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

<p>KRISTOFOR LOFGREN, an individual,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>CHRISTOPHER COZZONE, an individual; BAIN CAPITAL DOUBLE IMPACT FUND, LP, a Delaware limited partnership; BCIP DOUBLE IMPACT ASSOCIATES, L.P., a Delaware limited partnership; KITCHEN FUND, LP, a Delaware limited partnership; and SUSTAINABLE RESTAURANT HOLDINGS, INC., a Delaware limited liability company with its principal place of business in Oregon,</p> <p style="text-align: right;">Defendants.</p>	<p style="text-align: right;">No. 20CV14938</p> <p style="text-align: center;">AMENDED COMPLAINT</p> <p style="text-align: center;">(Declaratory Relief, Breach of Contract, Breach of the Duty of Good Faith and Fair Dealing, Defamation, Intentional Interference with Economic Relations, Breach of Fiduciary Duty)</p> <p style="text-align: center;">(Not Subject to Mandatory Arbitration – Prayer of \$9,700,000)</p> <p style="text-align: center;">Fee Authority: ORS 21.160(1)(e) and ORS 21.105(2)</p>
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Plaintiff Kristofor Lofgren alleges as follows:

INTRODUCTION AND SUMMARY

1.

Kristofor Lofgren, the founder of Bamboo Sushi restaurants, is in the midst of fending off a hostile takeover by Bain Capital and its fund manager, Christopher Cozzone.

2.

Bain first laid the groundwork for the takeover in 2018, when its junior manager, Christopher Cozzone, told Mr. Lofgren that Bain had a “Double Impact Investment Fund” that Bain used to invest in companies with double impact business models—*i.e.*, companies that pursued the dual objectives of (1) social and environmental responsibility; and

1 (2) profitability. Bain further claimed that, unlike most private equity funds, its Double
2 Impact Fund invested in long term growth rather than seeking a quick expansion and payoff.
3 This “patient capital” allowed socially responsible companies to grow and thrive.

4 3.

5 That notion matched the philosophy behind Bamboo Sushi. Mr. Lofgren had created
6 Bamboo Sushi to provide sustainably harvested seafood, benefitting society and the
7 environment, with profit as only a secondary goal.

8 4.

9 Mr. Lofgren, Bamboo Sushi employees, and other Sustainable Restaurant Holding,
10 Inc. (“SRH”) investors then agreed to take Bain on as investor. In March 2018, Bain agreed
11 to invest \$15,000,000 in the company through various business entities, in exchange for a
12 23% ownership interest in the company.

13 5.

14 Upon closing the deal, Bain issued a press release noting that Mr. Lofgren and his
15 team had “done an exceptional job of tapping into a growing segment of customers who
16 recognize that eating sustainability sourced seafoods is not only better for you, but also better
17 for the planet.” Bain further claimed that it looked forward to supporting SRH’s “high
18 potential for growth in new markets and to scale their vision of broader environmental
19 impact.”

20 6.

21 That turned out to be the last time that Bain ever showed any interest in making a
22 social or environmental impact through SRH.

23 7.

24 Over the next two years, Bain and Mr. Cozzone routinely went back on their word.
25 Within just a few months of closing the investment deal, Bain threatened Mr. Lofgren that it
26

1 would not invest a contractually required tranche of funding—which carried no financial
2 milestones for receipt—unless SRH rapidly improved its profitability.

3 8.

4 Despite their contractual promises, Bain and Mr. Cozzone refused to provide the
5 financing unless Bain was given additional stock in the company through a “down round.”
6 Under the down round, Mr. Lofgren and the other SRH investors’ ownership interests in the
7 company would be crammed down or diluted, while increasing Bain’s overall ownership
8 percentage.

9 9.

10 By April 2019, the company needed the additional capital Bain had promised to fund
11 SRH’s expanding operations. Mr. Lofgren and the other investors felt compelled to agree to
12 the down round, thereby diluting their shares in the company.

13 10.

14 As part of that down round, Mr. Cozzone took over as the lead manager for Bain’s
15 investment in SRH as well as Bain’s sole board member for SRH. Eager to prove himself at
16 Bain and in the investment world, Mr. Cozzone then insisted that SRH build and open five to
17 six new restaurants within a short period of time. Mr. Cozzone insisted that he, and he alone,
18 would find the additional funding needed to build the new restaurants.

19 11.

20 By the end of 2019, however, Mr. Cozzone still had not found funding for the new
21 restaurants, placing the company in potential peril. With the company in danger,
22 Mr. Lofgren began working to find funding. Mr. Lofgren then found an investment group,
23 the Oregon Venture Fund, which agreed it would issue a loan to SRH that would later
24 convert to stock. SRH, however, still needed the additional funding that Mr. Cozzone had
25 promised to secure.

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12.

Further aggravating Mr. Cozzone’s failure, by late February 2020, media outlets were beginning to report on the possibility of a worldwide Coronavirus pandemic, which threatened to shut down restaurants across the country.

13.

Mr. Lofgren, as the Chief Executive Officer of SRH then formulated a plan to secure any additional funding and renegotiate leases to ride out the potential pandemic and maintain the company’s value, which by that point, was in excess of \$40,000,000.

14.

Mr. Cozzone, however, saw an opportunity to cover up his failure and secure an even higher ownership percentage in the company for Bain. Mr. Cozzone accordingly rejected Mr. Lofgren’s plan, informed him that he would accelerate Mr. Lofgren’s planned departure as Chief Executive Officer of SRH, and said he would “move to the Bain Capital playbook.”

15.

Mr. Cozzone then called an emergency meeting of the board of directors. During the meeting, Mr. Cozzone informed Mr. Lofgren that Bain Capital, through newly expanded board powers, would terminate Mr. Lofgren’s employment, effective the very next week.

16.

In addition, Mr. Cozzone told Mr. Lofgren that Bain itself would provide a portion of the funding that Mr. Cozzone had previously promised, but would require a second round that gave Bain a majority ownership interest in the company. Making matters worse, Mr. Cozzone insisted that the company would be valued at just \$15,000,000, allowing Bain an approximately 63% discount on the price of its new shares.

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17.

Viewing the new down round as illegal and immoral, Mr. Lofgren refused to agree to it. Ostensibly to place pressure on Mr. Lofgren, Mr. Cozzone and Bain threatened to retroactively terminate Mr. Lofgren’s role as CEO “for Cause,” falsely claiming that a 2017 accounting error on SRH’s books somehow constituted fraud on Mr. Lofgren’s part. A termination “for Cause” would void Mr. Lofgren’s right to receive approximately \$1,950,000 of severance from the company that he had built and taint his reputation in the business community.

18.

The accounting error had, however, been resolved several weeks before. In fact, Mr. Cozzone and SRH’s board of directors had previously concluded that the account error was simply a mistake. As a result, they allowed the Oregon Venture Fund to issue its funding without disclosing anything about the error—an act that Mr. Cozzone had previously acknowledged would expose SRH to legal liability if he and the SRH board had truly believed that Mr. Lofgren acted fraudulently.

19.

Mr. Lofgren again refused to authorize the new down round. So, on April 1, 2020, Mr. Cozzone, as the now sole board member of SRH, issued a board resolution retroactively terminating Mr. Lofgren’s employment “for Cause.” Moreover, Mr. Cozzone authorized the company to retain legal and financial advisors to put the company into bankruptcy or some other form of reorganization.

20.

SRH, however, has very little debt. And with multiple state and government stimulus packages and protective rules available to ride out the COVID-19 shutdown, SRH is well-positioned for a full recovery when the pandemic subsides. On information and belief, Mr. Cozzone and Bain are now considering placing the company into bankruptcy or

1 reorganization to shed the company’s shareholders and take over the company for pennies on
2 the dollar—a private equity tactic straight out of the “Bain Capital playbook” that
3 Mr. Cozzone referenced.

4 **PARTIES, JURISDICTION, AND VENUE**

5 21.

6 Plaintiff Kristofor Lofgren is an individual residing in Multnomah County, Oregon.

7 22.

8 Defendant Christopher Cozzone is an individual residing in New York.

9 23.

10 Defendant Bain Capital Double Impact Fund LP is a Delaware limited partnership
11 with its principal place of business in Boston, Massachusetts.

12 24.

13 Defendant BCIP Double Impact Associates, L.P. is a Delaware limited partnership
14 with its principal place of business in Boston, Massachusetts.

15 25.

16 Defendant Kitchen Fund, LP is a Delaware limited partnership with its principal place
17 of business in New York. Defendants Bain Capital Double Impact Fund LP, BCIP Double
18 Impact Associates, L.P., and Kitchen Fund, LP are collectively referred to as “Bain Capital”
19 or “Bain.”

20 26.

21 Defendant Sustainable Restaurant Holdings, Inc. (“SRH”) is a Delaware corporation
22 with its principal place of business in Portland, Oregon. SRH conducts regular and sustained
23 business activities within Multnomah County.

24 27.

25 A substantial portion of the events giving rise to this case occurred within Multnomah
26 County.

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28.

In the event that Mr. Cozzone and Bain Capital proceed further with their intent to takeover SRH, Mr. Lofgren reserves his right to amend this complaint to add additional plaintiff investors as parties.

GENERAL ALLEGATIONS

A. Kristofor Lofgren’s creation of Bamboo Sushi.

29.

In 2008, Kristofor Lofgren opened the first Bamboo Sushi restaurant in Portland, Oregon.

30.

Mr. Lofgren opened Bamboo Sushi as a “double impact” business that serves the dual purposes of social responsibility and profitability. Thus, as its first priority, Bamboo Sushi would benefit society and the planet through sustainable seafood practices. As its second priority, Bamboo Sushi would be financially successful for both Mr. Lofgren and his employees.

31.

To that end, Bamboo Sushi offered its customers quality seafood that had been sustainably harvested. In addition, Bamboo Sushi provided its employees with the ability to build and maintain a quality standard of living in an increasingly expensive city. Specifically, Bamboo Sushi employees were paid 30% higher than the living wage of the area, plus a generous benefits package.

32.

Mr. Lofgren originally conducted Bamboo Sushi’s business through an entity called Bamboo Sushi, LLC, which he later converted to Bamboo Sushi, Inc., a certified B Corporation. As a B Corporation, Bamboo Sushi would not just be beholden to the financial interests of shareholders, but also to social and environmental considerations.

1 33.

2 In 2008, Bamboo Sushi became the world's first certified sustainable seafood
3 restaurant.

4 34.

5 Due to the quality of its food and its sustainable mission, Bamboo Sushi quickly
6 became a popular restaurant in Portland. Mr. Lofgren accordingly opened additional
7 Bamboo Sushi locations in Portland, along with a poke restaurant called QuickFish.

8 35.

9 In 2011, Bamboo Sushi, Inc. gave all of the profit it had earned through that time to
10 fund a marine nature conservancy in the Bahamas.

11 36.

12 Over the next six years, Bamboo Sushi's popularity continued to increase. By 2017,
13 Mr. Lofgren had opened seven Bamboo Sushi and QuickFish restaurants: five in Portland
14 and two in Denver, Colorado. Mr. Lofgren's restaurants employed more than 200 people.

15 37.

16 Over the years, Mr. Lofgren ran various aspects of the Bamboo Sushi and QuickFish
17 restaurants through different business entities, such as Sustainable Restaurant Group, Inc.,
18 SRG Operations LLC, and Sustainable Restaurant Holdings, Inc., all of which were B
19 companies.

20 **B. Bain Capital and Chris Cozzone falsely present themselves as dual impact**
21 **investors.**

22 38.

23 Based on the success of the Bamboo Sushi and QuickFish brands, Mr. Lofgren
24 believed that his particular double impact business model could be successful in other
25 locations. But to expand, Mr. Lofgren needed to bring in a professional management team
26 and raise capital by taking on investors.

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39.

Mr. Lofgren first offered investment opportunities to a number of his friends, family, and business contacts who believed in dual impact business practices and the mission of Bamboo Sushi. In December 2017, Mr. Lofgren raised \$1,305,000 in convertible notes—*i.e.*, loans that would convert into stock—from those friends and family (the “First Investors”).

40.

Although the initial capital from the First Investors would be enough to build a professional management team, the national expansion of the Bamboo Sushi and QuickFish brands would require substantial additional capital and sophisticated financial expertise.

41.

Mr. Lofgren accordingly looked at the possibility of obtaining investments from private equity firms, some of which were beginning to invest in socially responsible companies across the country.

42.

In late 2017, Mr. Lofgren was introduced to defendant Christopher Cozzone, a junior manager of Bain Capital’s Double Impact Investment Fund (“Double Impact Fund”). Mr. Cozzone and Bain claimed that the Double Impact Fund had been established for the express purpose of investing in socially responsible companies and enabling them to both receive a financial return and to make a measurable social and environmental impact. As stated on Bain’s website at the time:

Impact Investing has the power to build great companies that can deliver both competitive financial returns and meaningful, measurable social and environmental good. Bain Capital Double Impact will pursue investments where we can utilize our unique capabilities to help mission-driven companies scale and drive meaningful change.

Our goal is to scale financial and impact growth for our partner companies, which are solving critical social problems, and doing so with sustainable business models. We believe that our value-added approach, experienced team and broad platform

1 expertise will provide the resources and capabilities that these companies need to
2 thrive.

43.

3 After holding an initial telephone conversation Mr. Cozzone invited Mr. Lofgren to
4 Bain Capital's headquarters in Boston.

44.

6 In January 2018, Mr. Lofgren travelled to Boston to meet with Mr. Cozzone and
7 Bain. During that meeting, Mr. Cozzone and other Bain Capital representatives expressed
8 enthusiasm about Bamboo Sushi and Mr. Lofgren's double impact business model.
9 Mr. Cozzone claimed that nobody had yet been able to "crack the code" for creating a
10 national sushi brand that offered an affordable dining option that could compete with other
11 national restaurants, like PF Chang's.

45.

13 Mr. Cozzone and Bain Capital then told Mr. Lofgren that they wanted to invest in
14 Bamboo Sushi. According to Mr. Cozzone and his colleagues, Bamboo Sushi "touched
15 every point" for Bain Capital's Double Impact Fund. As Mr. Cozzone said, "We want to
16 prove that social impact can also be better for the world," and this investment would help
17 achieve that goal.

46.

19 Mr. Cozzone also explained to Mr. Lofgren that he viewed investing in Bamboo
20 Sushi as a significant opportunity for himself. Mr. Cozzone was still early in his career, and
21 he was new to Bain Capital's Double Impact Fund. A successful investment in Bamboo
22 Sushi would help create a name for himself at Bain and in the investment world. On the
23 other hand, Mr. Cozzone stated, "If this fails, this is on me. I'm the one betting on you."

47.

25 Mr. Lofgren, and his employees, however, had concerns about Bain's reputation for
26 sharp business practices and using leverage tactics to takeover the ownership of their

1 portfolio companies. Bain Capital had gained considerable notoriety during the 2012
2 presidential election, when Bain Capital founder Mitt Romney was portrayed as having made
3 his fortune through Bain Capital as a “corporate raider.”

4 48.

5 But during the first few months of 2018, Mr. Cozzone and Bain Capital, repeatedly
6 reassured Mr. Lofgren during multiple telephone calls that Bain Capital had simply been
7 smeared by the media during the 2012 presidential campaign. Moreover, they insisted that
8 Bain Capital’s Double Impact Fund focused on social impacts and consequently did not use
9 the types of leverage tactics common in the private equity world.

10 49.

11 In February 2018, Mr. Cozzone and several of his Bain colleagues travelled to
12 Portland to meet with Mr. Lofgren and his wife. During those meetings, Mr. Cozzone and
13 Bain further talked about social ethics and the mission of the Double Impact Fund.

14 50.

15 Mr. Lofgren was reassured by Mr. Cozzone’s and Bain’s multiple representations
16 about their intentions and the purpose of the Double Impact Fund. Mr. Lofgren and the First
17 Investors accordingly moved forward with due diligence, believing that Bain shared similar
18 social goals as him and his employees.

19 **C. Bain invests in SRH and immediately goes back on its word.**

20 51.

21 As part of the deal, Bamboo Sushi and QuickFish would largely be run through an
22 umbrella company, defendant Sustainable Restaurant Holdings, Inc. (“SRH”). Bain Capital,
23 Mr. Lofgren, and the First Investors would hold shares in that entity.

24 52.

25 As the deal neared closing, SRH’s pre-investment value was set at \$25,000,000.
26 Based on that value, Bain planned to invest \$15,000,000, in exchange for preferred stock that

1 would give Bain a 23% overall ownership interest in SRH. Bain would provide the entire
2 \$15,000,000 in funding to SRH without requiring any financial milestones. In addition, Bain
3 would receive one seat on SRH's three-member board of directors.

4 53.

5 The other two board seats would be filled by the Chief Executive Officer of SRH
6 (Mr. Lofgren), and another person elected by a majority vote of SRH's stockholders.

7 54.

8 As part of the deal, Mr. Lofgren wanted Bain to make the entire \$15,000,000
9 investment immediately upon closing so that SRH could use the funds to expand its
10 operations. Bain, however, claimed that it needed to stagger its payment in order to maintain
11 its Double Impact Fund at a certain level. Bain accordingly insisted that it pay approximately
12 \$7,600,000 at closing, but promised to pay the remaining funding within one year, without
13 any further conditions required. If Bain failed to pay the remaining funds on time, then its
14 preferred stock would automatically convert to common stock.

15 55.

16 As part of the deal, Mr. Lofgren would retain common stock in SRH, resulting in a
17 57.4% ownership interest in the company. Mr. Lofgren would also enter into an Executive
18 Employment Agreement with SRH to serve as Chief Executive Officer of SRH. The First
19 Investors would receive preferred stock, resulting in a combined ownership interest of 5.5%
20 in SRH. The remaining 14.11% of the company's stock would be reserved for employee
21 incentives—*i.e.* to provide stock to Bamboo Sushi and QuickFish employees.

22 56.

23 On March 13, 2018, Bain Capital, Mr. Lofgren, and the First Investors closed the
24 deal, signing multiple agreements and company resolutions. Under the deal, the investors'
25 ownership interests in SRH were as follows:
26

Investor	Ownership Percentage
Bain Capital (through the Defendant entities)	23%
Kristofor Lofgren	57.4%
First Investors	5.5%
Reserved for employee incentive plan	14.1%

57.

That same day, Bain Capital sent out a press release stating the following:

“Sustainable Restaurant Group is an authentic, compelling brand that stands out across all social dimensions,” said Warren Valdmanis, a Managing Director at Bain Capital Double Impact. “Kristofor and his high-quality management team have done an exceptional job of tapping into a growing segment of customers who recognize that eating sustainability sourced seafoods is not only better for you, but also better for the planet. We look forward to partnering with Sustainable Restaurant Group to support Bamboo Sushi and QuickFish’s high potential for growth in new markets and to scale their vision of broader environmental impact.”

58.

That statement, as it turned out, would be the last time that Bain Capital ever showed any interest in making a social or environmental impact through SRH.

D. Bain goes back on its word and crams down Mr. Lofgren and the First Investors’ ownership interests.

59.

Less than 90 days after closing the deal, Mr. Cozzone called Mr. Lofgren and told him that SRH’s Earnings Before Interest Tax Depreciation and Amortization (“EBITDA”) was trending below budget. As a result, Mr. Cozzone contended that Bain was considering not paying the additional \$7,400,000 it had promised.

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60.

Mr. Lofgren was surprised, since he had specifically told Bain that the company should expect a temporary drop in EBITDA as the new management team learned SRH’s business operations and management style.

61.

Receiving the additional funding was critical to continuing the expansion plans that were already underway for the Bamboo Sushi and QuickFish brands. Over the next nine months, Mr. Lofgren worked to convince Bain to follow the contract and provide the funding they had promised. Moreover, as 2018 progressed, SRH’s financial performance evened out to the expected levels.

62.

Bain, however, became increasingly hostile and worked actively to undermine Mr. Lofgren as CEO of the company. Soon, Bain began threatening to have SRH terminate Mr. Lofgren’s employment with the company without pay, despite clear severance requirements in the Executive Employment Agreement.

63.

By early 2019, SRH’s financial performance was strong, but SRH still needed the additional capital Bain had promised as part of the original deal. Despite its prior promises, Bain refused to pay the additional funding, unless it was done through a “down round” (the “First Down Round”), meaning that Bain would receive additional shares in the company at a reduced value, thereby diluting or “cramming down” the ownership interests of Mr. Lofgren and the First Investors.

64.

With SRH’s need for the additional capital, Mr. Lofgren and the First Investors agreed to the First Down Round. In April 2019, and as part of the First Down Round, Mr. Lofgren, Bain, and the SRH investors executed various agreements and corporate

1 resolutions. Pursuant to those documents, Bain Capital’s ownership interest in SRH was
2 increased and Mr. Lofgren’s and the First Investors’ interests were reduced as follows:

Investor	Pre-Down Round Ownership	Post-Down Round Ownership	Percentage Change
Bain Capital (through the defendant entities)	23%	38.8%	+15.8%
Kristofor Lofgren	57.4%	45.6%	-11.8%
First Investors	5.5%	4.4%	-1.1%
Employee stock options and remaining reserve for incentive plan	14.1%	11.2%	-2.9%

11
12 65.

13 As part of the First Down Round, Mr. Lofgren insisted that the terms of his Executive
14 Employment Agreement be renegotiated to provide him with a more substantial severance
15 package in the event of his termination. With Bain (1) having shown its willingness to cram
16 down Mr. Lofgren’s ownership interest and (2) threatening to terminate him as Chief
17 Executive Officer, Mr. Lofgren felt the need to protect himself and his young family
18 financially.

19 66.

20 Accordingly, Mr. Lofgren and Bain negotiated an Amendment to the Executive
21 Employment Agreement (together, the “EEA”) with SRH. Under the EEA, Mr. Lofgren
22 would remain as the CEO of SRH through the end of 2023 and be paid an escalating annual
23 salary as follows: \$450,000 in 2020; \$475,000 in 2021; \$500,000 in 2022; and \$525,000 in
24 2023.

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67.

The EEA further provided that, in the event that Mr. Lofgren’s employment as CEO was terminated before that time, he would still receive the salary he had been promised through 2023, unless Mr. Lofgren was terminated “for Cause,” specifically for the “commission of fraud, embezzlement, or theft with respect to the Company or any of its affiliates”

E. Mr. Cozzone gets his opportunity to prove himself at Bain and fails.

68.

Following the First Down Round, Mr. Cozzone took on a new role as Bain’s lead manager for the SRH investment. Mr. Cozzone also became a board member of SRH.

69.

Eager to build a name for himself at Bain in his new role, Mr. Cozzone created a plan in June 2019 to rapidly expand SRH and increase value of the company to somewhere in excess of \$60,000,000 by the end of 2020. This would allow for another stock offering at the end of 2020, which could potentially make Bain millions of dollars.

70.

As part of his plan, Mr. Cozzone planned to have SRH build and open five to six new Bamboo Sushi restaurants in Beaverton, Oregon, San Francisco, California, and San Jose, California—all in 2020.

71.

The additional restaurants, however, would require at least an additional \$5,000,000 to \$7,000,000 in funding, either through loans or convertible notes.

72.

Mr. Lofgren was concerned about the aggressive timeline for opening the new restaurants and offered to assist with fundraising. But Mr. Cozzone told Mr. Lofgren, “We [Bain] don’t need you to do anything. We’ll find the funding.” He then directed

1 Mr. Lofgren to build a team to secure leases for the restaurants at the new locations. To
2 incentivize the team members, Mr. Cozzone offered them bonuses if they found new leases
3 in time to build out the restaurants in 2020.

4 73.

5 On July 19, 2019, Mr. Cozzone wrote an email to Mr. Lofgren about the funding
6 needed for the new restaurants and explained, “Given all the work on operations/openings
7 going on, this is something we can help with and lead the charge on. I really don’t want you
8 wasting time on pitches right now.”

9 74.

10 Over the next five months, Mr. Lofgren and the SRH lease team found leases for the
11 new restaurants. During that time, Mr. Lofgren inquired numerous times—through multiple
12 emails and by telephone—about Mr. Cozzone’s progress. Mr. Cozzone continually claimed
13 he was working on finding the funding.

14 75.

15 By the fall of 2019, Mr. Cozzone still had not found funding and had no apparent
16 leads. And without the funding to continue the expansion plan that Mr. Cozzone had created,
17 the company would soon be in financial jeopardy.

18 76.

19 Mr. Lofgren accordingly began looking for additional financing. By late November
20 2019, Mr. Lofgren had found potential funding from the Oregon Venture Fund, which would
21 provide SRH with a \$1,500,000 loan that would convert to stock upon SRH’s next stock
22 offering.

23 **F. Mr. Cozzone ousts Mr. Lofgren and unsuccessfully attempts to deprive**
24 **Mr. Lofgren of his severance.**

25 77.

26 By early 2020, Mr. Cozzone believed that SRH had a value of \$40,000,000, and that
would be worth in excess of \$60,000,000 by the end of the year.

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78.

Around the same time, SRH’s 2019 year-end financials showed that, despite its most successful year ever, SRH had missed a certain financial metric by just 7%. Under an SRH Voting Rights Agreement, that event would allow Bain to expand the SRH board of directors from three to five members, and control three of the board seats.

79.

With Bain in a position to secure control of the board, Mr. Cozzone decided to remove Mr. Lofgren as CEO of the company. However, under the EEA, Mr. Lofgren would be entitled to receive approximately \$1,950,000 in severance through 2023, unless he was terminated for “fraud, embezzlement, or theft.”

80.

So, in early 2020, Mr. Cozzone approached Mr. Lofgren about an accounting error that had occurred in 2017. The error involved a series of loans that Mr. Lofgren had made to SRH in 2017, before Bain Capital had invested in the company. While visiting family in New Zealand that year, Mr. Lofgren learned that SRH needed short term cash, and he intended to loan \$900,000 to SRH. Mr. Lofgren had instructed his and SRH’s shared banker at Wells Fargo to transfer the money to SRH from his personal bank accounts and lines of credit. On information and belief, the banker, however, took only \$650,000 from Mr. Lofgren’s account, and funded the remaining \$250,000 by expanding SRH’s business line of credit.

81.

Due to his international travel, Mr. Lofgren was unaware of the change, and SRH’s bookkeeper put a \$900,000 loan on SRH’s books. When Bain Capital invested in SRH in March 2018, a \$900,000 loan repayment was issued to Mr. Lofgren—resulting in a \$250,000 overpayment to Mr. Lofgren. Mr. Lofgren, Bain, and Bain’s numerous due diligence advisors were unaware of the error at the time.

1 82.

2 A few months later, an SRH accountant, Lisa Johnson, noticed that the paperwork for
3 the \$900,000 loan added up to only \$650,000. Mr. Lofgren and the SRH finance team
4 discussed the issue with SRH’s auditors in 2018 and 2019, who advised SRH to simply treat
5 the \$250,000 as a loan and remove it from the books. Although he believed that the loan had
6 indeed been made, Mr. Lofgren declined that advice and instructed the auditors to leave the
7 \$250,000 on SRH’s books so that Bain was aware of the issue.

8 83.

9 Over a year later, in January 2020, Mr. Cozzone claimed that he had just learned
10 about the \$250,000 loan and that it might indicate “financial mismanagement” by
11 Mr. Lofgren.

12 84.

13 Mr. Lofgren then worked extensively with Mr. Cozzone and SRH to further resolve
14 the issue and explain the accounting error. During their exchanges about the issue,
15 Mr. Cozzone explained that the error created a major problem with the upcoming loan from
16 Oregon Venture Fund because, if there was any suspected fraud, then SRH could not legally
17 accept the funding without full disclosure. Otherwise, Mr. Cozzone and SRH would be
18 exposed to legal liability, including a claim for securities fraud.

19 85.

20 On January 21, 2020—and recognizing that Mr. Cozzone may be trying to set him up
21 for a “for Cause” termination to invalidate his severance—Mr. Lofgren sent the SRH board
22 of directors multiple documents, including (1) a 2017 email from Mr. Lofgren instructing his
23 banker to issue the full loan; (2) emails from 2017 showing Mr. Lofgren’s contemporaneous
24 belief that the full loan had issued; and (3) documents showing that the \$900,000 loan was
25 disclosed and part of the initial stock offering to Bain.

26

1 86.

2 On January 23, 2020, Mr. Lofgren, Mr. Cozzone, and SRH's other board member,
3 Christine Barone, held a telephone call to further discuss the accounting error. Counsel for
4 Bain was also on the line.

5 87.

6 Following the call, Mr. Cozzone and Ms. Barone authorized the funding from Oregon
7 Venture Fund. Consistent with their repeated statements that SRH could not legally accept
8 the funding if there was any suspicion that Mr. Lofgren had committed an act of fraud or
9 theft, Mr. Cozzone and SRH did not disclose any allegation or suspicion of fraud,
10 embezzlement or theft related to the \$250,000 error to the Oregon Venture Fund because
11 they concluded that the issue did not involve any fraud, embezzlement or theft. Oregon
12 Venture Fund then issued the funding on January 28, 2020.

13 88.

14 On February 14, 2020, Mr. Lofgren, Mr. Cozzone, and Ms. Barone held a call to
15 discuss SRH's future management team. During that call, Mr. Cozzone notified Mr. Lofgren
16 that Bain would (1) expand the board of directors from three to five members; (2) select three
17 of the five members of the board, thereby taking control of SRH; and (3) with that control,
18 replace Mr. Lofgren as CEO in the next six to nine months.

19 89.

20 Mr. Cozzone, however, stated that Mr. Lofgren was "vital to the business and the
21 brand." He accordingly asked Mr. Lofgren to stay on as CEO for another six to nine months
22 to assist with the transition to a new CEO and position the company for another stock
23 offering. Mr. Cozzone further claimed that, after Mr. Lofgren's tenure as CEO ended, Bain
24 wanted him to remain employed with the company in another capacity.

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90.

At no point during the call did Mr. Cozzone claim that Bain was terminating Mr. Lofgren’s role as CEO “for Cause.” Indeed, during the call, the board discussed the accounting error and Ms. Barone commented, “It does not seem like fraud. It seems like a mistake.”

G. Mr. Cozzone uses the COVID-19 crisis to cover his failure to raise funds and secure a majority ownership interest in SRH for Bain.

91.

By February 2020, Mr. Cozzone still had not raised the funding he had promised to build out the additional five to six Bamboo Sushi restaurants he had planned, thus placing the company—and his reputation—at risk.

92.

By late February 2020, media outlets were reporting on the possibility of a national or worldwide Coronavirus pandemic that could potentially shut down the restaurant industry for a time.

93.

Since SRH had no meaningful debt, it had the ability to resume operations right after a shutdown, with less competition from other restaurants who might go out of business.

94.

As the CEO of the company, Mr. Lofgren formulated a plan to ride out the potential pandemic and maintain the company’s value. On March 7, 2020, Mr. Lofgren sent an email to Mr. Cozzone and the SRH board outlining that plan. Mr. Lofgren noted that, as part of the plan, he would need Mr. Cozzone to find the rest of the funding for the new restaurants that he had promised.

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95.

Mr. Cozzone, however, saw an opportunity to cover for his failure to raise funds and secure an even higher ownership percentage in SRH for Bain.

96.

Mr. Cozzone accordingly rejected Mr. Lofgren’s proposal and told Mr. Lofgren that he was “changing plans” and would “move to the Bain Capital playbook.”

97.

Mr. Cozzone then called an emergency meeting of the SRH board of directors for March 11, 2020, supposedly to discuss the plan for dealing with what appeared to be a looming Coronavirus shutdown.

98.

On March 11, 2020, the three members of SRH’s board of directors—Mr. Lofgren, Mr. Cozzone, and Ms. Barone—met by telephone. As permitted under Oregon law, Mr. Lofgren recorded the phone call.

99.

During the call, Mr. Cozzone informed Mr. Lofgren that Bain would be using its expanded board control to accelerate the removal of Mr. Lofgren as CEO and as a board member, effective March 16, 2020. Bain would then install an interim Chief Executive Officer and provide Mr. Lofgren’s board seat to him.

100.

Mr. Cozzone then outlined the reasons why Mr. Lofgren’s employment was being terminated. Mr. Cozzone explained that there was a “lack of alignment given the state of the business,” particularly given “all the work that remains to be done to prove the concept,” “the macro risk,” and “some organizational questions.” Mr. Cozzone claimed that with those issues in mind, Bain “would rather consolidate the decision making” with Bain itself.

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101.

Mr. Cozzone also stated that there were issues regarding the “allocation of time and resources on different initiatives,” “governance questions,” and board concerns that their directives “repeatedly ha[d] not been followed,” such as Mr. Lofgren signing a lease at Washington square. Mr. Cozzone said that the “key feedback . . . is quite mixed at this point . . . and we’re hearing from the organization through exit interviews . . . that there is a preference for just having one clear direction . . . and having closer management that Bain has been able to provide in the past months.”

102.

Finally, Mr. Cozzone again brought up the \$250,000 accounting error:

“And I think, you know, from another perspective, I think the, you know, there’s still these actions, which, you know, I’ll talk about later in this conversation, but, you know, about the, kind of, the 250K, I’ll call it that way. I think some, some people could see it as, you know, fraud, or embezzlement, or whatever. I think we’ve kind of talked about moving on from that, but I think the, the way even after our conversation went Friday that we would resolve this on Wednesday, how, how that still hasn’t happened and the, you know, us taking it seriously, but you know, maybe kind of still feels a little bit half put to bed was, kind of a signal, of the, kind of the, how this was taken seriously.”

103.

In addition, Mr. Cozzone informed Mr. Lofgren that SRH would conduct yet another down round (the “Second Down Round”), and that Bain or one of its related entities would invest another \$3,000,000 as a “rescue capital injection.” As Mr. Cozzone said, the down round “makes a little bit of sense given where we are in the business right now.”

104.

Mr. Cozzone then acknowledged that Mr. Lofgren and other shareholders would be “crammed down” by the Second Down Round, and that Mr. Lofgren’s interests in the company would be reduced to just 38%. Mr. Cozzone also initially claimed that Bain’s

1 ownership interests would be diluted, but then noted that Bain would receive a majority
2 ownership interest in company.

3 105.

4 Despite Bain's belief just a few weeks before that SRH was valued at \$40,000,000,
5 Mr. Cozzone said that Bain's purchase of shares would be based on a \$15,000,000 valuation.
6 Mr. Cozzone then noted that \$15,000,000 "sounds extremely low to you and to me," but
7 claimed that the valuation was necessary, "given that we're all being crammed down."

8 106.

9 Mr. Cozzone then expressly acknowledged SRH's severance obligations to
10 Mr. Lofgren under the Amendment, but claimed that Bain wanted to "change the ongoing
11 economic deal" that SRH had agreed to with Mr. Lofgren. Mr. Cozzone's justification for
12 this change had nothing to do with the actual terms of the Amendment or any "for Cause"
13 termination.

14 107.

15 Instead, as Mr. Cozzone said, it was driven by the desire to free up cash flow because
16 it would otherwise be difficult for Bain to further invest in a "no value equity" company and
17 would be "tough for the business and our [Bain's] dilution."

18 108.

19 Mr. Cozzone then explained that, instead of SRH paying Mr. Lofgren the \$1,950,000
20 in severance owed under the Amendment, SRH would pay Mr. Lofgren \$250,000.
21 Mr. Lofgren would also need to repay that \$250,000 to SRH to resolve the 2017 accounting
22 error.

23 109.

24 Later that night, Mr. Cozzone had SRH's counsel send Mr. Lofgren a term sheet (the
25 "Term Sheet") that included the following material terms:

26

- 1 • “Bain Capital Double Impact Fund, LP . . . together with its affiliated funds . . .
2 will invest up to \$3,000,000 at a pre-money valuation of \$15,000,000”
- 3 • “Kristofor Lofgren’s [KL] employment with the Company will terminate and he
4 will continue to serve as a board member.”
- 5 • “In lieu of the terms of KL’s current employment agreement, KL will receive
6 severance in the amount of \$250,000.”
- 7 • “KL will agree to pay \$250,000 to the Company . . . to repay the outstanding loan
8 amount”
- 9 • “As a condition to closing, KL will (1) acknowledge and affirm the pre-money
10 valuation” of \$15,000,000.

11 110.

12 The Term Sheet mentioned nothing about terminating Mr. Lofgren “for Cause.”

13 111.

14 Mr. Lofgren did not immediately respond to Mr. Cozzone’s Term Sheet and instead
15 began working with the new CEO, Matthew Park, on transitioning to the CEO role. As part
16 of those efforts, Mr. Lofgren, Mr. Park, and Mr. Cozzone jointly prepared a statement from
17 Mr. Lofgren to Bamboo Sushi and QuickFish employees about the change in leadership.

18 112.

19 On March 16, 2020, Mr. Park took over as CEO of SRH, and Mr. Lofgren’s
20 employment with the company ceased. SRH immediately terminated Mr. Lofgren’s email
21 account and blocked his access to SRH’s computer system and records.

22 **H. Bain tries to reverse course to retroactively terminate Mr. Lofgren “for
23 Cause” and pressure him into agreeing to the Second Down Round.**

24 113.

25 On March 17, 2020, Mr. Lofgren, through his attorneys, expressly rejected
26 Mr. Cozzone’s Term Sheet. Moreover, Mr. Lofgren provided SRH with a limited written
release, which under the terms of the EEA, triggered his right to receive severance payments
through 2023. Mr. Lofgren accordingly demanded that those amounts be paid to him.

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114.

On March 20, 2020, Bain Capital’s New York City counsel responded, claiming that “as of this writing, Mr. Lofgren has not been terminated as SRH’s CEO.”

115.

Ostensibly to put pressure on Mr. Lofgren to authorize the new valuation for SRH, Bain further contended that “Mr. Lofgren was only in discussions with the company regarding his voluntary and orderly resignation as CEO, in exchange for SRH not terminating him for Cause.” Bain then went on to threaten, “unless Mr. Lofgren has a very prompt change of heart concerning his threats and posture, we are confident that [a for Cause termination] is the finding that the company will reach in connection with Mr. Lofgren’s termination.”

116.

Mr. Lofgren had, of course, not been provided with the opportunity to resign. He had been fired, effective March 16, 2020—and not “for Cause.”

117.

On March 25, 2020, Mr. Lofgren refused to authorize the new valuation and Second Down Round, which he viewed as an illegal attempt to cram down and oppress shareholders.

118.

On March 28, 2020, Ms. Barone resigned as an SRH board member. On information and belief, Ms. Barone resigned in part over Bain’s plan to retroactively terminate Mr. Lofgren for cause.

119.

On April 1, 2020, Mr. Cozzone, as SRH’s sole board member passed a resolution (the “Resolution”) retroactively terminating Mr. Lofgren’s employment “for Cause.” The Resolution further authorized SRH to hire several “restructuring and legal advisors” to assist SRH “with a potential sale and/or restructuring of the Company” For example, the

1 resolution authorized SRH to retain a bankruptcy law firm, as its Delaware legal counsel—
2 *i.e.* the location where SRH is incorporated and would likely seek to file for bankruptcy.

3 120.

4 The next day, Mr. Park, SRH’s new CEO, began laying off additional SRH
5 employees, telling them that Mr. Cozzone and Bain Capital planned to place the company
6 into bankruptcy.

7 121.

8 SRH, however, has almost no debt, has nearly \$1,000,000 of cash on hand, and there
9 are multiple options available to SRH to keep the company out of bankruptcy and position it
10 for a full recovery following the COVID-19 shutdown. By way of example only, the U.S.
11 Congress passed stimulus and relief legislation to assist small businesses to whether the
12 shutdown. On April 1, 2020, Oregon Governor Kate Brown banned commercial evictions in
13 Oregon for 90 days so that businesses can maintain their leases during the COVID-19
14 shutdown.

15 122.

16 There is no justifiable basis to place SRH into bankruptcy, restructure the entity, or
17 force another down round. It is a viable organization with no significant debt that can
18 emerge in a financially strong position following the COVID-19 shutdown.

19 123.

20 On information and belief, Mr. Cozzone and Bain are considering placing SRH into
21 bankruptcy, or otherwise restructure it in order to shed shareholders, and emerge with full
22 ownership of SRH for pennies on the dollar—a private equity tactic straight out of “the Bain
23 Capital playbook.”

1 **FIRST CLAIM FOR RELIEF**

2 **(Declaratory Relief – Against all Defendants)**

3 124.

4 Plaintiff incorporates all paragraphs above.

5 125.

6 A dispute exists between Mr. Lofgren and the defendants concerning the basis of
7 Mr. Lofgren’s termination as CEO of SRH. Mr. Lofgren contends that defendants’
8 retroactive termination of his employment “for Cause” is a mere pretext designed to (1) avoid
9 SRH’s obligation to pay Mr. Lofgren severance under the Executive Employment Agreement
10 and (2) pressure him into agreeing to the Second Down Round. Defendants contend that the
11 termination was “for Cause.”

12 126.

13 Pursuant to ORS 28.020-28.030 and 28.080, Mr. Lofgren seeks declarations that:
14 (1) the termination of his employment with SRH was not “for Cause,” specifically it was not
15 for “fraud, embezzlement, or theft”; and (2) defendants’ termination of Mr. Lofgren’s
16 employment “for Cause” was a mere pretext.

17 **SECOND CLAIM FOR RELIEF**

18 **(Breach of Contract – Against SRH)**

19 127.

20 Plaintiff incorporates by reference all preceding paragraphs.

21 128.

22 The EEA between Mr. Lofgren and SRH is a valid, binding contract.

23 129.

24 The EEA states that if Mr. Lofgren were terminated for any reason other than for
25 Cause based on the “commission of fraud, embezzlement, or theft with respect to the
26

1 Company or any of its affiliates,” then he would be entitled to severance totaling \$1,950,000
2 to be paid over the course of four years.

3 130.

4 Mr. Lofgren had been fired, effective March 16, 2020, and not “for Cause.”
5 Accordingly, Mr. Lofgren was entitled to the severance pay set out in the EEA.

6 131.

7 SRH breached the EEA by attempting to retroactively (and falsely) change the reason
8 for Mr. Lofgren’s termination and refusing to pay the severance owed. Alternatively, SRH
9 breached the EEA by falsely terminating Mr. Lofgren “for Cause” and then refusing to pay
10 the severance owed.

11 132.

12 Mr. Lofgren has complied with his obligations under the EEA.

13 133.

14 Mr. Lofgren has authorized SRH to reduce \$250,000 from his severance for
15 repayment of the 2017 accounting error.

16 134.

17 As a direct and proximate result of SRH’s breach of the EEA, Mr. Lofgren has
18 suffered economic damages of an amount to be proven at trial, but no less than \$15,385 in
19 severance to date, plus prejudgment interest. This amount will continue to increase with each
20 installment that SRH fails to pay, through the end of 2023, up to a total amount of
21 \$1,700,000, plus prejudgment interest.

22 **THIRD CLAIM FOR RELIEF**

23 **(Breach of Covenant of Good Faith and Fair Dealing – Against SRH)**

24 135.

25 Plaintiff incorporates by reference all preceding paragraphs.

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136.

The EEA between Mr. Lofgren and SRH is a valid, binding contract giving rise to a covenant of good faith and fair dealing.

137.

The EEA states that if Mr. Lofgren were terminated for any reason other than “for Cause” based on the “commission of fraud, embezzlement, or theft with respect to the Company or any of its affiliates,” then he would be entitled to severance totaling \$1,950,000 to be paid over the course of four years.

138.

Mr. Lofgren had been fired, effective March 16, 2020, and not “for Cause.” Accordingly, Mr. Lofgren was entitled to the severance pay set out in his EEA.

139.

SRH breached its covenant of good faith and fair dealing by attempting to retroactively (and falsely) change the reason for Mr. Lofgren’s termination and refusing to pay the severance owed. Alternatively, SRH breached the covenant of good faith and fair dealing by falsely terminating Mr. Lofgren “for Cause” and then refusing to pay the severance owed.

140.

As a direct and proximate result of SRH’s breach of its covenant of good faith and fair dealing, Mr. Lofgren suffered economic damages of an amount to be proven at trial, but no less than \$15,385 in severance to date, plus prejudgment interest. This amount will continue to increase with each installment that SRH fails to pay, through the end of 2023, up to a total amount of \$1,700,000, plus prejudgment interest.

1 **FOURTH CLAIM FOR RELIEF**

2 **(Defamation – Against Mr. Cozzone and Bain)**

3 141.

4 Plaintiff incorporates the preceding paragraphs.

5 142.

6 Mr. Cozzone, acting on his own behalf and on behalf of Bain, made the false and
7 defamatory statements that Mr. Lofgren had committed and was being terminated for
8 committing an act of “fraud, embezzlement, or theft.”

9 143.

10 Mr. Cozzone and Bain knew that this statement was false when made.

11 144.

12 This false and defamatory statement wrongfully accused Mr. Lofgren of a crime and
13 injures Mr. Lofgren’s professional reputation.

14 145.

15 On information and belief, Mr. Cozzone and Bain have published this statement to
16 other Bain and SRH officers, directors, investors, and employees.

17 146.

18 As a direct and proximate result of Mr. Cozzone and Bain’s defamatory statement,
19 Mr. Lofgren suffered \$3,000,000 in reputational harm, plus prejudgment interest.

20 **FIFTH CLAIM FOR RELIEF**

21 **(Tortious Interference with Economic Relations –**

22 **Against Mr. Cozzone and Bain)**

23 147.

24 Plaintiff incorporates the preceding paragraphs.

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148.

Mr. Lofgren had a contractual and business relationship with SRH, including through the EEA.

149.

Mr. Cozzone and Bain intentionally interfered with Mr. Lofgren’s interest in the EEA and his business relationship with SRH by inducing SRH to breach the EEA and SRH’s covenant of good faith and fair dealing as alleged above.

150.

Bain interfered with Mr. Lofgren’s relationship with SRH solely for the improper purpose of enriching itself at the expense of Mr. Lofgren, SRH, SRH’s employees, and SRH’s other shareholders.

151.

More specifically, Bain induced SRH to breach the EEA in the hopes that depriving Mr. Lofgren of his livelihood—by eliminating his severance pay and falsely labeling him a fraudster—would force Mr. Lofgren to acquiesce to the Bain defendants’ attempt to loot the corporation for their own benefit through a down round of financing, financial restructuring, and/or bankruptcy.

152.

Mr. Cozzone and Bain also interfered with Mr. Lofgren’s relationship with SRH through improper means by using their ability to induce SRH to violate the EEA to try to extort Mr. Lofgren into agreeing to Bain’s plan.

153.

As a direct and proximate result of Mr. Cozzone and Bain’s interference with Mr. Lofgren’s contractual and business relationship with SRH, Mr. Lofgren suffered economic damages of an amount to be proven at trial but no less than \$15,385 in severance, which will increase with each payment installment that SRH misses, up to a total amount

1 \$1,700,000, plus prejudgment interest. Mr. Lofgren has also suffered \$3,000,000 in
2 reputational harm, plus prejudgment interest.

3 154.

4 Mr. Cozzone and Bain's interference with Mr. Lofgren's business relationships as
5 described above was willful and malicious. Mr. Lofgren hereby provides notice of his intent
6 to move to add allegations of punitive damages against defendants at any time after the filing
7 of this Complaint.

8 **SIXTH CLAIM FOR RELIEF**

9 **(Breach of Fiduciary Duty – Against Mr. Cozzone and Bain)**

10 **Count I – Mr. Lofgren derivatively on behalf of SRH, Against Mr. Cozzone**

11 155.

12 Plaintiff incorporates all paragraphs above.

13 156.

14 Plaintiff was a shareholder of SRH at the time of Mr. Cozzone's breach of his
15 fiduciary duties and is still a shareholder of SRH.

16 157.

17 At all relevant times, Mr. Cozzone was a member of the SRH board of directors and
18 an employee of Bain, serving as Principal in the Bain Double Impact Fund.

19 158.

20 As a Director of SRH, Mr. Cozzone owes SRH fiduciary duties of care, loyalty, and
21 good faith.

22 159.

23 Mr. Cozzone breached his duties of care, loyalty, and good faith to SRH by inducing
24 SRH to breach the EEA in the hopes of forcing Mr. Lofgren to acquiesce to Bain's attempt to
25 loot the corporation for their own benefit through a down round of financing, financial
26 restructuring, and/or bankruptcy.

1 160.

2 In inducing SRH to breach its duties to Mr. Lofgren, Mr. Cozzone was acting for his
3 own personal benefit and the benefit of his employer, Bain, and not in the best interest of
4 SRH.

5 161.

6 Mr. Cozzone's actions have harmed SRH. By forcing SRH to breach the EEA,
7 Mr. Cozzone has exposed SRH to expenses and legal fees in this lawsuit and has harmed
8 SRH's reputation and goodwill in the industry.

9 162.

10 Potential investors have told SRH they are unwilling to invest in a company in a
11 dispute with its former CEO and founder arising from false allegations of fraud, and key
12 employees have expressed an unwillingness to work for a company controlled by Bain in
13 light of its actions.

14 163.

15 Any demand that the SRH board of directors investigate and pursue this claim would
16 be futile, because Bain (a defendant in this action and Mr. Cozzone's employer) controls
17 SRH through its contractual right to appoint three of the five directors. Two of SRH's
18 directors are employees of Bain; another director is a restructuring attorney that, on
19 information and belief, was retained by Bain as part of its plan to loot the corporation for its
20 own benefit; a fourth director is the present Chief Executive Officer that was hand chosen by
21 Bain and subject to removal at Bain's discretion; and the fifth director position is presently
22 unfilled.

23 164.

24 As a result of Mr. Cozzone's breaches of his fiduciary duties, SRH has suffered, and
25 will suffer, past and future damages in the form of costs and attorney fees and a loss of
26

1 reputation/goodwill in an amount to be determined at trial, but no less than \$5,000,000, plus
2 prejudgment interest.

3 165.

4 Mr. Lofgren is also entitled to reasonable attorney fees and expenses as permitted by
5 law. *See Crandon Capital Partners v. Shelk*, 342 Or 555 (2007).

6 166.

7 Mr. Cozzone's breach of fiduciary duty described above was willful and malicious.
8 Mr. Lofgren hereby provides notice of his intent to move to add allegations of punitive
9 damages against Mr. Cozzone at any time after the filing of this Complaint.

10 **Count II – Mr. Lofgren derivatively on behalf of SRH, Against Bain**

11 167.

12 Plaintiff incorporates all paragraphs above.

13 168.

14 Plaintiff was a shareholder of SRH at the time of Bain's breach of its fiduciary duties
15 and is still a shareholder of SRH.

16 169.

17 Bain, as the controlling shareholder of SRH, owes SRH and its non-controlling
18 shareholders fiduciary duties of care, loyalty, and good faith.

19 170.

20 Bain breached its duties of care, loyalty, and good faith to SRH by inducing SRH to
21 breach the EEA in the hopes of forcing Mr. Lofgren to acquiesce to Bain's attempt to loot the
22 corporation for their own benefit through a down round of financing, financial restructuring,
23 and/or bankruptcy.

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171.

In inducing SRH to breach its duties to Mr. Lofgren, Bain was acting for its own benefit and not in the best interest of SRH.

172.

Bain's actions have harmed SRH. By forcing SRH to breach the EEA, Bain has exposed SRH to expenses and legal fees in this lawsuit and has harmed SRH's reputation and goodwill in the industry.

173.

Potential investors have told SRH they are unwilling to invest in a company in a dispute with its former CEO and founder arising from false allegations of fraud, and key employees have expressed an unwillingness to work for a company controlled by Bain in light of its actions.

174.

Any demand that the SRH board of directors investigate and pursue this claim would be futile, because Bain controls SRH and its board of directors through its contractual right to appoint three of the five directors.

175.

As a result of Bain's breaches of its fiduciary duties, SRH has suffered, and will suffer, past and future damages in the form of costs and attorney fees and a loss of reputation/goodwill in an amount to be determined at trial, but no less than \$5,000,000, plus prejudgment interest.

176.

Mr. Lofgren is also entitled to reasonable attorney fees and expenses as permitted by law. *See Crandon Capital Partners v. Shelk*, 342 Or 555 (2007).

Bain's breach of fiduciary duty described above was willful and malicious. Mr. Lofgren hereby provides notice of his intent to move to add allegations of punitive damages against Bain at any time after the filing of this Complaint.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Kristofor Lofgren prays for relief as follows:

A. That judgment be entered against Mr. Cozzone and Bain on the First Claim for Relief (Declaratory Relief) and that the Court enter a judgment in Mr. Lofgren's favor declaring that:

(1) The termination of Mr. Lofgren's employment with SRH was not "for Cause," specifically it was not for "fraud, embezzlement, or theft"; and

(2) Defendants' termination of Mr. Lofgren's employment "for Cause" was a mere pretext.

B. That judgment be entered against SRH on the Second Claim for Relief (Breach of Contract) and that Mr. Lofgren be awarded damages and prejudgment interest at the statutory rate.

C. That judgment be entered against SRH on the Third Claim for Relief (Breach of Covenant of Good Faith and Fair Dealing) and that Mr. Lofgren be awarded damages and prejudgment interest at the statutory rate.

D. That judgment be entered against Mr. Cozzone and Bain on the Fourth Claim for Relief (Defamation) and that Mr. Lofgren be awarded damages and prejudgment interest at the statutory rate.

E. That judgment be entered against Mr. Cozzone and Bain on the Fifth Claim for Relief (Tortious Interference with Economic Relations) and that Mr. Lofgren be awarded damages and prejudgment interest at the statutory rate.

1 F. That judgment be entered against Mr. Cozzone and Bain on the Sixth Claim
2 for Relief (Derivative Claims for Breach of Fiduciary Duty), that SRH be awarded damages
3 and prejudgment interest at the statutory rate, and that plaintiff be awarded his reasonable
4 costs and attorney fees.

5 G. Any other relief the Court deems just and proper.

6 DATED this 1st day of May, 2020.

7 MARKOWITZ HERBOLD PC

8 By: *s/ Chad M. Colton*

9 _____
10 Chad M. Colton, OSB #065774
11 ChadColton@MarkowitzHerbold.com
12 Stanton R. Gallegos, OSB #160091
13 StantonGallegos@MarkowitzHerbold.com
14 Bryana L. Blessinger, OSB #084622
15 BryanaBlessinger@MarkowitzHerbold.com
16 Stephen F. Deatherage, OSB #982095
17 StephenDeatherage@MarkowitzHerbold.com
18 Anthony Blake, OSB#162446
19 AnthonyBlake@MarkowitzHerbold.com

20 Of Attorneys for Plaintiff

21 985963