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SUPERIOR COURT OF WA.
SHARON K. FOSO

BY _____ DEPUTY

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

Agrios Global Holdings Ltd. and
Timberland Bay Properties, LLC

Plaintiffs,

vs.

James Foster,
Christopher Kennedy, and
Flora Real Estate LLC (f/k/a/ JRV
Finance & Lease LLC)

Defendants.

Case No. 22-2-00465-23

CIVIL COMPLAINT

Introduction.

1. Defendants James Foster and Chris Kennedy were directors and officers of Plaintiff Agrios Global Holdings Ltd., a public company with many shareholders that was listed on the Canadian Securities Exchange. In 2018, Agrios acquired a cannabis grow facility in Shelton, Washington for \$20 million. Title to the facility was held in the name of Plaintiff Timberland Bay Properties, LLC, which was a wholly-owned subsidiary of Agrios. Foster and Kennedy were also officers of Timberland.

2. In their roles as directors and officers, Foster and Kennedy owed fiduciary duties

1 to Agrios and Timberland, including the duties of loyalty, good faith, due care, and the duties to
2 make decisions in the best interest of the companies and to place the companies' interest ahead
3 of their own self-interest.

4 3. Under the direction of Foster and Kennedy, Agrios invested an additional \$6
5 million in the facility to increase its capacity by more than 150% and to install state-of-the-art
6 hydroponic equipment. By 2020, the expansion and renovation had been completed, the facility
7 had been leased out, and it was generating millions of dollars in annual net profits for Plaintiffs.
8 The Shelton facility was worth in excess of \$30 million.

9 4. At that point, Agrios' only debt was to a bank with an outstanding balance of just
10 under \$3 million. In September 2020, Defendants Foster and Kennedy arranged for another
11 company controlled by Foster, Defendant JRV Finance, to replace the bank as the lender on the
12 \$3 million bank loan. The terms of the loan to JRV Finance were far worse than the terms of
13 the previous bank loan. In particular, JRV Finance received a security interest on the entire
14 Shelton facility, including the real estate, equipment, and business records. And JRV Finance
15 had the right to call the loan at any time, for any reason or no reason.

16 5. Soon after JRV Finance was installed as the lender, it called the loan. Agrios
17 and Timberland did not have \$3 million in cash immediately available to pay the entire balance
18 of the loan. Under the terms of the loan, JRV's remedy would be to commence foreclosure
19 proceedings, which would give Agrios and Timberland at least four months to arrange debt or
20 equity financing to pay off the \$3 million loan.

21 6. As directors and officers of Agrios and Timberland, Foster and Kennedy had
22 fiduciary duties to arrange that financing. And because the Shelton facility was worth in excess
23 of \$30 million and was generating millions of dollars in net profits, arranging for \$3 million in
24 capital would have been relatively easy to accomplish.

1 7. But instead of arranging for that financing, Defendants Foster and Kennedy had
2 Timberland sign a deed in lieu of foreclosure, transferring the entire facility to JRV Finance. A
3 facility and operating business generating millions of dollars in net profits and worth more than
4 \$30 million dollars were transferred to satisfy a debt of \$3 million.

5 8. Agrios and Timberland bring this lawsuit to right that wrong.

6 **Parties.**

7 9. Plaintiff Agrios Global Holdings Ltd. (“Agrios”) is a Canadian corporation.

8 10. Plaintiff Timberland Bay Properties, LLC (“Timberland”) is a Washington
9 limited liability company with its principal place of business in Washington. It is a wholly
10 owned subsidiary of Agrios.

11 11. Defendant James Foster is a former director, chairman of the board, and officer
12 of Agrios, and a former officer of Timberland.

13 12. Defendant Chris Kennedy is a former director and the former chief executive
14 officer of Agrios and a former officer of Timberland.

15 13. Defendant Flora Real Estate, LLC (formerly known as JRV Finance & Lease,
16 LLC, and referred to in the complaint as “JRV”) is a Missouri limited liability company. JRV is
17 owned directly or indirectly by Defendant Foster and operates under the direction and control of
18 Defendant Foster.

19 **Jurisdiction and venue.**

20 14. This Court has subject matter jurisdiction because the amount in controversy is
21 greater than \$300, and the case involves the title and possession of real property located in
22 Shelton, Washington. RCW § 2.08.010.

23 15. Venue is proper in this county because the real property that is the subject of the
24 action (the Shelton Property) and a substantial portion of the personal property is situated in this

1 county, and a substantial part of the events giving rise to the claims took place in Shelton,
2 Washington. RCW §§ 4.12.010, 4.12.020.

3 **Facts.**

4 **A. Agrios is formed.**

5 16. Agrios was founded in early 2017 with the goal of developing a fully functional
6 indoor cannabis grow facility based on data analytics-driven technology. Agrios would then
7 lease or license that grow facility to other companies that could use it to grow cannabis. That
8 leasing and licensing operation would be Agrios' business and the source of revenue for the
9 company (the "Agrios Business"). To obtain the substantial funds that would be needed to start
10 its operations, Agrios raised early-stage funding. Investors invested over \$13 million in cash
11 and, in return, received shares in Agrios.

12 17. The following year, Defendant Foster also invested in Agrios. But instead of
13 providing cash in exchange for his shares, Foster contributed an existing grow facility on
14 approximately 1.7 acres of land located in Shelton, Washington (the "Shelton Property"). The
15 Shelton Property was valued at \$20.3 million. The transaction for Agrios to acquire the Shelton
16 Property from Foster was structured as follows. Foster owned and controlled a company, BDB
17 Finance and Leasing Two, LLC, that held title to the Shelton Property. BDB changed its name
18 to Timberland Bay Properties LLC, Timberland became a wholly-owned subsidiary of Agrios,
19 and Foster received approximately 26% of the shares of Agrios. This was the largest number of
20 shares held by any shareholder. When that transaction was completed, Foster also became a
21 director of Agrios in June 2018.

22 18. When Agrios acquired Timberland and the Shelton Property, only three of the
23 eight potential grow rooms were operational. Timberland had leased out those three grow
24 rooms and was earning revenues. By acquiring Timberland, Agrios acquired not just the

1 Shelton Property, but the relationships and contracts that formed the beginning of the Agrios
2 Business.

3 19. Agrios planned to transform the other rooms on the Shelton Property into fully
4 operational, state-of-the-art hydroponic grow rooms. In the fiscal year ending in March 2019,
5 the facility generated over \$3 million in revenue, even in its unfinished state. With a larger
6 facility, the Agrios Business would generate even greater revenue for Agrios. Agrios invested
7 over \$5 million to improve the facility and expand its capacity by more than 150%.

8 20. The Shelton Property was the company's key asset. The property and the
9 equipment on the property were the cornerstone of the Agrios Business. It was generating
10 millions of dollars in net profits each year and was worth between \$30 million and \$40 million.
11 It was an asset that Agrios could borrow against. And it could be the centerpiece in a sale of the
12 business to a larger company.

13 **B. Foster engages in an interested party transaction with Agrios**
14 **that benefits Foster to the detriment of Agrios.**

15 21. As of May 2018, Agrios had a bank loan from Citizen's Bank of Newburg in the
16 amount of approximately \$4.5 million with an outstanding balance of approximately \$3 million.

17 22. Foster had signed a personal guaranty for that bank loan. In that guaranty, Foster
18 had agreed with Citizens' Bank: "I am unconditionally liable under this Guaranty, regardless of
19 whether or not you pursue any of your remedies against the Borrower, against any other maker,
20 surety, guarantor or endorser of the Debt or against any Property." And Foster had agreed:
21 "You may sue me alone ... to collect the Debt." And Foster had agreed: "I will remain
22 obligated to pay on this Guaranty even if ... the Borrower has such obligation discharged in
23 bankruptcy, foreclosure, or otherwise discharged by law." If Agrios defaulted on the loan and
24 failed to pay the remaining balance, Foster would have to pay Citizens' Bank the approximately

1 \$3 million still outstanding.

2 23. Foster set in motion a transaction to transfer the loan to his company, JRV, for
3 his personal benefit. The transaction would entail Foster paying off the loan to Citizen's Bank,
4 and Agrios and Timberland entering a new loan agreement with Foster's company, JRV. That
5 transaction would remove Foster as the personal guarantor on the loan. And it would benefit
6 Foster by allowing his company, JRV, to receive significant interest payments, by giving JRV
7 the right to demand immediate payment of the loan at any time, and by giving JRV a security
8 interest that it could exercise if Agrios and Timberland failed to pay, with the security interest
9 encompassing not only the Shelton Property, but also all of the equipment, personal property,
10 trade names, permits, and business records for the Agrios Business. Because this transaction
11 would personally benefit Foster, it was in his self-interest.

12 24. Foster asked attorneys, with whom he had previous connections, to draft
13 documents that would accomplish the transaction. In drafting those documents, the lawyers
14 acted under the direct control and direction of Foster. By July 2020, the lawyers had finalized
15 the documents for the transaction to Foster's satisfaction. The documents included a secured
16 promissory note, a deed of trust, and a finance and lease agreement. The terms of the loan
17 favored Foster and JRV in multiple ways, including the following.

18 25. JRV would loan \$2,988,016.97 to Agrios and Timberland "for the purpose of
19 extinguishing" the Citizen's Bank loan, which would also operate to extinguish Foster's
20 personal guaranty on the Citizen's Bank loan.

21 26. The new loan terms specified that Agrios and Timberland would pay JRV a hefty
22 18% interest rate as well as an "Origination Fee" of more than \$50,000. And the new loan had
23 a default interest rate of 21%. These terms were much higher than the interest rate in the
24 Citizen's Bank loan.

1 27. The new loan was written as a “demand” note, which gave JRV the right to
2 demand payment of the full balance of the loan on five days’ notice. Demanding repayment of
3 the loan on such short notice would not be in the best interests of Agrios or Timberland—it
4 would have to immediately come up with the funds to pay JRV.

5 28. The deed of trust securing the Citizen’s Bank loan had been secured by only the
6 real estate at the Shelton Property. But for the new loan to JRV, the security interest would
7 encompass not only the Shelton Property, but also all of the equipment, personal property, trade
8 names, permits, and business records for the Agrios Business.

9 29. This transaction benefitted Foster and JRV. Foster was absolved of personal
10 liability for the loan if Agrios and Timberland could not pay. JRV would receive hefty interest
11 payments, with the ability to immediately call the loan at any time. Agrios and Timberland, on
12 the other hand, received almost nothing from the transaction. The Citizen’s Bank loan would be
13 extinguished by Foster, but Agrios would become indebted to Foster’s company, JRV. Agrios
14 and Timberland would lose the personal guaranty from Foster. And Agrios and Timberland
15 would be indebted to JRV on worse terms than it was indebted to Citizen’s Bank.

16 **C. Foster’s improper transaction is not ratified by the board or**
17 **the shareholders.**

18 30. When a company is considering a transaction in which a director has a material
19 interest, the company is supposed to follow a series of steps to ensure that the conflicted
20 director does not improperly influence decision-making regarding the transaction. The director
21 with the conflict of interest should not participate in the decision-making. Instead, the
22 transaction must be separately negotiated and approved by directors who have no conflicts of
23 interest (so-called “disinterested directors”) after informing themselves of all material
24 information that is reasonably available, and after carefully considering that information and all

1 reasonable alternatives to the interested-party transaction. In addition, transactions between the
2 corporation and a director almost always require shareholder approval, unless the directors
3 demonstrate in writing that either of two narrow exceptions is satisfied. All of these steps are
4 meant to ensure that the board makes a decision in the best interests of the company, rather than
5 in the best interests of a director with a material interest in the transaction. If a company's
6 directors do not follow those steps, they cannot ratify or approve an interested transaction.

7 31. In August 2020, Foster and Kennedy told the other members of the Agrios board
8 that Citizen's Bank was calling the note for which Foster was a personal guarantor, with an
9 outstanding amount payable of almost \$3 million. And the board of directors was told that it
10 needed to immediately approve a transaction transferring the loan from Citizen's Bank to
11 Foster's company, JRV. Foster and Kennedy provided no written documentation to the other
12 directors on the board or to the shareholders about any of this. They did not provide any
13 documentation that the note was being called. And he did not provide any documentation
14 showing the terms of the Citizen's Bank note.

15 32. As discussed below, none of the required procedures for approving that
16 transaction with Foster were followed by the other directors.

17 **1. Foster, not the other directors, determined how to structure the**
18 **transaction.**

19 33. The other directors did not consider how a potential transaction with Foster's
20 company should be structured or what terms should apply. Instead, Foster was the one who
21 made all of the decisions about structuring the transaction and presented the structure that he
22 wanted to the board as the only option.

23 34. The first time that all the other directors were informed of the transaction with
24 Foster was at the August 19, 2020, board meeting. The board had no previous involvement or

1 input in designing the transaction. The documentation for the transaction had already been
2 prepared by Foster before the board was even presented with the proposed transaction. Foster,
3 not the board, had dictated each of the terms that he wanted to be included in those documents.
4 And Foster had determined that this would be the only option presented to the board.

5 **2. The directors failed to receive all material information and failed to**
6 **consider any alternatives.**

7 35. The board of directors was presented only with the proposed transaction that
8 would have Agrios and Timberland enter a loan with JRV. That transaction was presented as
9 being “required immediately.” And the board immediately voted to agree to that transaction,
10 without considering any other alternatives. At minimum, reasonable alternatives included
11 negotiating with Citizen’s Bank instead of transferring the note to JRV, engaging an investment
12 banker to obtain competing financing proposals from equity or debt investors, or allowing
13 Citizen’s Bank to call the personal guaranty against Foster, and then commencing a negotiation
14 with Foster without the threat of any foreclosure against the Shelton Property.

15 36. Moreover, the directors also failed to obtain and carefully consider all material
16 information about the transaction with JRV that was reasonably available. For example, the
17 directors did not obtain the interest rate or other material terms of the new loan; the current
18 terms of the Citizen’s Bank note; the potential options available to Agrios should the company
19 decide not to transfer the note to JRV; or advice or an opinion from an investment banker, a law
20 firm, or other knowledgeable professional as to what terms would be reasonable or whether the
21 transaction was in the best interests of Agrios.

22 37. Because the directors failed to obtain and carefully consider all material
23 information reasonably available or to carefully consider all reasonable alternatives, they could
24 not ratify the interested-party transaction with Foster.

1 **3. The directors do not make written findings documenting that an**
2 **exception to shareholder approval applies.**

3 38. A transaction with a director generally requires shareholder approval.
4 Shareholder approval is meant to act as an additional check against self-interested transactions
5 that are not in the best interests of the company. Shareholder approval is not required if the
6 directors demonstrate that the interested transaction falls into either of two exceptions. To make
7 that showing, the directors must document, in writing, that they considered each element of the
8 exception and demonstrate, in writing, why the interested transaction meets each element.

9 39. None of the directors made any written findings that the transaction would
10 qualify for one of those exemptions, much less written findings about each element of either of
11 the two exceptions. Without those written findings, the directors were required to obtain
12 shareholder approval for the transaction with Foster before it was implemented.

13 40. But the directors made no attempt to obtain shareholder approval. The directors
14 did not submit the transaction to a shareholder vote. They did not request shareholder input.
15 Instead, the shareholders were informed via press release on or about September 18, 2020, that
16 Agrios had entered the loan agreement with JRV, and given no opportunity to object to or
17 approve that transaction.

18 **D. Foster, Kennedy, and JRV implement the unlawful**
19 **transaction.**

20 41. Foster, Kennedy, and JRV implemented the unlawful transaction described
21 above. Kennedy, representing that he was the “President and COO” of Timberland, signed a
22 deed of trust dated September 4, 2020, in favor of JRV that granted JRV a security interest in
23 the Shelton Property, including all real property, buildings, fixtures, and other improvements; as
24 well as a security interest in all equipment used on the property; in all trade names, permits, or

1 other intangible personal property used in connection with the property; and all business records
2 pertaining to the property. On September 23, 2020, Kennedy appeared before a notary public,
3 acknowledged the deed of trust, and took an oath that he was authorized to execute the deed of
4 trust on behalf of Timberland. The deed of trust was recorded with Mason County on October
5 2, 2020.

6 **E. Foster and Kennedy cause Agrios to be delisted by the**
7 **Canadian Securities Exchange.**

8 42. During the same time period that Foster and Kennedy were implementing the
9 transaction to eliminate Foster's personal liability on the loan guaranty and grant JRV a security
10 interest in the Agrios Business, Foster and Kennedy were knowingly neglecting their duties as
11 directors to ensure that Agrios complied with securities reporting requirements.

12 43. As a publicly listed company on the Canadian Securities Exchange, Agrios was
13 required to comply with the Canadian Securities Act (R.S.B.C. 1996). That act required Agrios
14 to regularly prepare and file financial information about the company. Those reporting
15 requirements ensured that shareholders, and overseeing officials, had insight into the company.

16 44. Defendants Foster and Kennedy held positions as directors and executives at
17 Agrios and were responsible for ensuring that Agrios complied with financial reporting
18 requirements. For example, Defendant Kennedy signed a securities prospectus acknowledging
19 "management's responsibility for financial reporting," and that the "Board of Directors is
20 responsible for ensuring that management fulfills its responsibilities." But Foster and Kennedy
21 failed to ensure that Agrios was in compliance with reporting requirements. Defendants Foster
22 and Kennedy did not cause Agrios to file financial statements as required in 2020. They failed
23 even to respond to inquiries from Agrios's auditors. And because Agrios was not in compliance
24 with these reporting requirements, the Canadian Securities Exchange issued a cease trade order

1 to Agrios on October 20, 2020, restricting Agrios shareholders from publicly trading their
2 shares.

3 **F. Defendants cause the property to be transferred to Foster's**
4 **company, JRV.**

5 45. Foster had the ability to have his company, JRV, demand full payment of the
6 loan at any time. The knowledge that Foster acquired as a director and officer of Agrios and
7 Timberland was knowledge that would not have been available to an outside investor
8 determining whether to call a loan. For example, Foster had access to the cash projections for
9 both companies, and knowledge about the times at which Agrios and Timberland had the least
10 available cash. Foster could choose to call the loan at a time when he knew Agrios and
11 Timberland would not have cash available to satisfy the loan to JRV, and thus cause Agrios and
12 Timberland to be in default. Further, Foster had knowledge about the current operations of the
13 Shelton Property from his role as a fiduciary and thus knew that its value far exceeded the value
14 of JRV's loan.

15 46. Soon after JRV was installed as the lender, Foster caused JRV to call the loan
16 and demand full repayment. Agrios and Timberland did not have \$3 million in cash
17 immediately available to pay the entire balance of the loan. If Agrios and Timberland were to
18 default on the loan with JRV, then under the terms of the loan, JRV's remedy would be to
19 commence foreclosure proceedings, which would give Agrios and Timberland at least four
20 months to arrange debt or equity financing to pay off the \$3 million loan.

21 47. As directors and officers of Agrios and Timberland, Foster and Kennedy had
22 fiduciary duties to arrange that financing. And because the Shelton Property was worth in
23 excess of \$30 million and was generating millions of dollars in net profits, arranging for \$3
24 million in capital would have been relatively easy to accomplish.

1 48. Foster and Kennedy did not arrange for Agrios and Timberland to pay off the
2 loan to JRV. And JRV did not institute foreclosure proceedings against the Shelton Property.
3 Instead, Foster and Kennedy arranged to simply have Timberland sign a deed transferring the
4 Shelton Property to JRV. On January 15, 2021, Agrios issued a press release that Foster had
5 resigned as chairman and as a director of the board of Agrios, effective immediately. Then, on
6 February 4, 2021, Kennedy acting on behalf of Timberland, signed a deed in lieu of foreclosure
7 that transferred the Shelton Property to JRV.

8 49. This transfer caused immense harm to Agrios and Timberland. The Shelton
9 Property was worth in excess of \$30 million and the loan was only \$3 million. With well over
10 \$20 million in equity, Agrios and Timberland had many available options. If JRV were
11 required to institute formal foreclosure proceedings, Agrios would have many months to
12 arrange debt or equity financing to pay off the loan to JRV. Agrios would also have time to
13 shop the property to a buyer or to look for a partner. When the value of real property greatly
14 exceeds the amount due on a loan, as was the case with the Shelton Property, it is rare for a
15 foreclosure proceeding to actually proceed to the stage where the property is put up for auction
16 and sold. And even if the foreclosure proceeding continued all the way to an auction and sale,
17 the Shelton Property was virtually certain to fetch a price far in excess of the \$3 million owed to
18 JRV. That meant the majority of the proceeds from a foreclosure sale would go to Agrios and
19 Timberland. For example, if the property was sold at a foreclosure sale for only \$30 million,
20 around \$3 million would be used to satisfy the loan to JRV. And around \$27 million would be
21 returned to Agrios and Timberland. Transferring the Shelton Property directly to JRV deprived
22 Agrios of all of the value of the property in excess of JRV's loan amount.

23 50. But the harm to Agrios was worse than just losing the value of the property. The
24 Shelton Property was being used to run the Agrios Business—leasing its grow rooms and

1 generating revenues. By obtaining ownership of the Shelton Property, JRV obtained the right to
2 lease that property. This effectively transferred the Agrios Business to JRV, and allowed JRV
3 to reap the benefits of the business that Agrios had created by investing millions of dollars and
4 years of effort.

5 51. The harmful nature of that transaction was obvious to Foster and Kennedy. For
6 Kennedy to execute a deed in lieu of foreclosure was so far outside the bounds of reasonable
7 judgment that it was inexplicable on any basis other than bad faith. This action was not
8 approved by any other directors or Agrios' shareholders. A deed in lieu of foreclosure had
9 never been presented to the board of directors, or to any of Agrios' shareholders.

10 52. Defendants did not give any of the shareholders an opportunity to object to the
11 transfer of the property to JRV. Foster and Kennedy did not direct Agrios to seek shareholder
12 approval for a transaction that would give away Agrios' most important asset. And as a result,
13 none of the shareholders had any ability to object to or weigh in on the transfer of the Shelton
14 Property to JRV.

15 53. On February 11, 2021, one week after Kennedy signed the property over to
16 Foster's company, JRV, Kennedy and the other remaining board members resigned from
17 Agrios' board, leaving Agrios without any directors or management executives. By the time the
18 Agrios board left, Agrios had been delisted from the Canadian Securities Exchange.

19 **G. The shareholders obtain control of Agrios and discover that**
20 **Agrios has been stripped of the Agrios Business.**

21 54. After Agrios had been delisted and the entire Agrios board had resigned, certain
22 shareholders took action to take control of the company and to appoint shareholder
23 representatives to the board of directors of Agrios. The process of regaining control of the
24 company took until early 2022, when the shareholder representatives became directors on the

1 board.

2 55. When the representatives of the shareholders took over Agrios' board, they
3 found that essentially all of the records of Agrios were missing. Correspondence, accounting
4 records, banking records, and email accounts had all been taken. Foster and Kennedy did not
5 leave any records of their, or Agrios's, activities between August 2020 and February 2021.
6 They did not leave any records of the Citizen's Bank loan, the loan transfer to JRV, or the deed
7 in lieu of foreclosure. Upon information and belief, all such records were taken by Foster when
8 his company JRV acquired title to the Shelton Property. Because of that complete absence of
9 records, it took the shareholders some time even to discover that the Shelton Property was no
10 longer owned by Agrios, but instead was now owned by JRV.

11 56. And JRV was using the Shelton Property and the improvements to that property
12 to operate the Agrios Business. JRV was leasing out the grow facilities and obtaining revenue
13 as a result. JRV used all of the improvements to the property and equipment paid for with the
14 money invested by Agrios' shareholders and investors. But the shareholders and investors have
15 not seen a dime of the revenue generated by the Shelton Property.

16 **First Cause of Action: Breach of fiduciary duty**

17 **(by Agrios against Defendants Foster and Kennedy)**

18 57. Agrios realleges and incorporates by reference paragraphs 1 through 56 of the
19 Complaint.

20 58. Defendants Foster and Kennedy owed fiduciary duties to Agrios in their roles as
21 directors and officers of Agrios. Those duties required Defendants Foster and Kennedy to at all
22 times act in the best interests of Agrios, rather than in their self-interest. Those duties required
23 that neither Foster nor Kennedy act for the benefit of Foster and his company at the expense of
24 Agrios. They required Foster and Kennedy to use due care in making decisions on behalf of

1 Agrios, including considering all reasonably available material information, keeping thorough
2 records, and diligently complying with their responsibilities. And those duties further required
3 that Foster and Kennedy at no point make decisions or take actions that were obviously harmful
4 to Agrios.

5 59. The acts alleged above constituted breaches of the fiduciary duties that
6 Defendants Foster and Kennedy owed to Agrios. Here are some examples:

- 7 • Defendant Foster knowingly structured a transaction with Agrios that was in Foster's
8 self-interest. Defendant Foster had a disabling conflict of interest (a personal
9 financial interest) in a transaction in which he obtained a complete release from
10 personal liability and a loan with favorable terms for his company, JRV. As a result,
11 Foster's structuring of that transaction was a breach of his fiduciary duty of loyalty
12 because he acted in his own interests rather than in Agrios' interests.
- 13 • Defendant Foster breached his duty of loyalty by controlling all of the information
14 that the board received about that transaction. Foster's personal interest in the
15 transaction with his company JRV meant that he should not have been the one
16 determining what information the other directors received in considering that
17 transaction. But Foster determined what information was presented to the board
18 (and what information was withheld).
- 19 • Defendant Foster failed to carefully consider all reasonable alternatives to the loan to
20 his own company, JRV.
- 21 • Defendant Kennedy breached his duty of loyalty by failing to properly oversee
22 Defendant Foster's structuring of the transaction that Foster had a personal disabling
23 conflict of interest in. Kennedy failed to make any effort to ensure that Foster was
24 not involved in structuring that transaction.

- 1 • Defendant Kennedy breached his duty of care by failing to obtain and carefully
2 consider all material information reasonably available and failing to carefully
3 consider all reasonable alternatives before voting to have Agrios enter the
4 transaction with Foster's company, JRV.
- 5 • Defendants Foster and Kennedy breached their duty of care by failing to arrange an
6 investment that would pay off the loan to JRV. After JRV called the loan, Foster
7 and Kennedy had an obligation to search for and obtain equity financing that would
8 allow Agrios to pay off the loan without triggering foreclosure proceedings. They
9 failed to do so.
- 10 • Defendants Foster and Kennedy failed to act in the best interests of Agrios by
11 signing the Shelton Property over to JRV rather than forcing JRV to institute
12 foreclosure proceedings. Instead of ensuring that Agrios received fair value for the
13 Shelton Property, Defendants Foster and Kennedy acted against Agrios' interests
14 and transferred a property worth tens of millions of dollars to satisfy a loan of only
15 \$3 million.
- 16 • Defendants Foster and Kennedy failed to use due care in allowing Agrios to fall out
17 of compliance with securities reporting requirements. They recklessly neglected
18 their duties and caused Agrios to be de-listed from the Canadian Securities
19 Exchange.
- 20 • Defendants Foster and Kennedy failed to maintain company records. Foster and
21 Kennedy did not maintain records of the underlying Citizen's Bank note, did not
22 maintain records of the loan transfer to JRV, and did not maintain records about
23 Agrios' financial position and the use of investor funds in 2020.

24 60. The breaches of fiduciary duties by Defendants Foster and Kennedy are a

1 proximate cause of, and a substantial factor in, losses and damages to Agrios in an amount in
2 excess of \$30 million, which will be determined at trial.

3 **Second Cause of Action: Breach of fiduciary duty**

4 **(by Timberland against Defendants Foster, Kennedy, and JRV)**

5 61. Timberland realleges and incorporates by reference paragraphs 1 through 56 of
6 the Complaint.

7 62. Defendants Kennedy and Foster owed fiduciary duties to Timberland in their
8 roles as officers of Timberland. Those duties required Kennedy and Foster to at all times act in
9 the best interest of Timberland, rather than in their own self-interest. They required that neither
10 Foster nor Kennedy act for the benefit of Foster and his company at the expense of Agrios. And
11 those duties further required that Foster and Kennedy at no point make decisions or take actions
12 that were obviously harmful to Timberland.

13 63. The acts alleged above constituted breaches of the fiduciary duties that
14 Defendants Kennedy and Foster owed to Timberland. Here are some examples:

- 15 • Defendant Kennedy breached his duties of loyalty and good faith by transferring
16 the Shelton Property to Foster's company, JRV. Kennedy knew that a deed in
17 lieu of foreclosure was so obviously not in the best interests of Timberland that it
18 is inexplicable on any basis other than bad faith.
- 19 • Defendant Foster breached his duty of loyalty and good faith by taking the
20 Shelton Property from Timberland. The transaction that transferred the Shelton
21 Property occurred while Foster was still acting as an officer of Timberland. In
22 the alternative, that transaction had its inception while Foster was still acting as a
23 fiduciary of Timberland and Agrios, and Foster's resignation did not absolve him
24 of his fiduciary duties to both entities.

1 64. Further, Defendants Foster and JRV aided and abetted Kennedy's breach of his
2 fiduciary duty, and conspired with Kennedy to have Kennedy breach his fiduciary duties.
3 Defendants Foster and JRV knew that Defendant Kennedy owed fiduciary duties to Timberland.
4 Defendants Foster and JRV had actual knowledge that Defendant Kennedy was planning on
5 signing the deed in lieu of foreclosure. Defendants Foster and JRV knew that Kennedy's
6 signing of the deed and transfer of the property to JRV would be a breach of Kennedy's
7 fiduciary duties.

8 65. Defendants Foster and JRV provided substantial encouragement to Defendant
9 Kennedy to engage in the breach of fiduciary duty. Kennedy's act of signing the deed in lieu of
10 foreclosure would provide a substantial benefit to Foster and JRV. Further, Foster provided
11 assistance to Kennedy by agreeing to the terms of the deed in lieu of foreclosure on behalf of
12 JRV, and JRV assisted in the breach of fiduciary duty by accepting the property.

13 66. The breaches of fiduciary duty by Defendants Kennedy, Foster, and JRV are a
14 proximate cause of, and a substantial factor in, losses and damages to Timberland in an amount
15 in excess of \$30 million, which will be determined at trial.

16 67. In the alternative to money damages on this claim, Timberland lacks an adequate
17 remedy at law to compensate Timberland for its losses.

18 68. When a transaction is entered in breach of an officer's duty of loyalty, that
19 transaction is void or voidable. Here, the deed in lieu of foreclosure was signed by Kennedy in
20 breach of his fiduciary duty of loyalty to Timberland, and that property transfer is thus voidable
21 at the discretion of Timberland. In the alternative to monetary damages, Timberland demands
22 rescission and the return of the Shelton Property.

23 69. Separately, when a fiduciary causes property belonging to his beneficiary to be
24 misappropriated and transferred to a third party, that third party holds the property as a

1 constructive trustee for the beneficiary. Timberland demands the imposition of a constructive
2 trust for the benefit of Timberland on the Shelton Property, on the equipment and other tangible
3 and intangible personal property associated with the business run on that property, and on all of
4 the profits stemming from that business.

5 **Third Cause of Action: Conversion**

6 **(by Timberland against Defendants Foster, Kennedy, and JRV)**

7 70. Timberland realleges and incorporates by reference paragraphs 1 through 56 of
8 the Complaint.

9 71. Plaintiff Timberland owned the Shelton Property, all of the improvements
10 constituting real property, and all of the equipment, trade names, permits, and business records
11 constituting personal property that were located at that facility and used in the Agrios business.

12 72. Defendant Kennedy deprived Timberland of the ownership of the equipment and
13 other personal property on the Shelton Property. Kennedy intentionally and knowingly
14 transferred control and possession of the personal property to JRV, taking it outside of
15 Timberland's control. JRV, under the direction and control of Foster, accepted that transfer.
16 And JRV, under the direction and control of Foster, operates and uses the equipment and other
17 personal property at the facility that rightfully belongs to Timberland, denying Timberland
18 access to the Shelton Property and the business operated on that property. Foster and JRV
19 generate profits from its use and possession of the equipment at that facility.

20 73. The actions of Kennedy, Foster, and JRV were a proximate cause of, and a
21 substantial factor in causing, losses and damages to Timberland. The amount of those losses
22 will be determined at trial.

23 **Fourth Cause of Action: Unjust enrichment**

24 **(by Agrios and Timberland against Defendants Foster and JRV)**

1 74. Agrios and Timberland reallege and incorporate by reference paragraphs 1
2 through 56 of the Complaint.

3 75. Defendants Foster and JRV received a benefit from the transfer of the Shelton
4 Property and all of the improvements and equipment on that property. JRV received all of the
5 value of the Shelton Property in excess of the outstanding balance of the loan. And Defendant
6 Foster received personal financial benefits from that transaction because of his ownership of
7 JRV.

8 76. Defendants Foster and JRV knew and appreciated those benefits. Foster was
9 familiar with the value of the Shelton Property and knew that the property was worth far more
10 than the amount of the outstanding loan to JRV.

11 77. The circumstances under which Foster and JRV obtained the Shelton Property
12 and the Agrios Business make it inequitable for them to retain the Shelton Property and the
13 profits from the Agrios Business without paying for their value. Foster and JRV received the
14 Shelton Property and the business operated on that property as a direct result of Foster's and
15 Kennedy's breaches of fiduciary duties owed to Agrios and Timberland, and Foster and JRV's
16 aiding and abetting in Kennedy's breach of fiduciary duties.

17 78. Foster and JRV have not made any payments to Timberland or Agrios in
18 exchange for receiving the Shelton Property or the business run on that property. Foster and
19 JRV's actions are a proximate cause of, and a substantial factor in causing, losses and damages
20 to Timberland and Agrios.

21 79. In the alternative to money damages on this claim, Agrios and Timberland lack
22 an adequate remedy at law. Agrios and Timberland demand the imposition of a constructive
23 trust for the benefit of Timberland and Agrios on the Shelton Property, on the equipment and
24 other tangible and intangible personal property associated with the business run on that

1 property, and on all of the profits stemming from that business.

2 **Prayer for Relief**

3 80. Agrios and Timberland seek the following relief:

4 (a) On all causes of action, a judgment in favor of Plaintiffs and
5 against Defendants;

6 (b) On all causes of action, an award of money damages in an
7 amount sufficient to compensate for the losses and harms resulting from
8 Defendants' wrongful conduct;

9 (c) On the second cause of action, in the alternative to money
10 damages, an order rescinding the deed in lieu of foreclosure and returning
11 the Shelton Property to Timberland;

12 (d) On the second and fourth causes of action, in the alternative to
13 money damages, an imposition of a constructive trust on the Shelton
14 Property and all proceeds of the business being run on that property;

15 (e) On all causes of action, an award of restitution;

16 (f) On all causes of action an award of disgorgement of Defendants'
17 profits;

18 (g) On all causes of action, an award of pre- and post-judgment
19 interest;

20 (h) On all causes of action, an award of reasonable attorneys' fees
21 and costs;

22 (i) Such other and further relief as the Court may deem just and
23 proper.

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Dated: September 14, 2022

Respectfully submitted,

By: /s/ Alexander Erwig

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***Pro Hac Vice Forthcoming*

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