff would have just cause employment with FEA, and would get a fair
6 return on his investment of funds, unpaid work, loans and guarantees of credit by receiving all
of the company profit as his salary.

7 61. FEA has not paid dividends, so that Plaintiff's only reasonable expectation of income
8 from his investment and ownership of the Defendant FEA company would come from his
9 employment, which was reasonably expected to be just cause employment.

10 62. In 2012, FEA as a company had revenues of approximately \$3 million with a
11 substantial portion of that amount being profits. This means that the value of each shareholder's
12 interest in the company is worth a substantial amount of money, but only if they receive the
13 benefits of their original expectations; for Plaintiff this would mean just cause employment
14 whereby all profits are paid to him as salary, and for FGC this would be sales by Defendant
FGC to FEA, and for Hamai sales by Hamai Industries to FGC of products for the US sales.

15 63. The reasonable expectations of Plaintiff were destroyed by the oppressive actions of
16 Defendants in terminating Plaintiff as President and as an employee of the FEA company
17 without just cause, by his diversion of FEA opportunities and profits to his son's Kwik Valve
18 Business, and by other oppressive actions alleged herein. The oppression continues to the
19 present by means of Defendants holding Plaintiff's investment with no dividends or other
return.

20 64. Plaintiff seeks to invoke the equitable powers of the court in support of his claims due
21 to the oppressive actions of the majority shareholder Defendant FGC, and its owner Defendant
22 Yamamoto.

1
2 David Reed, WSBA No. 7014
3 Attorney for Plaintiff
4

5 CERTIFICATE OF SERVICE

6 Pursuant to RCW 9A.72.085, the undersigned certifies under penalty of perjury under the
7 laws of the State of Washington, that on the _____, the document
8 attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF
9 system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of
10 the Court will send e-mail notification of such filing to the following persons:

11 Laura T. Morse, WSBA No. 34532 morses@lanepowell.com
12 Jacob M. Downs, WSBA No. 37982 downsj@lanepowell.com
13 1420 Fifth Avenue, Suite 4200 P.O. Box 91302 Seattle, WA 98111-9402
14 Telephone: (206) 223-7000 Facsimile: (206) 223-7107
15 Attorneys for Defendants Naoyuki Yamamoto and Fumoto Giken Co., Ltd, and Nominal
16 Defendant Fumoto Engineering of America, Inc

17 and I hereby certify that I have mailed by United States Postal Service the document to the
18 following non-CM/ECF participants: (none)

19 Executed on May 29, 2013, at Fall City, Washington.

20 David Reed, WSBA No.7014
21
22

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~~UNITED STATES DISTRICT~~ IN THE SUPERIOR COURT
~~WESTERN DISTRICT OF THE STATE OF WASHINGTON~~
AT SEATTLE
FOR
IN AND FOR THE COUNTY OF KING

NORIO MITSUOKA,

Plaintiff,

v.

FUMOTO ENGINEERING OF AMERICA,
INC., a Washington Corporation, NAOYUKI
YAMAMOTO, FUMOTO GIKEN CO., LTD,
a Japanese Corporation,

Defendants.

Case No. ~~2-13-ev-02048-TSZ2-23101-8~~
SEA

[PROPOSED] PLAINTIFF'S
SECONDTHIRD AMENDED
COMPLAINT

COMES NOW, Plaintiff NORIO MITSUOKA, by and through his undersigned
~~attorney~~attorneys, and submits this SECONDTHIRD AMENDED COMPLAINT (hereinafter the
"Complaint") against the Defendants as follows:

I. NATURE OF THE ACTION (SECONDTHIRD AMENDED)

1. — This is a claim by Plaintiff for his wrongful discharge and interference with his
employment and as president of FUMOTO ENGINEERING OF AMERICA, INC. (FEA, or
Defendant or Company)

[PROPOSED] PLAINTIFF'S SECONDTHIRD
AMENDED COMPLAINT - 1 of 25

Advocates Law Group, PLLC
10900 NE 4th St, Suite 2300
Bellevue, WA 98004
(425) 646-6760: Phone
(425) 642-8260: Fax

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[PROPOSED] PLAINTIFF'S SECONDTHIRD
AMENDED COMPLAINT - 2 of 25

Advocates Law Group, PLLC
10900 NE 4th St, Suite 2300
Bellevue, WA 98004
(425) 646-6760: Phone
(425) 642-8260: Fax

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II.), AND FOR HIS OPPRESSION AS A MINORITY SHAREHOLDER OF FEA.PARTIES

2-1. Plaintiff NORIO MITSUOKA is owner of 12.5% of the issued and outstanding shares of the FUMOTO ENGINEERING OF AMERICA, INC. (FEA)

3-2. Defendant NAOYUKI YAMAMOTO ("Yamamoto") is a resident of Japan.

4-3. Defendant FUMOTO GIKEN CO., LTD. ("FGC"), is a 62.5% shareholder of FEA and is wholly owned by Defendant Yamamoto.

5-4. Defendant FUMOTO ENGINEERING OF AMERICA, INC. (FEA, or Defendant or Company) is a Washington corporation and resident.

6-5. Hamai Industries is a Japanese manufacturer of FEA oil changer valves, and owns 25% of the shares of FEA.

7-6. Many of the acts and omissions alleged herein occurred in King County, Washington, where Plaintiff was employed, and the principal place of the FEA's business when this suit was filed. Defendant FEA was incorporated in and is a citizen of the state of Washington.

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III. FACTUAL ALLEGATIONS

7. Plaintiff Norio Mitsuoko. Norio Mitsuoko graduated from Tokyo Univeristy in 1977. After graduation, he went to work for the largest Japanese advertising agency, Dentsu, which at the time was the highest paying company in Japan. In 1981, Mitsuoko moved from Japan to the United States to work for a Dentsu joint venture, Young & Rubicam/Dentsu. At the time he was a Japanese citizen. He became a U.S. citizen in 2011 and now maintains a dual citizenship.

8. Defendant Naoyuki Yamamoto. Yamamoto is a Japanese citizen and has resided in Japan his entire life. Yamamoto and his company Defendant FGC had an oil drain valve product that was marketed and sold in Japan.

1 9. Negotiation of Contract. In late 1983, Mitsuoko was introduced to Yamamoto
2 through a mutual friend and learned that Yamamoto and his company FGC were looking for a
3 US distributor for his oil changer valves. Mitsuoko was looking for an opportunity to start his
4 own business (as in the American dream) although he had a well paying job. When they began
5 discussions, Mitsuoko was a native speaker of Japanese but also spoke English. He also had
6 substantial expertise in developing markets for new products. Yamamoto and Mitsuoko
7 exchanged letters, and in March of 1984 Yamamoto and his wife came to visit Mitsuoko in LA
8 to discuss the business opportunities. They immediately became very close friends. At that
9 time, both were citizens of Japan, shared the traditions, culture, business and employment
10 assumptions of their Japanese heritage, where "lifetime" and "just cause employment" are
11 assumed, where termination of employment for no cause is rare, and subject to legal sanctions.
12 (Employment where termination of the employee may only occur for just cause, is referred to
13 hereinafter as "just cause employment.") This great relationship continued for more than 2
14 decades.

15 10. During Yamamoto's stay, he and Mitsuoko spent many hours talking about the
16 future business and way of life. On a number of occasions they had a dialogue like the following:

17 Y: "Are you really sure you want to sacrifice your great career and devote your
18 life to something like this unknown valve?"

19 N: "Yes. I see a great potential in this product, and I learned a lot about marketing
20 and advertising for new products in my ad agency career, so I'm ready to make
21 the full commitment. I want to make this my lifetime work."

22 Y: "OK. I like you. I will give you my full support and help you all the way. I will
 guarantee that you will not regret your decision. You can be the exclusive
 distributor for as long as you want to sell the valves"

At one point, Yamamoto said "I'm sure you will succeed, but if anything goes wrong, don't
 worry. I can take care of the life of you and your family..." When Yamamoto returned to Japan
 after 3-4 days, he wrote Mitsuoko a letter on March 28, 1984 and stated "I fell in love with your
 personality." Before the corporate structure of their business deal was formed, Mitsuoko and

1 Yamamoto agreed that Plaintiff would start a new company either as a sole proprietor or other
2 entity form, and that such company would be the exclusive dealer of the valve in the US. The
3 exclusive dealership agreement supplemented the broader agreement between the two men. The
4 exclusive dealer arrangement was memorialized in part in a document handwritten by Yamamoto
5 titled "Agreement" and dated May 10, 1984. The Agreement stated in part:

6 " A [FGC] shall provide B [FEA] with exclusive agency ship to import to and
7 distribute in the United States, Oil Changer Valves which [FGC] produces in
8 Japan, for unlimited time (as long as [FEA] wishes to sell the product) . . .

9 [FGC] is forbidden to transfer this Agreement to any other party, and its binding
10 force shall extend to [FGC] and its successors."¹

11 Plaintiff agreed to: (1) be the exclusive U.S. distributor, (2) quit his lucrative job, (3) dedicate his
12 personal financial resources for the duration of the company, as may be necessary (e.g., going
13 without a salary the first six months, personally guaranteeing loans, loaning money to the
14 company), (4), dedicate his expertise and (5) make a long term commitment to the new company.
15 In exchange, the "distributorship" arrangement was for employment with just cause termination.

16 ~~¶ 11. FEA Formation and, Exclusive Dealership Agreement, and Plaintiff's~~
17 ~~Reasonable Expectations as a Shareholder: Yamamoto and Plaintiff originally thought that~~
18 ~~Plaintiff would be a sole proprietor distributing the valves, but because of product liability, it was~~
19 ~~decided that Plaintiff would form a corporation. FEA was first incorporated as TATM~~
20 ~~Corporation d/b/a Fumoto Engineering of America (FEA) in 1984 in California. At the time of~~
21 ~~formation, Plaintiff was a fifty percent shareholder at that time, and made an investment of his~~
22 ~~time and money to form the company and become a shareholder. FCG and Hamai Industries~~
~~would later join Plaintiff as shareholders for FEA. Yamamoto approached Plaintiff asking~~
~~whether Plaintiff would be willing to create and run a company in the U.S. as an exclusive~~
~~distributor of FCG's oil changer valves for Yamamoto's company in Japan, FCG. On May 10,~~
~~1984, FEA entered into a written contract with FGC, which promised that FEA would be the~~

¹ This is an English translation of the handwritten agreement.

1 ~~exclusive American distributor for oil changer valves produced by FGC ("Distribution~~
2 ~~Agreement"). The contract was of unlimited duration, so long as of FEA wished to sell the~~
3 ~~product. Plaintiff's reasonable expectations, spoken and unspoken, at the time of formation and~~
4 ~~when FGC and Hanai Industries were brought on as shareholders was that he originally would~~
5 ~~be working as a distributor of the oil valve products, that he would be responsible for developing~~
6 ~~the US market for the oil valves, that he would operate the newly formed company on an~~
7 ~~autonomous basis, that he would receive no compensation for his efforts in the beginning, that he~~
8 ~~may be required to contribute additional cash or loans to the company in order to keep it going,~~
9 ~~all beyond the contemplated services for the job of selling valves and developing a US market,~~
10 ~~and that the job would be his as long as there was no just cause for his termination as an~~
11 ~~employee.~~

12 12. Upon information and belief, Defendants are in possession of evidence
13 documenting Yamamoto's assent to Plaintiff's just cause employment. In addition, Yamamoto
14 statements to Plaintiff during his visit and later in his letters and emails documents and manifests
15 Yamamoto's assent. Yamamoto also manifested his assent to the just cause employment by his
16 subsequent conduct that he knew or had reason to know that Plaintiff would infer his assent.
17 Specifically, Yamamoto knew at the time FEA was first formed, that it was under-capitalized
18 and that Plaintiff would not be paid a salary for the time being and that Plaintiff would need to
19 infuse additional capital and commit personal financial resources to the success of the company
20 for the duration of the company. Yamamoto's 28-year acquiescence of control and profit to
21 Plaintiff and his failure to provide financial resources when the company was faltering (such as
22 in 2008) is conduct consistent with and manifests his intent and assent to the agreement that
Plaintiff would have just cause employment.

13. **Early Efforts of the Enterprise.** When the initial effort to market and sell the
FGC valves in the US began, it was apparent to all that the effort lacked sufficient funds to pay

1 salaries of employees, such as Plaintiff until there were profits. As a result, Plaintiff would not
2 be paid for his work in the beginning. His lack of compensation was therefore consideration in
3 addition to the contemplated services of selling and marketing the oil drain valves. In
4 furtherance of this additional consideration beyond contemplated services, for the first six
5 months of his employment, Plaintiff worked for FEA full time without salary. This period of
6 service without being paid would only have taken place, and would take place again in the
7 future, because the parties, including Plaintiff, agreed to just cause employment. Plaintiff would
8 supply other consideration in addition to the contemplated services, as well. For example, on or
9 around 1987, business was poor and two other employee shareholders of the company were
10 arranging to be bought out by FGC and Yamamoto. With Yamamoto's knowledge and approval,
11 Plaintiff personally guaranteed payment of a \$200,000 debt owed by FEA which was necessary
12 for the out-going shareholders' stock to be purchased by Yamamoto.

11 **14. Intent of the Parties.** Plaintiff would not have worked for six months without
12 pay, guaranteed debt, nor would he have done the many other things listed below as additional
13 consideration herein without Yamamoto's statements and representations in the letters,
14 statements and representations in the pre FEA discussions, the exclusive distribution agreement
15 and Yamamoto's other conduct that manifested his intent and assent to Plaintiff's just cause
16 employment. Defendants and Hamai Industries (although only FEA is the Plaintiff's employer)
17 would not have given Plaintiff employment with his salary being all profits of the company, and
18 complete autonomy to operate the company in his sole discretion if he were only to be an at will
19 employee. Nor would Defendants have asked for Plaintiff to go without pay for six months had
20 they not intended and assented that he be an employee subject to termination only for just cause.

20 **9-15. FEA Moves to Washington State:** When Plaintiff moved to Washington State,
21 the company was re-incorporated as a Washington corporation, effective April 29, 1991. This
22 was the same company and assumed all obligations, and all property, beneficial relationships,

1 customers, business expectancies, the exclusive distributorship with defendant FGC, and other
2 aspects of its California predecessor TATM, including the same just cause employment
3 relationship with FEA as Plaintiff ~~was had~~ with TATM. Plaintiff remained President of the re-
4 incorporated FEA. ~~As part~~ By the time of the re-incorporation, the California ~~other~~ shareholders
5 ~~other than Plaintiff, FGC and Hamai Industries~~ of TATM were bought out by Defendant
6 Yamamoto, leaving share ownership as follows:

| Shareholder | Percentage of share ownership |
|--------------------------|-------------------------------|
| FGC | 62.5% |
| Hamai Industries | 25% |
| Plaintiff Norio Mitsuoka | 12.5% |

10 ~~10-16.~~ Hamai Industries continued to supply the oil drain valves to FGC as its sole
11 manufacturer. During Plaintiff's time as President, FGC supplied FEA in the US with oil drain
12 valves as FEA's sole supplier, and by agreement between FEA and FEJ, FEA was exclusively
13 the representative of FGC's products in the United States, and elsewhere, but not in Japan.

14 ~~11-17.~~ **FEA Contract of Permanent Just Cause Employment:** At the time FEA was
15 first incorporated California, ~~and continuing through~~ re-incorporation in Washington and
16 thereafter, Plaintiff agreed to serve and to continue to serve as President and work for FEA in
17 exchange for just cause employment on a permanent basis and as the President of FEA so long as
18 Plaintiff chose ~~and so long as the Company~~. The company was successful. In addition to the
19 Distribution Agreement and discussions with Yamamoto, evidence of this agreement of
20 ~~permanent just cause~~ employment and Plaintiff's ongoing personal investment in and additional
21 consideration to FEA is the parties' subsequent course of dealing, course of performance and
22 other acts or omissions, including without limitation the following:

- a. Plaintiff was FEA's sole employee since its re-incorporation in 1991 in Washington, until recent years.

- 1 b. Plaintiff had sole responsibility for the operations and management of FEA.
- 2 c. Neither FCG nor Hamai Industries exercised dominion over or control of FEA, as a
3 shareholder or director while Plaintiff worked as President and employee.
- 4 d. Other than FCG's original investment in FEA, no further infusion of capital or cash was
5 made while Plaintiff worked as President and employee. Neither FCG nor Hamai
6 Industries made loans, provided personal or corporate guarantees for loans or assumed
7 debt for FCG.
- 8 e. Under Plaintiff's management, FEA increased its gross revenue from \$-0- in 1984, to
9 \$500,000 in 1991, to approximately \$3 million in ~~April 2013~~2012. At the time that
10 Plaintiff was terminated from FEA, in April of 2013, there was approximately \$500,000 in
11 inventory and \$500,000 in accounts receivable.
- 12 f. Plaintiff had sole discretion to determine the salary FEA paid to him, which was
13 generally commensurate with Plaintiff's investment in, growth and profitability of the
14 Company.
- 15 g. In the first six months of the Company's existence in California, FEA did not pay
16 Plaintiff salary earned. HeBecause the survival of FEA required it, Plaintiff was not paid
17 until such time as FEA had sufficient revenue.
- 18 h. Later, when the housing market crashed in 2008, and because the survival of the FEA
19 required it, Plaintiff, unilaterally reduced the salary FEA owed to him because of the
20 severe reduction in revenue and profit caused by the crash; this was consideration in
21 addition to the contemplated service of selling and marketing oil drain valves. For one or
22 two months during that period, Plaintiff worked full time without any salary.
- f.i. The non-payment and delay in payment of Plaintiff's salary was a detriment to Plaintiff
and a benefit to FEA. Plaintiff would not have agreed to delay, reduce or go without

1 payment of his wages as the President or as an employee of FEA if had not agreed to a
2 ~~permanent~~just cause employment position.

3 ~~g.j.~~ No dividends were demanded, requested or paid to shareholders until May 2012, and no
4 dividends have been paid to shareholders since Plaintiff's termination. No director or
5 shareholder meetings were held until the day Plaintiff was terminated.

6 ~~h.k.~~ Plaintiff provided aid to FEA financially beyond the requirements of his job, by, for
7 example, personally guaranteeing substantial financial obligations of the Company,
8 including providing a line of credit. The terms of the lines of credit to FEA were at less
9 than the market interest rate that would otherwise be commercially available without his
10 guarantee, so they were beneficial to the company as well as being a detriment to the
11 Plaintiff.

12 ~~i.l.~~ The Plaintiff was the personal guarantor on a \$150,000 line of credit with Bank of
13 America at the time of his termination. This line of credit was opened on July 28, 2000
14 and closed May 21, 2013, approximately six weeks after the Plaintiff's termination.
15 Neither FEA, nor Hamai Industries ever provided additional financial assistance or
16 provided any personal or corporate guarantees to FEA. These transactions were beneficial
17 to the company (FEA), known to FEA, as well as being a detriment to the Plaintiff.

18 ~~j.m.~~ When FEA was in California, Plaintiff personally guaranteed a \$200,000 loan that was
19 made to FEA before the California corporation was dissolved and re-incorporated,
20 Plaintiff incurred substantial personal financial risk until the loan was paid off. This was a
21 detriment to Plaintiff, known to FEA and Yanjanioto, and a benefit to FEA.

22 ~~12.18. FEA Growth:~~ FEA prospered with Plaintiff as President. The shareholders,
especially FGC, received regular reports and information about the income and expenses of
FEA, and approved of how business was being conducted, but at no time expressed an interest in
operating the company. Sales The continued status quo over the 28 years that Plaintiff was

1 employed by the company shows that the terms of the agreement between parties, implied or
2 otherwise, were well settled. The sales of the Company were profitable, revenues were
3 substantial, and FEA's customers included many of the largest corporations in the US and the
4 world.

5 19. **At-Will Contract Modified.** To the extent that Plaintiff's employment with FEA
6 was a contract for "at-will employment, Plaintiff's consideration in addition to the contemplated
7 service of selling and marketing oil drain valves over the years modified the "at-will"
8 employment contract to a contract for just cause employment so long as Plaintiff chose.

9 43-20. **Plaintiff's Personal Guarantee on Line of Credit and Loans:** Plaintiff's
10 financial aid to FEA went beyond the requirements of his job. Plaintiff provided a personal
11 guarantee for a \$150,000 line of credit to FEA, which benefited FEA because it allowed FEA to
12 reduce costs and increase profit margin by not having to establish an outside source or credit
13 facility for a line of credit at a higher commercial interest rate and on less favorable terms. This
14 was made to Plaintiff's detriment and risk. If FEA defaulted on the line of credit, Plaintiff would
15 be personally financially liable. Plaintiff also personally loaned \$390,000 to FEA over the
16 course of his employment. The line of credit and loans also reduced the personal credit available
17 to Plaintiff. This risk and detriment was a personal risk undertaken by both him and, by virtue of
18 his marital community, his wife. Each of these examples was a benefit to FEA and contributed
19 to the profitability of FEA and a detriment to Plaintiff. Plaintiff would not have agreed to
20 provide loans or personal guarantees on behalf of FEA if he were not going to have just cause
21 employment and be the permanent President. Plaintiff also had his personal home mortgage and
22 banking accounts at Bank of America. Upon information and belief, Plaintiff believes that the
personal guarantee provided to the FEA \$150,000 line of credit was cross-collateralized and
cross-defaulted with his personal home mortgage and other accounts maintained at Bank of
America. All of these efforts by Plaintiff on behalf of the company were contemplated in his

1 employment, the reasonable expectations of the parties as investors and shareholders of the
2 corporation and as part of the additional consideration beyond contemplated services that meant
3 Plaintiff was entitled to just cause employment.

4 **14.21. Fumoto New York Oppression Matter:** In 2005, one of Defendant
5 Yamamoto's two sons, Yuho Yamamoto, decided to attend language school in New York. As he
6 did so, he also started selling the FGC valves from a website he created for that purpose, called
7 www.qwikvalve.com for his company Qwik Valve. Defendant Yamamoto requested that the
8 name "Fumoto New York" be permitted to be used for his son's new company. Plaintiff objected
9 to that use, in order to avoid market confusion and avoid violation of an exclusive distributor
10 agreement, and loss of revenue to FEA. The new entry of Defendant Yamamoto's son into
11 business caused concern for the Plaintiff as President of FEA, since the son's website business
12 was infringing on the exclusive territory of some of FEA's established distributors in New York
13 and elsewhere. In addition, there was an issue as to whether the son's business would be supplied
14 by FEA, or if it would buy its valves direct from FGC, thus undercutting FEA's sales in the US,
15 and providing the son's business with a competitive advantage against FEA's other distributors
16 throughout the country

17 **15.22. Yamamoto's Self Dealing and Continued Oppression:** At the direction of
18 Yamamoto, FGC sold valves directly to the son's business in New York, thereby reducing sales
19 revenue and opportunities in the US that would otherwise be available to FEA and breaching the
20 Distribution Agreement, incurring loss of profits. Yamamoto acknowledged that it was improper
21 and wrong to direct these sales, but would later resume selling to Fumoto New York, again
22 providing opportunities and revenue to the son's company that were FEA's under the
Distribution Agreement. The actions of Yamamoto and FGC in favoring the son's business were
in violation of a long standing agreement between FEA and FGC, transferred business
opportunities to the son's business and away from FEA, were self dealing, disloyal and were in

1 violation of the elder Yamamoto's fiduciary duties as a Director of FEA, RCW 23B.08.300 and
2 as a majority shareholder. As a shareholder and director of FEA and by virtue of Yamamoto's
3 actions communications with Plaintiff and others, Yamamoto knew (1) of Plaintiff's business and
4 contractual expectancy, (2) that his actions harmed FEA, and reduced the profitability of FEA,
5 and (3) that his actions harmed Plaintiff's business and contractual expectancy and reduced the
6 profitability of FEA. Plaintiff continued to resist the efforts of Defendant Yamamoto to divert
7 sales and business opportunities to the son's business, as he was obliged to do as president.

8 16-23. Alternate Valve Source: In 2010, one of FEA's distributors proposed developing a
9 different source of valve supply in order to combat currency fluctuation problems that hampered
10 FEA's business in purchasing from valves from Japan, Plaintiff presented this idea to Defendant
11 Yamamoto, and Yamamoto asked Plaintiff to investigate this possibility. Over a period of time
12 following Defendant Yamamoto's request, the Plaintiff did investigate alternative sources of
13 valve production and reported his findings to Defendant Yamamoto, and Yamamoto continued to
14 follow the investigation with approval. In the fall of 2012, Plaintiff had obtained sample
15 alternative valves as part of his investigation, and sent them to Defendant Yamamoto.

16 17-24. December 2012 Meeting: Unknown to Plaintiff, in December 2012, a meeting was
17 held in Japan about the future of FEA between Defendant Yamamoto, his son Yuho (via Skype),
18 who operated Qwik Valve, a representative of Hamai, and a man named Rick Harder, who had
19 operated a subsidiary company of Hamai Industries in California until its recent failure and who
20 had been in a close business relationship with Hamai Industries. Plaintiff as President or
21 shareholder was not invited to or notified of the meeting.

22 18-25. Yamamoto's Misrepresentation and Oppression: On or about the time of that
meeting or immediately thereafter, Defendant Yamamoto, acting in his own personal interest to
promote his son's company, intentionally misrepresented the nature and purpose of Plaintiff's
work investigating the alternative sources of valve supply to Mr. Hamai and others. Defendant

1 Yamamoto stated that Plaintiff was promoting different source production of valves, that he
2 (Plaintiff) was disobeying the instructions of Defendant Yamamoto in conducting the valve
3 investigation and was being disloyal to Hamai Industries. Specifically, Yamamoto stated that
4 Plaintiff without Yamamoto's authority was cooperating with a certain Chinese manufacturer to
5 create copy valves. These statements were false and Defendant Yamamoto knew them to be
6 false. Defendant Yamamoto did not inform Mr. Hamai at that time or anytime thereafter that
7 Yamamoto had known and approved Plaintiff's investigation of alternative valve sources. The
8 false representations and related efforts made by Defendant Yamamoto were made to
9 intentionally interfere with Plaintiff's employment ~~contract~~ with FEA and facilitate Defendant
10 Yamamoto's efforts to terminate Plaintiff as president and employee of FEA and to further
11 facilitate the development of his son's business free from Plaintiff's resistance. Email
12 communications in 2010, 2011 and 2012 between Plaintiff and Yamamoto corroborate the fact
13 that (1) Yamamoto approved of Plaintiff's investigation of an alternative valve source, and (2)
14 that Yamamoto's statements to Hamai and others were false.

15 ~~19-26.~~ **December 28, 2012 Email:** After the December, 2012 meeting, on December 28,
16 2012, Plaintiff received an email from Defendant Yamamoto with a letter from Yamamoto
17 attached that had been back-dated to August 20, 2010, expressing for the first time that
18 Yamamoto was opposed to the idea of FEA ever investigating or using valves manufactured by
19 an alternative source (which would not be made by Hamai). This email letter had not been sent
20 to or received by Plaintiff on or about August 20, 2010, or any other date thereafter. Defendant
21 Yamamoto's two sons confirmed to Plaintiff that the letter had not in fact been sent that August
22 or anytime thereafter. The letter was contrary to Yamamoto's written and oral directions to
23 Plaintiff over the course of the previous two years. After receiving this letter, Plaintiff stopped all
24 activity related to sourcing a second valve.

1 20-27. Plaintiff's Wrongful Termination and Oppression: On or about March 21, 2013,
2 Rick Harder came up from California and met Plaintiff. Mr. Harder told Plaintiff he was being
3 terminated from his position as President and employee of FEA. Mr. Harder further stated that
4 Plaintiff had done nothing wrong, that he had done a wonderful job running and growing the
5 company. No cause was identified by Mr. Harder for Plaintiff's termination. He stated that he
6 was working as an agent and on instructions from Hamai and Defendant Yamamoto. The further
7 point of those instructions was that for the first time in its history, a formal shareholder's meeting
8 of FEA would be called and that Plaintiff's employment would be terminated. A notice was
9 received by Plaintiff scheduling the meeting for April 4, 2013. These actions were oppressive to
Plaintiff as a shareholder, and were wrongful to him as an employee.

10 21-28. April 2, 2013 Letter: On April 2, 2013, Defendant Yamamoto sent a letter to
11 Plaintiff stating that Plaintiff's termination was because of Plaintiff's purportedly "unauthorized"
12 investigation of an alternative source of valves for the Company to sell which purportedly led to
13 Plaintiff "allowing" an alternatively sourced valve to be manufactured. Defendant Yamamoto's
14 stated reason for termination is an allegation that is not true. Plaintiff's work related to the
15 alternative source valves was with Defendant ~~Yamamoto's~~ Yamamoto's and FGC's approval. On
16 multiple occasions over several years, Yamamoto personally authorized and directed Plaintiff to
17 undertake an ongoing investigation of alternative sources. Yamamoto promoted this false
18 reason to Hamai and others to gain their cooperation and to further his personal interests in
19 furthering his son's business. Defendant Yamamoto did not act in good faith and breached his
20 duty of loyalty and fair dealing to Plaintiff. This misrepresentation interfered with Plaintiff's
21 business expectancy and contractual relations with FEA and caused damage and was done for an
22 improper purpose. Because Yamamoto's stated reason for terminating Plaintiff was untrue and a
pretext for diverting FEA business to his son's business, it is not a just cause and is unlawful

1 under Washington law. Even if such a statement were true, which Plaintiff denies, it is not just
2 cause for Plaintiff's termination.

3 22-29. April 4, 2013 Shareholder Meeting: The company meeting of FEA occurred as
4 scheduled. Plaintiff was terminated as president, director, and as an employee and required to
5 deliver all company property, premises, and records to Mr. Harder, who presided at the meeting
6 and was elected President, replacing Plaintiff after his 28 years of service to the company, in
7 which he was an original founding investor and of which he still owned 12.5% of the outstanding
8 common stock. Yamamoto's son was elected as a director to FEA at this time.

9 23-30. Business Expectancy: Plaintiff had a business expectancy and contractual
10 relationship with FEA that Plaintiff would have a permanent job as President of the Company for
11 life, unless the company failed just cause employment with the Company, and was entitled for
12 this expectancy to not be interfered with. This duty of non-interference applied even if his
13 employment had been merely "at will." Yamamoto's misrepresentations to other shareholders,
14 his self-dealing to further his son's business and other conduct interfered with that expectation
15 and contract. Because Yamamoto interfered with Plaintiff's business expectancy and contract
16 relations with FEA, Plaintiff's goodwill and reputation has been damaged. ~~In addition,~~ and he
17 has lost income and benefits he would have otherwise derived from FEA had he remained
18 employed. The right of protection of this business expectancy and the wrongful nature of the
19 interference with the same, is no different whether the employment of Plaintiff is found to be just
20 cause employment, or merely "at will."

19 **VI. FIRST CAUSE OF ACTION**
20 **Intentional Interference with Contractual Relations**
21 **against Defendants Yamamoto and Fumoto Giken**

21 24-31. Plaintiffs re-allege the allegations and information in all of the preceding
22 paragraphs of this complaint.

1 ~~25-32.~~ Plaintiff had a valid contractual relationship (either express or implied) with FEA
2 for ~~permanent~~ just cause employment.

3 ~~26-33.~~ Yamamoto and FCG knew of this contractual relationship and had a duty to not
4 interfere with the contract based in part on FCG and Yamamoto's duty of care, good faith,
5 loyalty and fair dealing as majority shareholder to FEA and to FEA's employee and as director
6 to FEA, but also because his interference was motivated by the improper purpose of diverting
7 FEA's business to his son's business, in breach of his duties to FEA, and because there was no
8 just cause for termination of Plaintiff's employment. Such interference caused FEA to terminate
9 Plaintiff without just cause and in violation of Washington state law.

10 ~~27-34.~~ Defendant Yamamoto's statements and representations to Hamai and others
11 around the time of the December 2012 meeting in Japan, and thereafter, concerning Plaintiff's
12 investigation of alternative sources of valve manufacture and the actual manufacture of an
13 alternate valve prototype, described above, were false and misleading, and intended to interfere
14 and did interfere with Plaintiff's employment as President of FEA. Such actions were for
15 improper purposes, and were a proximate cause of Plaintiff's termination as employee and
16 president of Defendant FEA. Defendant Yamamoto's statements were made in furtherance of
17 his personal interests in diverting the distribution and sale of FCG valves from FEA to his son's
18 business, which violated the express written and exclusive Distribution Agreement with FEA.
19 These statements also caused FEA to terminate Plaintiff without just cause in violation of
20 Washington state law and to purposefully interfere with Plaintiff's implied and express
21 contractual rights with Defendant FEA.

22 ~~28-35.~~ Defendant Yamamoto's actual diversion of the distribution and sale of FCG
valves from FEA to his son's business, violates the express written and exclusive Distribution
Agreement with FEA, as well as breaches Yamamoto's fiduciary duties to FEA, to Plaintiff as
shareholder and as employee. Defendant Yamamoto's actions were in furtherance of his

1 personal interests in diverting the distribution and sale of FCG valves from FEA to his son's
2 business and caused FEA to terminate Plaintiff without just cause in violation of Washington
3 state law. Such action purposefully interfered with Plaintiff's implied and express contractual
4 rights with Defendant FEA.

5 ~~29-36.~~ As a result of Defendants Yamamoto and FCG's wrongful conduct, Plaintiff was
6 injured and entitled to damages for this claim as set forth in the Prayer, below.

7 **IV. SECOND CAUSE OF ACTION**
8 **Tortious Interference with Prospective Advantage or Business Opportunity**
9 **against Defendants Yamamoto and Fumoto Giken**

10 ~~30-37.~~ Plaintiffs re-allege the allegations and information in all of the preceding
11 paragraphs of this complaint.

12 ~~31-38.~~ Plaintiff had a valid ~~contractual relationship and business expectancy with FEA~~
13 ~~for permanent in his employment by FEA, regardless of whether such employment is later~~
14 ~~found to be "at will" or just cause employment.~~

15 ~~39.~~ Yamamoto and FCG knew of ~~this contractual relationship and business expectancy~~
16 ~~and Plaintiff was employed by FEA, and they had a duty to not interfere with the contract based~~
17 ~~in part on that employment for any improper purpose.~~

18 ~~40.~~ Yamamoto and FCG ~~and Yamamoto's duty~~ had a further duty not to interfere because
19 ~~of the duties they owed of care, good faith, loyalty and fair dealing as majority shareholder to~~
20 ~~FEA and to Plaintiff as FEA's employee and as director to FEA, but also because his, to~~
21 ~~Plaintiff as a minority shareholder,~~

22 ~~32-41.~~ The interference of Yamamoto and FCG was motivated by the improper
purpose purposes of diverting FEA's business to his son's business, in breach of his duties to
FEA, and ~~because there was no just cause for~~ termination of Plaintiff's employment. Such
interference caused FEA to terminate Plaintiff ~~without just cause and~~ in violation of
Washington state law.

1 33-42. Defendant Yamamoto's statements and representations to Hamai and others
2 around the time of the December 2012 meeting in Japan, and thereafter, concerning Plaintiff's
3 ~~supposedly improper~~ investigation of alternative sources of valve manufacture and the actual
4 manufacture of an alternate valve prototype, described above, were false and misleading, and
5 intended to interfere and did interfere with Plaintiff's employment as President of FEA.
6 ~~Such Yamamoto's~~ actions were for improper purposes, and were a proximate cause of Plaintiff's
7 termination as employee and president of Defendant FEA. Defendant Yamamoto's statements
8 were made for an improper and unfair ~~purpose~~ purposes and in furtherance of his personal
9 interests in diverting the distribution and sale of FCG valves from FEA to his son's business,
10 ~~which~~ and violated the express written and exclusive Distribution Agreement with FEA. These
11 statements also caused FEA to terminate Plaintiff ~~without just cause~~ in violation of Washington
12 state law and to purposefully interfere with Plaintiff's ~~implied and express contractual and~~
13 business expectancy ~~rights of employment~~ with Defendant FEA.

14 34-43. Defendant Yamamoto's actual diversion of the distribution and sale of FCG
15 valves from FEA to his son's business, violates the express written and exclusive Distribution
16 Agreement with FEA, as well as breaches Yamamoto's fiduciary duties to FEA, to Plaintiff as
17 shareholder and as employee. Defendant Yamamoto's actions were made for an improper and
18 unfair purpose and were in furtherance of his personal interests in diverting the distribution and
19 sale of FCG valves from FEA to his son's business, in breach of FCG and Yamamoto's duty of
20 care, good faith, loyalty and fair dealing as majority shareholder to FEA and to Plaintiff as a
21 ~~minority shareholder and FEA's employee and as director to FEA.~~ Defendants' actions caused
22 FEA to terminate Plaintiff without just cause in violation of Washington state law. Such action
purposefully interfered with Plaintiff's ~~implied and express contractual and~~ business expectancy
rights with Defendant FEA.

1 49. The presence of either the implied agreement or additional consideration requires
2 “cause” for termination.

3 50. Plaintiff’s discussions with Yamamoto, Yamamoto’s preceding and subsequent
4 writings and conduct, the Distribution Agreement, the parties course of dealing and business
5 custom and usage and other facts specified herein in whole and in part document the parties
6 mutuality, and assent and consideration forming an implied agreement that Plaintiff’s
7 employment was terminable only for just cause.

8 51. Plaintiff’s relinquishment of other opportunities, investment in the FEA, loans to
9 FEA at favorable rates, credit and loan guarantees, working without pay, and other acts alleged
10 herein, were to his detriment and for the benefit of the company constitute consideration in
11 addition to his contemplated service of distributing valves. To the extent Plaintiff’s
12 employment was merely “at will,” such additional consideration modified the employment
13 contract making his employment terminable only for just cause. Defendants Yamamoto, FGC
14 and FEA had actual and or constructive knowledge of the consideration in addition to
15 contemplated service. Among other things, Yamamoto’s ongoing acquiescence of control and
16 power of FEA to Plaintiff demonstrated Yamamoto’s intent and assent to “just cause
17 employment.” to the extent his assent is required in such circumstances.

18 38-52. The “implied/express contract” and “additional consideration to the contemplated
19 service” exception to “at will” employment applies to the employment of Plaintiff. FEA
20 wrongfully terminated Plaintiff because it did not have just cause. Because Plaintiff had an (1)
21 implied/express contract for “just cause” permanent employment and (2) had provided
22 additional consideration, FEA had a duty of good faith and fair dealing in the performance of
23 that contract.

24 39-53. The contractual right of “just cause” permanent employment of the Plaintiff as
25 President of FEA requiring just cause for termination was established by the parties’ at the

1 inception of FEA (and its predecessor TATM Corporation of California), and through their
2 course of dealing, course of performance and as implied from the facts and circumstances of his
3 employment. To the extent that such contractual right was not acquired at inception, Plaintiff's
4 consideration in addition to contemplated service created the same contractual right of just
5 cause employment. By virtue of the express and implied agreement, FEA had a duty of good
6 faith and fair dealing in the performance of the agreement. Defendant FEA's termination of
7 Plaintiff was a breach of those duties.

8 40.54. FEA's termination of Plaintiff was in retaliation for Plaintiff's refusal and
9 resistance to Defendants Yamamoto and FGC's actual and intended breaches of fiduciary duties
10 to the FEA and to him as shareholder.

11 41.55. ~~Because of Plaintiff's implied agreement of permanent employment with FEA at~~
12 ~~the time of his termination and for the proceeding 28 years, Plaintiff could only be terminated~~
13 ~~for "just cause." Plaintiff was performing his job duties satisfactorily at the time of his~~
14 ~~termination.~~

15 42.56. FEA's stated reason for Plaintiff's termination was false and a pretext for
16 retaliation. In addition, it did not constitute just cause, and there was no just cause.

17 43.57. Defendants, including the FEA, breached a duty of good faith with respect to the
18 employment agreement because Defendants, all of them, had independent duty of good faith
19 and fair dealing to Plaintiff.

20 44.58. As a result of FEA's wrongful conduct, Plaintiff was injured and entitled to
21 damages for this claim as set forth in the Prayer, below.

22
VIII. FOURTH CAUSE OF ACTION
OPPRESSION OF PLAINTIFF AS A MINORITY SHAREHOLDER

1 59. Plaintiff is and has been a minority shareholder in Defendant Corporation FEA, which
2 is also the employer in the wrongful termination claim herein.

3 60. Plaintiff's reasonable expectations for his benefit and returns from FEA both when the
4 Company was being created and through his 28-years of employment at the company included
5 the following: Plaintiff would contribute his marketing and advertising expertise to developing
6 a market for FGC's valves in the US market, that he would invest some of his own funds in the
7 Company enterprise, that some of his efforts on behalf of the Company would be unpaid
8 especially in the beginning, that he may personally need to make loans to the Company,
9 personally guarantee its credit, that there were Japanese cultural expectations he shared with
10 Defendant Yamamoto that Plaintiff would have just cause employment with the Company, that
11 he would have great autonomy in his management of the Company, that there would be no
12 dividends paid, but that Hamai and FGC would get a fair return on their investment by sales to
13 the company, that Plaintiff would have just cause employment with FEA, and would get a fair
14 return on his investment of funds, unpaid work, loans and guarantees of credit by receiving all
15 of the company profit as his salary.

16 61. FEA has not paid dividends, so that Plaintiff's only reasonable expectation of income
17 from his investment and ownership of the Defendant FEA company would come from his
18 employment, which was reasonably expected to be just cause employment.

19 62. In 2012, FEA as a company had revenues of approximately \$3 million with a
20 substantial portion of that amount being profits. This means that the value of each shareholder's
21 interest in the company is worth a substantial amount of money, but only if they receive the
22 benefits of their original expectations; for Plaintiff this would mean just cause employment
whereby all profits are paid to him as salary, and for FGC this would be sales by Defendant
FGC to FEA, and for Hamai sales by Hamai Industries to FGC of products for the US sales.

DECLARATION OF SERVICE

On said day below, I emailed a courtesy copy and deposited in the U.S. Mail for service a true and accurate copy of the Brief of Appellant in Court of Appeals Cause No. 72123-2-1 to the following:

David E. Reed
Theresa Pruett
Reed Pruett Walters PLLC
10900 NE 4th Street, Suite 2300
Bellevue, WA 98004

Laura T. Morse
Jacob M. Downs
Lane Powell PC
1420 Fifth Avenue, Suite 4200
P.O. Box 91302
Seattle, WA 98111

Original and a copy delivered by legal messenger to:
Court of Appeals, Division I
Clerk's Office
600 University Street
Seattle, WA 98101-1176

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: November 10th, 2014, at Seattle, Washington.



Matt J. Albers, Legal Assistant
Talmadge/Fitzpatrick