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20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**
22 **EASTERN DIVISION**

23 Alfredo Ramirez and Ramón Santos
24 Castro, individually and as representatives
25 of a class of all others similarly situated
26 and on behalf of the AMPAM Parks
27 Mechanical, Inc. Employee Stock
28 Ownership Plan (the “AMPAM ESOP” or
the “ESOP”),

Plaintiffs,

v.

AMPAM Parks Mechanical, Inc., Charles
E. Parks III, John D. Parks, John G.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Mavredakis, the AMPAM Board of
2 Directors, Neil Brozen, and John and Jane
3 Does 1-10,

Defendants.

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I. INTRODUCTION

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2 1. Plaintiffs Alfredo Ramirez and Ramón Santos Castro bring this action
3 pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”), 29
4 U.S.C. § 1001 *et seq.*, seeking plan-wide relief on behalf of the AMPAM Parks
5 Mechanical, Inc. Employee Stock Ownership Plan (the “AMPAM ESOP” or the
6 “ESOP”) and class-wide relief on behalf of a class of similarly-situated ESOP
7 participants and their beneficiaries as defined below.

8 2. AMPAM Parks Mechanical, Inc. (the “Company” or “AMPAM”) is a
9 closely held company, employing approximately 1,000 individuals, that provides
10 residential plumbing subcontractor services for multifamily residences.

11 3. Charles E. Parks III (“Buddy Parks”) and his brother(s) co-founded and
12 owned AMPAM. Buddy Parks and John D. Parks (together, “the Parks Brothers”),
13 along with other AMPAM owners collectively liquidated their interest in AMPAM
14 stock for \$247 million in 2019. The Parks Brothers and any other sellers of AMPAM
15 stock are collectively referred to as the “Sellers” or “Seller Defendants.”

16 4. To accomplish the sale, the Parks Brothers (who together controlled
17 AMPAM) created a retirement plan, the AMPAM ESOP, to purchase their AMPAM
18 stock at an inflated price.

19 5. Plaintiffs and other employee-participants (whose ESOP retirement
20 accounts were used to purchase 100% of AMPAM stock from the Sellers) were not
21 given an opportunity to negotiate or otherwise take part in the determination of the
22 price that they paid for AMPAM stock. They only found out about the ESOP
23 Transaction after the ESOP Transaction was completed and the \$247 million purchase
24 price was approved, which left the ESOP deeply in debt and allowed the Sellers to cash
25 out their interest in AMPAM.

26 6. In fact, rather than involving the employees whose retirement accounts
27 would be used to buy AMPAM, the Parks Brothers hand-picked Neil Brozen (“Brozen”
28 or “Defendant Brozen”) as the Trustee of the ESOP. Brozen was supposed to be an

1 independent third party acting with undivided loyalty to the ESOP and its participants.
2 However, and as discussed *infra*, the Parks Brothers collectively controlled AMPAM
3 and used the ESOP governance structure to retain the right to fire Brozen as the ESOP
4 Trustee if Brozen did not carry out the wishes of the Parks Brothers and other Company
5 insiders.

6 7. The Parks Brothers, who together controlled AMPAM, further cemented
7 their control over Defendant Brozen by agreeing that AMPAM would indemnify
8 Brozen for all ERISA fiduciary liability in connection with the ESOP Transaction.
9 Specifically, Buddy Parks signed the Trust Agreement on behalf of AMPAM, whereby
10 he agreed that:

11 [T]he Company shall indemnify the Trustee [Brozen] for any loss, cost,
12 expense or other damage, including attorney's fees, suffered by the
13 Trustee and resulting from or incurred with respect to any legal
14 proceedings related in any way to the performance of services by the
Trustee pursuant to the Plan [ESOP.]

15 The indemnification payments are paid from the Company's assets (after insurance is
16 exhausted), which were owned by the ESOP from at least 2019 until 2023. This form
17 of exculpation is illegal and void under ERISA. *See* ERISA § 410(a), 29 U.S.C.
18 § 1110(a); *Johnson v. Couturier*, 572 F.3d 1067, 1080 (9th Cir. 2009); *Hurtado v.*
19 *Rainbow Disposal Co.*, 2018 WL 3372752, at *15-16 (C.D. Cal. July 9, 2018).

20 8. The Parks Brothers, Neil Brozen, and the other Defendants took several
21 actions to cause the newly-created ESOP to buy AMPAM from the Sellers at an
22 inflated price of \$247 million. The various steps and aspects of this sale are collectively
23 referred to herein as the "ESOP Transaction" or "Transaction."

24 9. Because the ESOP did not have sufficient money to purchase the
25 AMPAM stock from the Sellers for \$247 million, Brozen executed loans whereby the
26 ESOP borrowed virtually all of the ESOP's purchase price. In addition, AMPAM itself
27 guaranteed the loans the ESOP took to finance the purchase of AMPAM stock. Thus,
28 if the ESOP could not make required loan payments, the Company was required to do

1 so, which made the Company indebted for almost its entire value as a result of the
2 ESOP Transaction that was orchestrated and completed by Defendants. These loans
3 are reported in filings with the Department of Labor.

4 10. The imprudent and disloyal ESOP Transaction terms caused ESOP
5 participants to suffer monetary losses in their ESOP retirement accounts.

6 11. There is no recognized market for private stock like AMPAM's, and the
7 value of the stock is determined based on an appropriate valuation report or stock
8 appraisal. The valuation documents related to AMPAM's stock are, and continue to
9 be, controlled by the Seller Defendants.

10 12. Plaintiffs and other employee-participants have never been given access
11 to the valuation reports underlying the value of the AMPAM stock in their retirement
12 accounts. Based on Defendants' duty to disclose all relevant information that bears
13 upon their retirement investments in AMPAM, Mr. Ramirez and other employee-
14 participants asked Defendants to provide the valuation reports. However, Defendants
15 refused to do so.

16 13. Prior to the ESOP Transaction, AMPAM's co-founder, Buddy Parks, pre-
17 negotiated that he would keep his Board seat and remain Chairman of the Board after
18 the ESOP Transaction. This allowed him and Defendant John Parks to retain control
19 over AMPAM's strategy, direction, and other fundamental business decisions. By pre-
20 negotiating that he would keep control of AMPAM's Board, Buddy Parks retained the
21 power to amend the Company's bylaws and the ESOP's governing documents to
22 determine the Company's strategy and the direction of the business, to sell the
23 Company in future mergers or corporate transactions, and to determine the amount and
24 timing of dividends and stock distributions.

25 14. As a result of the pre-agreement that Buddy Parks would retain control
26 over the Company's strategic direction and management, the fair market value of
27 AMPAM stock should have reflected a steep discount for the lack of control over the
28 Company. But it did not.

1 15. As a result, the \$247 million the ESOP paid was significantly more than
2 the fair market value of AMPAM stock because Defendant Brozen and the stock
3 valuation he relied on did not adequately take into account that the Parks Brothers kept
4 control over AMPAM in many material respects, including the strategic decisions of
5 the Company.

6 16. Even though Defendants reported to the government and employees that
7 AMPAM became 100% ESOP owned in July 2019, the Parks Brothers never actually
8 gave up a significant interest in AMPAM. Indeed, a press release published in 2023
9 indicated that, after the ESOP Transaction, the Parks Brothers kept a “significant
10 ownership stake in AMPAM.”¹ Indeed, just a few years after the ESOP Transactions,
11 the Parks Brothers engineered the sale of AMPAM’s stock (again) to a newly created
12 shell corporation, Canyonlands Purchaser LLP, which was owned by Buddy Parks and
13 Gemspring Capital Management, LLC (“Gemspring”), a private equity group

14 17. The October 4, 2023 press release announcing the sale of AMPAM back
15 to Buddy Parks and Gemspring (through the shell corporation created in April of 2023)
16 **does not even mention the ESOP** as an owner of AMPAM stock in October of 2023.
17 Rather, the press release states, “Co-founder Buddy Parks . . . will remain as Chairman
18 and **maintain** a significant ownership stake in the Company” *Id.* (emphasis
19 added).

20 18. Thus, Buddy Parks publicly acknowledged that he never gave up his
21 ownership of AMPAM in 2019 and that he retained a significant ownership stake in
22 AMPAM from 2019 to 2023, when it was supposedly 100% owned by the ESOP. John
23 D. Parks was identified as a director of AMPAM in 2019 and 2022 filings with the
24 State of Delaware.

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27 ¹ Gemspring Capital Acquires AMPAM, PR Newswire (Oct. 4, 2023),
28 <https://www.prnewswire.com/news-releases/gemspring-capital-acquires-ampam-301946541.html> (emphasis added).

1 19. The valuation of AMPAM stock—upon which Brozen relied to justify the
2 \$247 million purchase price by the ESOP and thereafter—did not include a substantial
3 discount for lack of control. In other words, Brozen failed to adequately consider that
4 the AMPAM stock offered to and ultimately purchased by the ESOP did not come with
5 the elements of control, such as control of all board seats, which are typically
6 transferred in a 100% stock sale. As a result, the ESOP substantially overpaid for
7 AMPAM stock because Brozen failed to obtain an adequate discount for the lack of
8 control in the ultimate price the ESOP paid for AMPAM.

9 20. The Parks Brothers were able to sell AMPAM (along with other Sellers)
10 for \$247 million dollars, yet retained control of AMPAM and a hidden ownership
11 interest in AMPAM. The Parks Brothers, who collectively controlled AMPAM from
12 2019 on, used this control to orchestrate its sale back to Buddy Parks (and perhaps
13 other Parks brothers) through a shell corporation set up with a private equity firm in
14 2023: Canyonlands Purchaser, LLC.

15 21. In addition to the fact that the ESOP paid too much for AMPAM stock,
16 the debt terms necessary to complete the purchase of the stock were neither prudent
17 nor in the best interest of Plaintiffs or other ESOP participants. According to
18 Department of Labor filings, because the ESOP did not have anywhere close to the
19 \$247 million the Sellers received for AMPAM stock, the ESOP had to borrow \$240.3
20 million, or 97.3% of the purchase price. Of the total \$240 million in debt, the ESOP
21 borrowed \$157.5 million from the Sellers themselves (which was guaranteed by the
22 Company) and the remainder was financed through an external loan obtained by the
23 Company. This left AMPAM responsible for all \$240 million in ESOP Transaction
24 debt and required the Company to divert approximately \$10 million of its cash flow
25 towards loan payments every year. As a result, the \$240 million in crippling debt would
26 hamper the Company's ongoing operations and profitability. In short, the excessive
27 level of debt necessary to complete the ESOP Transaction was not in the best interest
28 of the ESOP participants.

1 22. Defendants together orchestrated and carried out the ESOP Transaction
2 to serve the Sellers' interests while the ESOP participants' interests were harmed. The
3 ESOP obtained little control over a company (AMPAM) whose operations were
4 impaired by the enormous debt load. As a result, the long-term value of AMPAM stock
5 was substantially in doubt.

6 23. Ultimately, the ESOP Transaction allowed the Parks Brothers to sell a
7 non-controlling interest in AMPAM to the ESOP participants for significantly more
8 than such an interest was worth because the Parks Brothers did not give up full control
9 over AMPAM.

10 24. Defendants' actions as outlined herein harmed the ESOP and caused
11 Plaintiffs and all other ESOP participants to suffer significant losses to their ESOP
12 retirement savings.

13 25. Plaintiffs bring this action to recover the losses suffered by the ESOP and
14 the participants and beneficiaries of the ESOP, to obtain other equitable and remedial
15 relief as provided by ERISA, and to otherwise remedy Defendants' prohibited
16 transactions and fiduciary breaches in violation of ERISA as outlined herein.

17 **II. JURISDICTION AND VENUE**

18 26. **Subject Matter Jurisdiction.** This Court has subject matter jurisdiction
19 over this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(a), 29 U.S.C.
20 § 1132(a).

21 27. **Personal Jurisdiction.** This Court has personal jurisdiction over
22 Defendants because they transact business in, and have significant contacts with, this
23 District, and because ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2) provides for
24 nationwide service of process.

25 28. **Venue.** Venue is proper in this District and this Division because
26 AMPAM Parks Mechanical, Inc. and other Defendants may be found in this District
27 and this Division. ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). AMPAM conducts
28 business operations and employs employees found in this District and Division.

1 **III. PARTIES**

2 **A. Plaintiff Alfredo Ramirez**

3 29. Plaintiff Alfredo Ramirez is a current employee of AMPAM, who has
4 worked for AMPAM since approximately 2018. Mr. Ramirez was a participant in the
5 ESOP as defined by ERISA § 3(7), 29 U.S.C. § 1002(7). Mr. Ramirez was vested in
6 the ESOP and received a payment when the ESOP was terminated in 2023.

7 30. Pursuant to California Labor Code § 1198.5, counsel requested personnel
8 files for Plaintiff Alfredo Ramirez and other represented parties (including Wilis
9 Barrios, who brought a prior action alleging similar claims). Defendants failed to
10 provide the requested documents within the 30 days of receipt of Plaintiff Ramirez’s
11 request as required by California Labor Code § 1198.5.

12 **B. Plaintiff Ramón Santos Castro**

13 31. Plaintiff Ramón Santos Castro is a former employee of AMPAM who
14 worked at AMPAM from approximately 2022 to 2023. Mr. Castro was a participant in
15 the ESOP as defined by ERISA § 3(7), 29 U.S.C. § 1002(7). Mr. Castro was vested in
16 the ESOP and received a payment when the ESOP was terminated in 2023..

17 **C. Defendant AMPAM Parks Mechanical, Inc.**

18 32. Defendant AMPAM Parks Mechanical, Inc. is a multifamily residential
19 plumbing subcontractor that maintains operations and employs individuals
20 (approximately 1,000) throughout California. AMPAM may be found in Riverside and
21 San Bernadino counties. It conducts its business operations (including providing
22 plumbing and mechanical contracting services) in both Riverside and San Bernadino
23 counties.

24 33. ERISA provides:

25 Every employee benefit plan shall be established and maintained pursuant
26 to a written instrument. Such instrument shall provide for one or more
27 named fiduciaries who jointly or severally shall have authority to control
and manage the operation and administration of the plan.

28 ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1).

1 34. AMPAM is or was the current or former employer of all ESOP
2 participants.

3 35. The written instrument(s) according to which the ESOP was established
4 and maintained (hereinafter referred to as the “ESOP Plan Document”) provide that
5 the Company is a “Named Fiduciary” with authority to control and manage the
6 administration of the ESOP other than the responsibilities expressly delegated to the
7 Trustee in the Plan Document.

8 36. The Trust Agreement states that the Company may terminate the Trustee
9 with 30 days’ written notice without cause.

10 37. Accordingly, AMPAM is an ERISA fiduciary within the meaning of
11 ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because it had/has discretionary control
12 over the ESOP and the ESOP assets and it exercised control over ESOP assets.

13 38. The ESOP Plan Document states that AMPAM has the power and duty to
14 “review[] the performance of the Trustee with respect to the Trustee’s administrative
15 duties, responsibilities, and obligations under the Plan and Trust Agreement.”

16 39. At all relevant times, AMPAM acted through its executives, Board
17 members, and the Sellers who owned and controlled AMPAM.

18 **D. The Sellers/Seller Defendants**

19 40. Defendant Charles E. Parks III (“Buddy”) is the co-founder of AMPAM
20 and has run AMPAM with his brothers and other Board members since approximately
21 the late 1990s. Before and after the ESOP Transaction, Buddy Parks has also served as
22 the Chief Executive Officer (“CEO”) and Chairman of the Board of AMPAM and,
23 along with his brothers, controlled AMPAM’s strategic decisions. According to a
24 document AMPAM filed with the California Secretary of State and publicly available
25 information, Buddy Parks remains the CEO and Chairman of the Board of AMPAM.

26 41. Prior to and after the ESOP Transaction, Buddy Parks was a named
27 fiduciary because, as alleged below, he was/is the Chairman of the Company’s Board
28 from at least 2018 to the present and, in the ESOP governing documents, the Board

1 was given express fiduciary powers over ESOP administration, including the power to
2 appoint or replace the ESOP Trustee. *See* ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

3 42. Prior to and after the ESOP Transaction, Buddy Parks was a functional
4 fiduciary to the ESOP because he acted for AMPAM by, among other things, signing
5 the ESOP Trust Agreement with Brozen, who was appointed by AMPAM to be the
6 ESOP Trustee. As a result, Defendant Buddy Parks had/has discretionary control over
7 the ESOP and indeed exercised/exercises control over the ESOP.

8 43. Thus Buddy Parks was both a named fiduciary and functional fiduciary of
9 the ESOP within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21) because he had
10 discretionary authority or discretionary control respecting management of the ESOP,
11 exercised authority and control respecting management or disposition of the ESOP's
12 assets, and/or had discretionary authority or discretionary responsibility in the
13 administration of the ESOP.

14 44. Defendant Buddy Parks was also a "party in interest" to the ESOP within
15 the meaning of ERISA § 3(14)(A) and (H), 29 U.S.C. § 1002(14) (A) and (H) because
16 he was, at all relevant times, a fiduciary to the ESOP, the Chairman of the Board of
17 Directors, an officer of AMPAM, and/or an owner (or beneficial owner) of more than
18 10% of AMPAM stock at the time of the Transaction.

19 45. Defendant Buddy Parks, along with other Sellers, sold a non-controlling
20 interest in AMPAM to the ESOP for over \$247 million dollars, which unjustly enriched
21 him at the expense of ESOP participants.

22 46. Defendant John D. Parks, along with his brother Buddy Parks, co-founded
23 AMPAM and, along with other Sellers, sold their interest in AMPAM to the ESOP for
24 over \$247 million dollars, which unjustly enriched him at the expense of ESOP
25 participants. He is currently the President of AMPAM and, along with his brothers,
26 controlled AMPAM's strategic decisions.

27 47. Prior to and after the ESOP Transaction, John D. Parks was a named
28 fiduciary because, as alleged below, he was/is a member of the Company's Board from

1 at least 2018 to 2022 and, the ESOP governing documents granted the Board express
2 fiduciary powers over ESOP administration, including the power to appoint or replace
3 the ESOP Trustee. *See* ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

4 48. Prior to and after the ESOP Transaction, John D. Parks was an ERISA
5 fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because,
6 as President, he has acted for AMPAM (along with his brothers) to select and appoint
7 Brozen as the ESOP Trustee, among other things. As President of AMPAM, he had all
8 the fiduciary powers and discretion given to AMPAM in the ESOP governing
9 document; thus, Defendant John D. Parks had/has discretionary control over the ESOP
10 and exercised/exercises control over the ESOP.

11 49. Thus John D. Parks was both a named fiduciary and functional fiduciary
12 of the ESOP within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21) because he
13 had discretionary authority or discretionary control respecting management of the
14 ESOP, exercised authority and control respecting management or disposition of the
15 ESOP's assets, and/or had discretionary authority or discretionary responsibility in the
16 administration of the ESOP.

17 50. Defendant John D. Parks was a "party in interest" to the ESOP within the
18 meaning of ERISA § 3(14)(A) and (H), 29 U.S.C. § 1002(14) (A) and (H) because he
19 was an ESOP fiduciary, AMPAM's President, an officer of AMPAM, and/or an owner
20 (or beneficial owner) of more than 10% of AMPAM at the time of the ESOP
21 Transaction.

22 51. Defendants John and Jane Does 1-5 are the other individuals, entities, or
23 trusts who sold their AMPAM stock in the ESOP Transaction and received money or
24 other proceeds directly or indirectly from the ESOP Transaction.

25 52. Defendants Charles E. Parks III ("Buddy"), John D. Parks, James Parks,
26 Jason Parks, and John and Jane Does 1-5 are collectively referred to as the "Sellers" or
27 "Seller Defendants" who sold their interest in AMPAM to the ESOP for \$247 million
28 in 2019.

1 **E. Trustee Defendant**

2 53. Defendant Neil Brozen is an individual residing in Minnesota. Defendant
3 Brozen is President of Ventura Trust, a trust company doing business in Minnesota.

4 54. Defendant Brozen served as the Trustee of the ESOP and improperly
5 approved the ESOP Transaction on behalf of the ESOP. As Trustee of the ESOP,
6 Defendant Brozen was both a named fiduciary and functional fiduciary of the ESOP
7 within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21) because he had
8 discretionary authority or discretionary control respecting management of the ESOP,
9 exercised authority and control respecting management or disposition of the ESOP’s
10 assets, and/or had discretionary authority or discretionary responsibility in the
11 administration of the ESOP.

12 55. Defendant Brozen has also been a “party in interest” at all relevant times
13 because, *inter alia*, he is a fiduciary to the ESOP and provides services to the ESOP.
14 ERISA § 3(14), 29 U.S.C. § 1002(14).

15 56. Defendant Brozen has been sued multiple times for violations of ERISA
16 based on his actions as a trustee for ESOPs other than the AMPAM ESOP, including
17 by the Secretary of Labor.

18 **F. The Board Defendants**

19 57. As noted above, Buddy Parks has been a member of the Board and
20 Chairman of the Board since at least 2018.

21 58. Based on the Company’s 2019 and 2022 Annual Franchise Tax Reports
22 filed with the State of Delaware, Defendant John D. Parks was a member of the
23 AMPAM Board during that time period.

24 59. Defendant John G. Mavredakis was a member of the AMPAM Board in
25 2019, the year of the ESOP Transaction, according to the Company’s 2019 Annual
26 Franchise Tax Report filed with the State of Delaware. He may be found in Riverside
27 County.
28

1 60. Defendants John and Jane Does 6-10 are the other individuals who were
2 members of the AMPAM Board from 2018 until September 2023.

3 61. The AMPAM Board of Directors, Buddy Parks, John D. Parks, John G.
4 Mavredakis, and John and Jane Does 6-10 are collectively referred to as the “Board
5 Defendants.”

6 62. According to the Plan Documents, the Board has the fiduciary power to
7 appoint the ESOP Trustee.

8 63. Additionally, the Trust Agreement for the ESOP provides, “[u]pon
9 resignation or removal of the Trustee, the Board of Directors shall appoint a successor
10 trustee or trustees.” The Trust Agreement also states, “[t]he Company (through its
11 Board of Directors) shall have the right at any time” to modify or terminate the Trust
12 Agreement.

13 64. Also, the Board and its members, including the Parks Brothers, at all
14 relevant times, acted on behalf of the Company which was a named fiduciary with
15 respect to the ESOP.

16 65. Accordingly, the Board Defendants had and/or exercised discretionary
17 authority or discretionary control respecting management of the ESOP and are
18 fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

19 66. At all relevant times the Board Defendants have been fiduciaries to the
20 ESOP.

21 **IV. FACTUAL ALLEGATIONS**

22 67. According to publicly available documents, AMPAM Parks Mechanical,
23 Inc. was a “family-owned business” until the ESOP Transaction in 2019. AMPAM was
24 founded by Buddy Parks and his father decades ago. Since then, the Parks Brothers
25 have run AMPAM.

26 68. In or around 2019, the Parks Brothers decided to sell their stake in the
27 Company by creating a retirement plan (the AMPAM ESOP) that would borrow
28

1 hundreds of million of dollars to purportedly purchase 100% AMPAM stock they
2 owned.

3 69. To effectuate the Parks Brothers' sale of their interest, they established
4 the ESOP, an ERISA-protected defined contribution plan where employer
5 contributions made on behalf of employees are invested in the employer's stock (here
6 AMPAM stock). ERISA § 407(d)(6), 29 U.S.C. § 1107(d)(6); *see also* 29 C.F.R.
7 § 2550.407d-6 (2022) (definition of the term "employee stock ownership plan").

8 70. Buddy Parks signed the ESOP Trust Agreement between AMPAM and
9 Neil Brozen wherein he appointed the ESOP Trustee on behalf of the Board and/or the
10 Company.

11 71. The Trust Agreement states that, prior to July 15, 2019, AMPAM (then
12 controlled by the Parks Brothers) appointed Neil Brozen as Trustee to the ESOP, which
13 was a fiduciary act that required them to monitor Brozen and to furnish accurate and
14 complete information concerning AMPAM in connection with the ESOP Transaction.

15 72. Defendant Brozen was duty bound to evaluate whether all terms of the
16 ESOP Transaction (including the price paid for AMPAM stock) were adequately
17 investigated, all relevant alternative options were considered, and the ESOP
18 Transaction was in the best interest of ESOP participants.

19 73. Brozen and the Parks Brothers were duty bound to ensure that the ESOP
20 did not pay more than fair market value for the AMPAM stock it purchased.

21 74. Yet the Parks Brothers did not select Brozen because they believed he
22 would perform a thorough and rigorous evaluation of the sale price and other
23 Transaction terms and prudently oversee the ESOP. To the contrary, they selected
24 Brozen because they believed he would be easy to deal with, would not conduct much
25 due diligence, and would approve the Transaction on terms that were favorable to the
26 Sellers rather than in the best interest of the ESOP and its participants. And that is
27 exactly what happened.

1 75. For example, prior to the ESOP Transaction, Buddy Parks and Brozen
2 pre-negotiated that Buddy Parks and John Parks would keep their Board seats, and
3 Buddy would remain Chairman of the Board after the ESOP Transaction. In fact, this
4 agreement that Buddy Parks would keep his seat as Chairman of the Board was
5 publicly known at least one month prior to the completion of the ESOP Transaction.

6 76. By pre-negotiating that the Parks Brothers would retain at least two Board
7 seats on AMPAM's Board of Directors, they retained control over AMPAM's strategy,
8 the amount and timing of dividends and stock distributions, and other fundamental
9 business decisions. The Parks Brothers also retained substantial power to amend the
10 Company's bylaws and the ESOP's governing documents.

11 77. In fact, AMPAM Parks Mechanical, Inc.'s corporate filings with the
12 California Secretary of State show that Buddy Parks remained the CEO of AMPAM
13 for years after the ESOP Transaction. Specifically, AMPAM's "Statement of
14 Information" filings on November 16, 2021 and April 7, 2023 report Charles E. Parks
15 III as the CEO of AMPAM. Similarly, a 2022 Annual Franchise Tax Report filed by
16 AMPAM with the State of Delaware lists both Parks Brothers as directors.

17 78. In addition, Buddy Parks and the Parks Brothers kept control over
18 AMPAM because they effectively controlled Defendant Brozen who was the ESOP
19 Trustee because Brozen was beholden to the Parks Brothers. Indeed, Buddy Parks
20 remained the Chairman of the Board after the ESOP Transaction occurred and could
21 fire Brozen at his whim and pick a replacement ESOP Trustee that would honor the
22 Parks Brothers' wishes.

23 79. As noted above, Defendant Brozen approved a sale price of \$247,026,699
24 million for 834,331 shares of Company's stock, or \$296.08 per share. This amount
25 greatly exceeded the fair market value of the Company at the time of the Transaction
26 and greater than what a buyer, under no compulsion to buy AMPAM, would have paid
27 in an arm's length negotiation.

1 80. By year end 2022, AMPAM had contributed a total of \$36,230,656 into
2 the ESOP purportedly for the benefit of employees. Yet, the value of the AMPAM
3 stock in Plaintiffs and the Class’s ESOP accounts was just \$22,960,789 with a total of
4 97,421 shares of AMPAM stock had been allocated to ESOP participants’ accounts.

5 81. The purchase price of \$247 million and the Trustee’s evaluation and due
6 diligence to justify that price suffered from a number of serious flaws that any prudent
7 and diligent fiduciary, acting in the best interest of the ESOP and its participants,
8 should have discovered.

9 82. *First*, the sale price failed to properly take account of the fact that the
10 ESOP did not purchase a controlling interest in AMPAM.

11 83. As discussed above, the terms of the sale included a pre-agreement that
12 Buddy Parks would retain his Board seat and his role as Chairman of the Board.
13 Because this allowed Buddy Parks and his brothers to retain control over AMPAM’s
14 strategic direction and management, the fair market value of AMPAM stock should
15 have reflected a steep discount for the lack of control over the Company. But the actual
16 purchase price did not.

17 84. That the ESOP did not obtain a controlling interest in AMPAM (even
18 though its governmental filings states it paid for a controlling interest) is further
19 confirmed by the fact that, just a few years after the ESOP Transactions, the Parks
20 Brothers engineered the sale of AMPAM’s stock (again) to a newly created shell
21 corporation, Canyonlands Purchaser LLP, which was owned by Buddy Parks and
22 Gemspring Capital Management, LLC (“Gemspring”), a private equity group.

23 85. In addition, the Trust Document specifically gives AMPAM—which
24 was/is controlled by the Parks Brothers—unilateral power to remove Brozen as Trustee
25 and gave the AMPAM Board—also controlled by Buddy Parks—the power to pick the
26 replacement for Brozen. Thus, Brozen and any successor Trustee was not truly
27 “independent.”
28

1 86. This lack of independence compromised not only the investigation of the
2 Transaction, but also the ongoing management of AMPAM going forward. With
3 limited exception, Plan participants did not have majority power to vote on shareholder
4 matters. Instead, Defendant Brozen, who was hand-picked by the Park Brothers and
5 who could be fired by them at will, held the majority of voting power.²

6 87. Further, as noted above, Defendant Buddy Parks continued to serve as
7 Chairman of the Company's Board after the Transaction. And, after the ESOP
8 Transaction, the Parks Brothers, as Board members, were able to arrange the sale of
9 AMPAM to a private equity buyer even though the Company was supposedly wholly
10 owned by the ESOP.

11 88. Because the ESOP participants did not gain meaningful control over
12 AMPAM as a result of the Transaction, the purchase price the ESOP paid should have
13 been heavily discounted to reflect this lack of control. Court decisions have held that
14 discounts for lack of control as high as 40% are appropriate.

15 89. Publicly available governmental filings state that the ongoing valuations
16 of AMPAM stock did not include any discount for lack of control. As a result, the
17 ESOP overpaid. Had even a minimal discount for lack of control (10%) been applied,
18 the ESOP would have paid approximately \$25 million less than the ESOP actually did;
19 and a 40% discount for lack of control would have resulted in the ESOP paying
20 approximately \$100 million less than the ESOP actually did.³

21 90. Here, Brozen did not adequately consider or investigate which elements
22 of control were actually being transferred via the sale and did not ensure that an
23 appropriate discount for lack of control was used in the valuation of AMPAM stock.

24 _____
25 ² While allocated shares should have come with a right to vote on major corporate
26 transactions, those allocated shares were a minority interest for years after the ESOP
27 Transaction. Thus even these shareholder voting rights were illusory.

28 ³ The reductions for lack of control illustrated here assume that the Company did not
have a significant debt burden prior to the ESOP Transaction.

1 91. *Second*, Buddy Parks retained a hidden “significant ownership interest”
2 (not just operational control) in AMPAM from 2019 onwards even though the ESOP’s
3 reports filed with the government stated that the ESOP owned a 100% interest in
4 AMPAM. In other words, while AMPAM reported to the government that the the
5 Company became 100% ESOP owned in 2019, a press release dated October 4, 2023
6 painted a very different picture: that the Buddy Parks had always kept a “significant
7 ownership stake in AMPAM.”

8 92. Indeed, the October 4, 2023 press release announcing the sale of AMPAM
9 back to Buddy Parks and Gemspring (through the shell corporation created in April of
10 2023) *does not even mention* the ESOP as an owner of AMPAM stock in October of
11 2023.

12 93. Buddy Parks, therefore, never sold all of his interests in AMPAM to the
13 ESOP as reported in governmental filings; he retained a significant ownership stake in
14 AMPAM from 2019 to 2023.

15 94. This undisclosed and significant ownership interest that Buddy Parks
16 retained for years after the ESOP Transaction indicates that the price the ESOP paid
17 was more than fair market value.

18 95. *Third*, the \$247 million price was based on financial information provided
19 by the Parks Brothers (who together ran and controlled AMPAM). Each of them had a
20 personal interest in painting the rosier picture possible of AMPAM’s financial
21 situation and, on information and belief, did so. As Trustee, Defendant Brozen had a
22 responsibility to carefully scrutinize the financial projections and other information
23 supplied by the Parks Brothers and other Company insiders, rather than simply taking
24 them at face value. However, no evidence of such scrutinization of the valuation has
25 been provided in response to Plaintiffs’ counsel’s pre-litigation request for information
26 relating to the Transaction.

1 96. *Fourth*, the Transaction saddled the ESOP with an enormous debt burden
2 that was effectively underwritten by the Company, which sapped its cash flows and
3 growth potential as an ongoing business enterprise.

4 97. More specifically, to finance the Transaction, the ESOP entered into a
5 financing arrangement with the Sellers and with AMPAM on or around July 15, 2019.
6 According to the Transaction terms, AMPAM contributed approximately \$6.64 million
7 to the ESOP toward the purchase of AMPAM shares, directly depleting the Company's
8 assets. Next, AMPAM loaned approximately \$82.83 million toward the purchase of
9 AMPAM shares. Finally, the ESOP issued notes to the Sellers totaling approximately
10 \$157.54 million. Pursuant to the loan terms, the ESOP would make annual principal
11 and interest payments over 40 years.

12 98. The terms of the Transaction further required AMPAM to make
13 contributions in amounts sufficient for the ESOP to service the debt to the Sellers and
14 repay the Sellers. This put a tremendous financial strain on the Company, as the loans
15 required annual payments of principal and interest of approximately \$10 million per
16 year. This severe drag on the Company's cash flows also was not adequately reflected
17 in the Transaction sale price.

18 99. *Fifth*, the Company's business faced significant risks and headwinds at
19 the time of the Transaction that were not adequately reflected in the Company's
20 financial projections.

21 100. The ESOP Transaction occurred during a time of great uncertainty in the
22 housing market, especially for multifamily homes built in California, the type of
23 projects on which AMPAM works. In 2019, the California Assembly passed rent
24 control for multifamily houses with the enactment of Assembly Bill 1482. The law
25 applies to the majority of California's multifamily housing stock and caps annual rent
26 increases at 5 percent plus the rate of inflation, or 10 percent, whichever is lower. The
27 rent control law also requires a property owner to have "just cause" to evict a tenant.
28

1 101. Assembly Bill 1482 was being considered by the California legislature at
2 the time of the ESOP Transaction, and was eventually signed into law.

3 102. Additionally, in 2019, housing starts in California experienced their first
4 decline in 10 years.⁴ That year, 11% fewer multifamily homes were built.⁵ Indeed, 2018
5 was a high-water mark for multifamily construction starts in California that was
6 followed by a steady decline into at least 2021.⁶

7 103. One industry report in the summer of 2019 noted that in the last six
8 months, “developers have pulled back on new development, and half of the panelists
9 stated that they were not planning to start a new development in the next 12 months.”⁷
10 Developers expressed a more negative outlook in the 2019 survey than in 2018 in 5 of
11 the 6 geographic areas examined, with 3 of the 6 having an overall negative outlook.⁸

12 104. These substantial headwinds facing the multifamily housing industry, on
13 which AMPAM’s financial success depended, were not adequately reflected in the
14 ESOP’s purchase price of \$247 million.

15 105. Because the slump in the multi-family housing interest was not adequately
16 reflected in the Company’s financial projections, the stock suffered a sustained
17 reduction in value that was not just due to the transaction debt taken on in 2019.

18
19
20 ⁴ *Preliminary 2019 Annual Permit Statistics Indicate Housing Shortage*, Constr. Indus.
21 Rsch. Bd. (Feb. 10, 2020), <https://www.cirbreport.org/2019-housing-shortage>.

22 ⁵ *Id.*

23 ⁶ Hans Johnson et al., *California’s Housing Construction Picks Up Pace*, Pub. Pol’y
24 Inst. of Cal. (June 17, 2021), <https://www.pplic.org/blog/californias-housing-construction-picks-up-pace>.

25 ⁷ *Commercial Real Estate Survey 12*, Allen Matkins & UCLA Anderson Forecast
26 (Issue No. 25, Spring/Summer 2019),
27 [https://connect.allenmatkins.com/hubfs/AMCRES_Spring-](https://connect.allenmatkins.com/hubfs/AMCRES_Spring-Summer_2019_FINAL.pdf)
28 [Summer_2019_FINAL.pdf](https://connect.allenmatkins.com/hubfs/AMCRES_Spring-Summer_2019_FINAL.pdf).

⁸ *Id.*

1 106. Indeed from 2019 to 2020, the AMPAM stock the ESOP owned declined
2 in value by \$15.7 million.

3 107. Thereafter, the ESOP's 2021 Form 5500 reported a value of \$12.69
4 million, still significantly depressed.

5 108. Because Brozen failed to engage in an adequate investigation and failed
6 to insist on an adequate discount for the lack of control being sold, the ESOP overpaid
7 by at least as much as \$25 million and potentially more than \$100 million.

8 109. As a general rule, ERISA prohibits transactions between a retirement plan
9 (such as the ESOP here) and parties in interest affiliated with the sponsoring employer
10 (such as all Defendants here). ERISA § 406(a), 29 U.S.C. § 1106(a).

11 110. All employer contributions to the ESOP, invested in employer stock, are
12 part of employee compensation and comprise an important part of employee retirement
13 savings.

14 111. Because—and only because—an ESOP contribution qualifies as
15 employee compensation, an employer can deduct the total value of its ESOP
16 contribution from its income tax liability as an ordinary business expense. 26 U.S.C.
17 § 404; 26 C.F.R. § 1.404(a)–1(b) (2022).

18 **V. PLAINTIFFS SEEK PLAN-WIDE RELIEF**

19 112. Plaintiffs bring their claims on behalf of the Plan pursuant to ERISA
20 § 502(a)(2), 29 U.S.C. § 1132(a)(2), and as a class action pursuant to Federal Rule of
21 Civil Procedure 23 on behalf of the following Class:⁹

22 All participants in the AMPAM ESOP on or after December 28, 2017,
23 and those participants' beneficiaries, excluding Defendants and their
24 immediate family members; any fiduciary of the Plan; the officers and
25 directors of AMPAM or of any entity in which a Defendant has a

26 _____
27 ⁹ Plaintiffs reserve the right to revise the class definition and to propose other or
28 additional classes in subsequent pleadings or in his motion for class certification, after
discovery in this action.

1 controlling interest; and legal representatives, successors, and assigns of
2 any such excluded persons.

3 113. **Numerosity.** The Class satisfies the numerosity requirement because it is
4 composed of hundreds of persons. At the end of 2022, the year before it was terminated,
5 the ESOP had approximately 797 participants. The number of Class members is
6 sufficiently large that joinder of all its members is impracticable.

7 114. **Commonality.** This case presents numerous common questions of law
8 and fact, including (among other things):

- 9 a. Whether the ESOP Transaction was a prohibited transaction under
10 ERISA;
- 11 b. Whether the Sellers received more than adequate consideration in
12 connection with the ESOP Transaction;
- 13 c. Whether Defendant Brozen was a fiduciary to the ESOP as the ESOP
14 Trustee;
- 15 d. Whether Defendant Brozen engaged in a prudent investigation of the
16 ESOP Transaction and acted in the best interests of the ESOP and its
17 participants in approving the Transaction;
- 18 e. Whether AMPAM, operating through the Parks Brothers, imprudently
19 appointed Brozen as Trustee, failed to monitor Brozen, and
20 imprudently retained him as Trustee despite his fiduciary failures,
21 without taking appropriate corrective action;
- 22 f. Whether the Parks Brothers were involved in the preparation of the
23 financial projections used in appraisals of AMPAM stock that formed
24 the basis of the ESOP purchase price of \$247 million;
- 25 g. Whether the Parks Brothers and other Seller Defendants provided
26 misleading or incomplete financial information in connection with the
27 ESOP Transaction;
- 28 h. The amount of losses suffered by the ESOP as a result of the unlawful
conduct alleged herein;
- i. The proper form of equitable and injunctive relief; and

1 j. The extent to which any non-fiduciary Defendants are subject to
2 equitable remedies and relief.

3 106. **Typicality.** Plaintiffs' claims are typical of the claims of the Class because
4 (among other things): (a) they are or were employed by AMPAM and participated in
5 the ESOP; (b) Plaintiffs were injured in the same manner as other Class members in
6 connection with the ESOP Transaction and the inflated price that was paid for the
7 Company; and (c) to the extent that Plaintiffs seek relief on behalf of the Plan pursuant
8 to § 502(a)(2) of ERISA, 29 U.S.C. § 1132(a)(2), their claims are not only typical of,
9 but the same as, a claim under § 502(a)(2) brought by any other Class member.

10 107. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the
11 Class and is committed to the vigorous representation of the Class. Plaintiffs' retained
12 counsel, Cohen Milstein Sellers and Toll PLLC, are experienced in class action and
13 ERISA litigation, and Plaintiffs and their counsel have no interests antagonistic to or
14 in conflict with the interests of the Class.

15 108. **Rule 23(b)(1)(A).** Class certification is appropriate pursuant to Federal
16 Rule of Civil Procedure 23(b)(1)(A). Fiduciaries of ERISA-covered plans have a legal
17 obligation to act consistently with respect to all similarly situated participants and to
18 act in the best interests of plan participants. This action challenges whether Defendants
19 acted consistently with their fiduciary duties or otherwise violated ERISA as to the
20 ESOP as a whole. As a result, prosecution of separate actions by individual members
21 would create the risk of inconsistent or varying adjudications that would establish
22 incompatible standards of conduct for Defendants relating to the ESOP.

23 109. **Rule 23(b)(1)(B).** Class certification is also appropriate pursuant to
24 Federal Rule of Civil Procedure 23(b)(1)(B). Administration of an ERISA-covered
25 plan requires that all similarly situated participants be treated the same. Resolving
26 whether Defendants fulfilled their fiduciary obligations to the ESOP and engaged in
27 prohibited transactions with respect to the ESOP would, as a practical matter, be
28 dispositive of the interests of the other participants in the ESOP and would substantially

1 impair or impede their ability to protect their interests if they are not made parties to
2 this litigation by being included in the Class. Further, the relief granted by the Court,
3 including any equitable relief, injunctive relief, or accounting of profits, may be
4 dispositive of the interests of other class members.

5 110. **Rule 23(b)(2).** Additionally and alternatively, class certification is
6 appropriate pursuant to Federal Rule of Civil Procedure 23(b)(2) because Defendants
7 have acted or refused to act on grounds generally applicable to the Class, making
8 appropriate declaratory and injunctive relief with respect to the Class as a whole. This
9 action challenges whether Defendants acted consistently with their fiduciary duties or
10 otherwise violated ERISA as to the ESOP as a whole. The members of the Class are
11 entitled to declaratory and injunctive relief to remedy Defendants' fiduciary violations.

12 111. **Rule 23(b)(3).** Additionally and alternatively, class certification is
13 appropriate pursuant to Federal Rule of Civil Procedure 23(b)(3) because questions of
14 law and fact common to all Class members predominate over any questions affecting
15 individual members of the Class and because a class action is superior to other available
16 methods for the fair and efficient adjudication of this action. Common questions related
17 to liability will necessarily predominate over any individual questions because
18 Defendants' duties and obligations were uniform as to all ESOP participants and
19 therefore all members of the Class, and whether Defendants breached those duties will
20 center on their conduct rather than the conduct of individual class members. Common
21 questions as to remedies will likewise predominate over any individual issues in light
22 of the plan-wide claims asserted in the action and the nature of the relief sought.
23 Further, a class action is superior to other available methods for resolving the
24 controversy because the claims are brought on behalf of the ESOP, involve an ESOP
25 Transaction impacting all Class members, and the issues in this litigation will be most
26 efficiently resolved in a single proceeding rather than multiple proceedings. The losses
27 suffered by individual Class members are small compared to the expense and burden
28 of individual prosecution of this action. As such, Class members do not have an interest

1 in individually prosecuting their claims, and Plaintiffs are unaware of any similar
2 action filed by another member of the Class. Proceeding on a class-wide basis in this
3 forum will be desirable, manageable, and obviate the need for unduly duplicative
4 litigation which might result in inconsistent judgments.

5 112. The names and addresses of the Class members are available from the
6 ESOP and/or the Company, and notice can be provided to all members of the Class to
7 the extent required by Federal Rule 23.

8 VI. CAUSES OF ACTION

9 Count I

10 **Prohibited Transaction in Violation of ERISA § 406(a), 29 U.S.C. § 1106(a)** 11 **(Against Neil Brozen, the Parks Brothers, and AMPAM)**

12 113. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

13 114. ERISA § 406(a)(1), 29 U.S.C. § 1106(a)(1) requires that a plan fiduciary
14 “shall not cause the plan to engage in a transaction, if he knows or should know that
15 such transaction constitutes a direct or indirect (A) sale or exchange, or leasing, of any
16 property between the plan and a party in interest,” or a “(D) transfer to, or use by or for
17 the benefit of a party in interest, of any assets of the plan.”

18 115. Each of the Defendants named in this Count was a fiduciary as discussed
19 in Section III.C-E above.

20 116. The ESOP Transaction involved the sale of interest of several “parties in
21 interest” as discussed in Section III.C-F above.

22 117. As Trustee, Defendant Brozen approved the ESOP Transaction terms,
23 including the price, in violation of ERISA § 406(a)(1)(A) and (D), 29 U.S.C.
24 § 1106(a)(1)(A) and (D) because he failed to conduct a prudent investigation of the
25 sale price and other material terms of the Transaction. He approved the Transaction for
26 more than fair market value and failed to ensure that the ESOP paid no more than fair
27 market value for the AMPAM stock that was sold by the Seller Defendants.
28 Accordingly, Defendant Brozen is also liable for violation of the foregoing prohibited
transaction provisions.

1 118. As set forth in Section IV above, the ESOP paid more than fair market
2 value and there was not a prudent and loyal investigation into the sale price and other
3 material terms of the Transaction by Defendant Brozen on behalf of the ESOP.

4 119. In addition, the Parks Brothers (and in particular, Buddy Parks) retained
5 control over AMPAM, its Board, and Brozen, and their actions are also “but for causes”
6 of the ESOP Transaction given that they created the ESOP solely for the purpose of
7 buying their AMPAM interest and that they hand-picked Brozen as Trustee despite the
8 fact that he has been sued for violating ERISA as an ESOP trustee multiple times,
9 including by the Secretary of Labor.

10 120. In addition, the Parks Brothers provided Brozen with unreasonably
11 optimistic projections of future growth that resulted in the ESOP paying an inflated
12 price; the Parks Brothers prenegotiated with Brozen that Buddy Parks would remain as
13 Chairman of the Board, which caused the ESOP Transaction to receive a non-
14 controlling interest in AMPAM, yet the \$247 million price the ESOP paid was not
15 adequately discounted for that lack of control. In particular, Buddy Parks retained a
16 hidden and substantial ownership interest in AMPAM that was not disclosed until
17 2023.

18 121. Further, each of the Parks Brothers received significant consideration in
19 connection with the ESOP Transaction and was familiar with the terms of, and parties
20 to, the Transaction. As such, each of them had actual or constructive knowledge that:
21 (i) the Transaction constituted a direct or indirect sale of property between the ESOP
22 and parties affiliated with AMPAM (ERISA “parties in interest”); (ii) the ESOP loans
23 constituted a use of Plan assets by or for the benefit of themselves and other parties in
24 interest; (iii) the ESOP Transaction price was more than fair market value because *inter*
25 *alia*, the Parks Brothers were not relinquishing full control of AMPAM; (iv) at least
26 Buddy Parks retained an ownership interest in AMPAM after it was supposed to be
27 100% ESOP owned. Yet, in spite of such actual or constructive knowledge, the Parks
28 Brothers took acts to consummate the ESOP Transaction and/or influenced Brozen to

1 do so. The Parks Brothers are thus liable for violations of ERISA § 406(a)(1)(A) and
2 (D), 29 U.S.C. § 1106(a)(1)(A) and (D).

3 122. Defendants Brozen, the Parks Brothers, and AMPAM thus caused the
4 ESOP to pay an inflated price and take on \$240 million in debt through the ESOP
5 Transaction, which resulted in substantial losses to the ESOP and its participant
6 accounts. They are thus each subject to appropriate relief under ERISA § 502(a)(2), 29
7 U.S.C. § 1132(a)(2) and ERISA § 409, 29 U.S.C. § 1109 for these violations of ERISA.

8 123. In addition or alternatively, each of them is liable as co-fiduciaries as set
9 forth in Count IV.

10 **Count II**

11 **Prohibited Transaction in Violation of ERISA § 406(b), 29 U.S.C. § 1106(b)** 12 **(Against Charles E. Parks III/Buddy Parks and John D. Parks)**

13 124. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

14 125. Each of the Defendants named in this Count was a fiduciary as discussed
15 in Section III.D above.

16 126. ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1) prohibits a fiduciary from
17 “deal[ing] with the assets of the plan in his own interest or for his own account.”

18 127. As set forth in Sections III.D and IV above, the Parks Brothers sold their
19 interest in AMPAM and dealt with ESOP assets in their own interest within the
20 meaning of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1). ERISA § 406(b)(2), 29 U.S.C.
21 § 1106(b)(2) mandates that a plan fiduciary shall not “act in any transaction involving
22 the plan on behalf of a party (or represent a party) whose interests are adverse to the
23 interests of the plan or the interests of its participants.”

24 128. As set forth in Sections III.D and IV above, the Parks Brothers acted in
25 their own interests and adverse to ESOP’s interests in connection with the ESOP
26 Transaction by arranging to receive more than adequate consideration for their shares,
27 in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).
28

1 129. ERISA § 406(b)(3), 29 U.S.C. § 1106(b)(3) prohibits a plan fiduciary
2 from “receiv[ing] any consideration for his own personal account from any party
3 dealing with such plan in connection with a transaction involving the assets of the
4 plan.”

5 130. As set forth in Sections III.D and IV above, the Parks Brothers
6 orchestrated the ESOP Transaction and caused themselves to receive consideration
7 (indeed, more than adequate consideration) for their own personal accounts in
8 connection with the ESOP Transaction, in violation of ERISA § 406(b)(3), 29 U.S.C.
9 § 1106(b)(3).

10 131. The Parks Brothers are therefore subject to appropriate relief under
11 ERISA § 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) and (3) and ERISA § 409, 29
12 U.S.C. § 1109 for these violations of ERISA.

13 **Count III**

14 **Breach of Fiduciary Duties Under ERISA § 404(a)(1)(A) and (B),**
15 **29 U.S.C. § 1104(a)(1)(A) and (B)**

16 **(Against Neil Brozen, Charles E. Parks III/Buddy Parks, John D. Parks, John**
17 **G. Mavredakis, AMPAM, and the other Board Defendants)**

18 132. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

19 133. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A) requires that a plan
20 fiduciary act “for the exclusive purpose of providing benefits to participants and [the]
21 beneficiaries [of the plan.]”

22 134. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B) requires that a plan
23 fiduciary act “with the care, skill, prudence, and diligence under the circumstances then
24 prevailing that a prudent [person] acting in a like capacity and familiar with such
25 matters would use in the conduct of an enterprise of a like character and with like
26 aims.”

27 135. In the context of a sale of the sponsoring company/employer to an ESOP,
28 the duties of loyalty under ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A) and
prudence under ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B) require a fiduciary

1 ESOP trustee to undertake a prudent and diligent investigation of the sale price and
2 other transaction terms and all underlying financial projections and assumptions, in the
3 exclusive interest of the ESOP and its participants without regard to the interests of
4 company insiders who retained the trustee, to ensure that the ESOP and its participants
5 pay no more than adequate consideration for the company's assets.

6 136. Each of the Defendants named in this Count was a fiduciary as discussed
7 in Section III.C-F above.

8 137. Defendant Brozen failed to undertake a prudent and appropriate
9 investigation of the terms of the ESOP Transaction and effectively gave a wink and a
10 nod to the Parks Brothers who hired Defendant Brozen, instead of serving in a truly
11 independent capacity for the exclusive benefit of the ESOP and its participants.

12 138. As alleged above, a prudent and loyal investigation of the relevant ESOP
13 Transaction terms and underlying financial projections and assumptions in connection
14 with the ESOP Transaction would have revealed that the price the ESOP paid was
15 greater than the fair market value of the AMPAM stock at the time of the Transaction.

16 139. A prudent and loyal investigation by Defendant Brozen also would have
17 revealed that the Transaction sale price did not adequately reflect the fact that the ESOP
18 gained only limited control over the Company.

19 140. A prudent and loyal investigation by Defendant Brozen also would have
20 revealed that the enormous debt burden taken on by the ESOP to complete the ESOP
21 Transaction, and the ongoing responsibility of the Company to underwrite that debt,
22 was inconsistent with the Transaction sale price and rendered the price inflated.

23 141. A prudent and loyal investigation by Defendant Brozen also would have
24 critically examined the financial projections and other information provided by the
25 Sellers. However, Defendant Brozen failed to do so and failed to take proper and
26 necessary measures to "look under the hood."

27 142. By failing to act prudently and loyally in participants' best interests in
28 connection with the ESOP Transaction and the ongoing management of the ESOP

1 (including the subsequent resale of the Company for less than it was originally
2 purchased), Defendant Brozen breached his fiduciary duties under ERISA
3 § 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B) and caused losses to the
4 ESOP and the individual retirement accounts of the participants in the ESOP.

5 143. The Parks Brothers selected Brozen as Trustee not because they believed
6 it was in the best interest of the ESOP and its participants, but because they believed
7 he would be easy to deal with and would approve the Transaction (or was likely to do
8 so) on terms that were favorable to the Sellers rather than in the best interest of the
9 ESOP and its participants. In so doing, the Parks Brothers violated their duties of
10 loyalty and prudence to ESOP participants.

11 144. By acting in their own self interest and ensuring that Buddy Parks
12 remained Chairman of the Board and that John Parks retained control over AMPAM
13 through his role as President, the Parks Brothers violated their duties of loyalty and
14 prudence to ESOP participants.

15 145. By providing overly aggressive projections of growth to Defendant
16 Brozen, the Parks Brothers violated their duty of undivided loyalty to participants
17 which included the duty of complete candor and honesty. Indeed, when Plaintiffs'
18 counsel asked for the valuation reports for AMPAM stock, this information was
19 refused by AMPAM, which was controlled by the Parks Brothers.

20 146. Any fiduciary with the power to appoint and/or remove another fiduciary
21 has an obligation to monitor the appointed fiduciary to ensure that he/she is acting in
22 compliance with the terms of the Plan and in accordance with ERISA. *See* 29 C.F.R.
23 § 2509.75-8 (FR-17) (2022). If the appointed fiduciary has violated or continues to
24 violate ERISA, the monitoring fiduciary must remove the appointed fiduciary and take
25 any other remedial action necessary to address the ERISA violations.

26 147. The Trust Agreement states that AMPAM appointed Defendant Brozen,
27 which means AMPAM had an obligation to monitor Brozen in connection with the
28 ESOP Transaction.

1 148. Additionally, the Trust Agreement for the ESOP provides, “[u]pon
2 resignation or removal of the Trustee, the Board of Directors shall appoint a successor
3 trustee or trustees.” The Trust Agreement also states, “[t]he Company (through its
4 Board of Directors) shall have the right at any time” to modify or terminate the Trust
5 Agreement.

6 149. The Parks Brothers, John G. Mavredakis, AMPAM, and the other Board
7 Defendants breached their fiduciary duty to monitor Defendant Brozen in compliance
8 with ERISA § 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B) and other
9 applicable ERISA regulations. Among other things, the Parks Brothers, John G.
10 Mavredakis, AMPAM, and the other Board Defendants:

- 11 a. failed to monitor and evaluate the performance of Defendant
12 Brozen as Trustee, or have a system in place for doing so, to ensure
13 that Defendant Brozen conducted a sufficiently rigorous review of
the ESOP Transaction in compliance with ERISA;
 - 14 b. knew and failed to correct the fact that Defendant Brozen was
15 acting based on unrealistic and unreliable financial projections for
16 AMPAM’s future revenues, cash flows, and earnings;
 - 17 c. knew and failed to correct the fact that the Transaction sale price
18 approved by Defendant Brozen was inflated and exceeded the fair
market value of the Company;
 - 19 d. failed to further investigate Defendant Brozen’s appropriateness
20 and competence as Trustee based on problems associated with his
work in connection with other transactions (*see supra* ¶ 56);
 - 21 e. failed to remove Defendant Brozen when they knew that his
22 performance was inadequate for the reasons described herein and
23 elsewhere in this Complaint; and
 - 24 f. failed to take other appropriate remedial measures to address
25 Defendant Brozen’s fiduciary failures as Trustee and the improper
26 approval of the ESOP Transaction (and subsequent resale
27 transaction).
- 28

1 150. Had the Parks Brothers, John G. Mavredakis, AMPAM, and the other
2 Board Defendants properly monitored Brozen, the ESOP would not have overpaid (or
3 at the very least would have overpaid less).

4 151. Defendant Brozen, the Parks Brothers, AMPAM, and the other Board
5 Defendants caused substantial lossess to the ESOP and thus are subject to appropriate
6 relief under ERISA § 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) and (3) and ERISA
7 § 409, 29 U.S.C. § 1109 for these fiduciary breaches in violation of ERISA.

8 **Count IV**
9 **Co-Fiduciary Liability Under ERISA § 405(a)(1) and (a)(3), 29 U.S.C.**
10 **§ 1105(a)(1) and (a)(3)**
11 **(Against Charles E. Parks III/Buddy Parks, John D. Parks, John G.**
12 **Mavredakis, AMPAM, and the other Board Defendants)**

13 152. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

14 153. Each of the Defendants named in this Count was a fiduciary as discussed
15 in Section III.C-F above.

16 154. ERISA § 405(a)(1), 29 U.S.C. § 1105(a)(1) provides that a fiduciary
17 “with respect to a plan shall be liable for a breach of fiduciary responsibility of another
18 fiduciary with respect to the same plan . . . if he participates knowingly in, or
19 knowingly undertakes to conceal, an act or omission of such other fiduciary.”

20 155. Each of the Defendants named in this Count was part of the highest-level
21 management at AMPAM and were involved in and directed the preparation of the
22 financial projections underlying the stock appraisal AMPAM relied upon in
23 determining (i) the purchase price the ESOP paid for the Company; and (ii) the
24 subsequent valuations of AMPAM stock at year-end 2019, 2020, 2021, and 2022.

25 156. Given their intimate knowledge of AMPAM’s business, their unique
26 access to Company financial information (and involvement in the preparation of such
27 information), and their appointment of Defendant Brozen, the Defendants named in
28 this Count knew that the price the ESOP paid for AMPAM stock was inflated and

1 exceeded fair market value and knew that Defendant Brozen failed to prudently and
2 appropriately carry out his duties as Trustee in approving the ESOP Transaction.

3 157. Nonetheless, they knowingly participated in the fiduciary violations of
4 Defendant Brozen and concealed them from the ESOP's participants and others by
5 allowing Defendant Brozen to continue to serve as Trustee and allowing the ESOP
6 Transaction to go forward without disclosing, addressing, or remedying those fiduciary
7 violations.

8 158. Under ERISA § 405(a)(1), 29 U.S.C. § 1105(a)(1), each of the
9 Defendants named in this Count are liable as co-fiduciaries for Defendant Brozen's
10 fiduciary violations.

11 159. Had they not violated their co-fiduciary duties, the ESOP would not have
12 suffered the losses alleged herein. They are therefore subject to appropriate relief under
13 ERISA § 409, 29 U.S.C. § 1109 and ERISA § 502(a)(2) and (3), 29 U.S.C.
14 § 1132(a)(2) and (3) based on their co-fiduciary liability.

15 **Count V**

16 **Equitable Relief Under ERISA § 502(a)(3), 29 U.S.C § 1132(a)(3)**
17 **(Against Seller Defendants)**

18 160. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

19 161. Under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), a court may award
20 "other appropriate equitable relief" to redress "any act or practice" that violates ERISA.
21 A defendant may be held liable under this section regardless of whether it is a fiduciary.

22 162. A non-fiduciary transferee of ill-gotten assets of the Plan is subject to
23 equitable restitution of those assets and disgorgement of any profits thereon if the non-
24 fiduciary had actual or constructive knowledge of the circumstances that rendered the
25 transaction or payment unlawful.

26 163. The Sellers knowingly participated in and profited from the fiduciary
27 breaches and prohibited transactions alleged herein with full knowledge that their stake
28 in the Company was being unlawfully acquired for greater than fair market value.

1 164. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), the Court should
2 order restitution of the consideration Sellers received as a result of the ESOP
3 Transaction and disgorgement of any profits thereon, regardless of whether or not the
4 Sellers were fiduciaries to the ESOP. As discussed above, the consideration that the
5 Sellers received impermissibly exceeded the fair market value of their shares.
6 Moreover, the Sellers had actual or constructive knowledge that they were receiving
7 greater than fair market consideration based on, *inter alia*, (i) their personal familiarity
8 with the value of their own equity interests; (ii) their access to the Company’s books
9 and records; (iii) their inside knowledge of confidential business and financial
10 information pertaining to AMPAM; (iv) their status as officers or directors of the
11 Company, to the extent they held those roles; and (v) their close personal and/or family
12 relationships to other company insiders.

13 165. The Plan Document contemplates that some or all of the Sellers would
14 invest the proceeds of the ESOP Transaction in “qualified replacement property”
15 pursuant to Section 1042 of the Internal Revenue Code in order to avoid capital gains
16 tax on the sale of their AMPAM stock to the ESOP. Under I.R.C. Section 1042, the
17 gains on the sale of the stock to the ESOP are taxed when the qualified replacement
18 property is sold, and capital gains taxes can be entirely eliminated if the qualified
19 replacement property is held by the Sellers until death. Thus, on information and belief,
20 any Sellers who invested the proceeds in qualified replacement property continue to
21 hold such property to avoid the adverse tax consequences.

22 166. Each Seller who sought deferral of capital gains pursuant to I.R.C. Section
23 1042 was required to sign a Statement of Purchase that identified and declare the
24 specific securities that represented the qualified replacement property that was
25 purchased to avoid taxes on the receipt of proceeds from the ESOP Transaction. The
26 Statement of Purchase for each Seller who elected an I.R.C. Section 1042 deferral
27 would be filed with his or her tax return.
28

1 167. Thus, all consideration to the Sellers in connection with the ESOP
2 Transaction and all profits thereon are in the current possession of the Sellers and are
3 traceable to its current location.

4 168. The Sellers cannot retain this consideration to the extent it exceeded the
5 fair market value of their shares.

6 **Count VI**
7 **Illegal Agreement to Exculpate Fiduciary Liability in violation of**
8 **ERISA § 410(a), 29 U.S.C. § 1110(a)**
9 **(Against Defendants Brozen, Charles E. Parks III/Buddy Parks and AMPAM)**

10 169. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

11 170. ERISA § 410(a), 29 U.S.C. § 1110(a) provides in relevant part (with
12 exceptions not applicable here) that “any provision in an agreement or instrument
13 which purports to relieve a fiduciary from responsibility or liability for any
14 responsibility, obligation, or duty under this part [ERISA Part IV] shall be void as
15 against public policy.”

16 171. AMPAM adopted and/or approved terms of the ESOP Plan Document
17 that state that the Company will indemnify any officer and director of AMPAM and all
18 of its affiliates for “any loss, cost, expense, or other damage, including reasonable
19 attorneys’ fees, suffered by such Indemnitee resulting from or incurred with respect to
20 any legal proceedings related in any way to the performance of services by the
21 Indemnitee.”

22 172. Buddy Parks and AMPAM adopted and/or approved the Trust Agreement
23 with Defendant Brozen, which states that AMPAM will indemnify Defendant Brozen
24 for “any loss, cost, expense or other damage, including attorney’s fees, suffered by the
25 Trustee and resulting from or incurred with respect to any legal proceedings related in
26 any way to the performance of services by the Trustee.”

27 173. The indemnification and defense provisions in the ESOP Plan Document
28 and the Trust Agreement violate ERISA § 410(a), 29 U.S.C. § 1110(a) to the extent
that they purport to relieve Defendant Brozen and the Board Defendants of

1 responsibility or liability for violations of ERISA, including the ERISA violations
2 alleged herein.

3 174. As such, these provisions must be declared void or inapplicable to the
4 claims alleged herein.

5 **COUNT VII**
6 **Failure to Comply with California Labor Code Section 1198.5**
7 **(Against AMPAM)**

8 175. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

9 176. California Labor Code Section 1198.5(a) provides, “Every current and
10 former employee, or his or her representative, has the right to inspect and receive a
11 copy of the personnel records that the employer maintains relating to the employee’s
12 performance or to any grievance concerning the employee.”

13 177. California Labor Code Section 1198.5(b)(1) further provides, “Upon a
14 written request from a current or former employee, or his or her representative, the
15 employer shall . . . provide a copy of the personnel records, at a charge not to exceed
16 the actual cost of reproduction, not later than 30 calendar days from the date the
17 employer receives the request.”

18 178. An employer’s failure to comply within this timeframe entitles a current
19 or former employee to recover a seven hundred fifty dollar \$750 penalty from the
20 employer. Cal. Lab. Code § 1198.5(k).

21 179. Pursuant to California Labor Code § 1198.5, Plaintiffs’ counsel requested
22 personnel files for Plaintiff Alfredo Ramirez and other represented parties on April 2,
23 2024. Defendants failed to provide the requested documents within the 30 days of
24 receipt of Plaintiff Ramirez’s request as required by California Labor Code §
25 1198.5(b)(1).

26 **VII. PRAYER FOR RELIEF**

27 180. Plaintiffs, on behalf of themselves, the ESOP, and the Class, pray that
28 judgment be entered against Defendants on each Count and that the Court grant the
following relief:

- 1 A. Declare that Defendants have violated ERISA as alleged herein;
- 2 B. Enjoin Defendants from engaging in further such violations of ERISA;
- 3 C. Order Defendants to restore all losses resulting from their ERISA
4 violations;
- 5 D. Order the Seller Defendants to disgorge all profits in connection with the
6 ESOP Transaction;
- 7 E. Order other appropriate equitable relief, including but not limited to
8 reforming or rescinding the Transaction, a surcharge against Defendants,
9 an accounting for profits, and a constructive trust and/or equitable lien on
any funds wrongfully held by any of the Defendants;
- 10 F. Enjoin the Defendants from dissipating any of the proceeds they received
11 from the ESOP Transaction held in their actual or constructive possession
12 until the ESOP participants' rights can be adjudicated;
- 13 G. Enjoin the Defendants from transferring or disposing of any of the
14 proceeds they received from the ESOP Transaction to any person or entity,
15 which would prejudice, frustrate, or impair the ESOP participants' ability
16 to recover the same;
- 17 H. Void the indemnification and defense provisions challenged in Count VI;
- 18 I. Require Defendants to pay attorneys' fees and costs pursuant to ERISA
19 § 502(g), 29 U.S.C. § 1132(g) and/or order payment of fees and expenses
to Plaintiffs' counsel on the basis of the common benefit or common fund
doctrine out of any money recovered for the Class;
- 20 J. Enter a monetary judgment against AMPAM in favor of Plaintiff
21 Ramirez for \$750, plus attorneys' fees and costs pursuant to California
22 Labor Code § 1198.5(l);
- 23 K. Award pre-judgment interest and post-judgment interest as appropriate;
24 and
- 25 L. Award such other and further relief that the Court determines is appropriate
26 pursuant to ERISA § 502(a)(2) and/or (a)(3), 29 U.S.C. § 1132(a)(2)
27 and/or (a)(3), or pursuant to Rule 54(c) of the Federal Rules of Civil
28 Procedure, or that is equitable and just.

DEMAND FOR JURY TRIAL

1 Plaintiffs hereby demand trial by jury on all issues so triable, pursuant to Rule
2 38 of the Federal Rules of Civil Procedure.

3 DATED: May 16, 2024

Respectfully Submitted,

4
5 By: /s/ Shaun P. Martin

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