

The Honorable Judge Ronald B. Leighton

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HENRY G. LUKEN III,

No. 3:16-cv-05214-RBL

Plaintiff,

vs.

CHRISTENSEN GROUP INCORPORATED,
a Washington corporation; DAVID H.
CHRISTENSEN; JOE F. FOGGIA; PAT
WITHEE; and DEAN ANDERSON,

**DEFENDANTS CHRISTENSEN GROUP,
INC., DAVID CHRISTENSEN, PAT
WITHEE, AND JOE FOGGIA'S
ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIMS TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Defendants.

JURY DEMAND

Defendants Christensen Group, Inc., David H. Christensen, Pat Withee, and Joe Foggia answer plaintiff Henry G. Luken III's Amended Complaint and allege as follows, without assuming any burden of proof that plaintiff otherwise bears:

**SUMMARY OF ALLEGATIONS SUPPORTING DEFENDANTS' ANSWER,
AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

1. Henry G. Luken III's \$170 million fortune never seemed to be enough for him. So he raided Christensen Shipyards Ltd. ("CSL") by pushing the company into financial ruin and then buying all of its assets for cheap. In the process, Luken put hundreds of people out of work, stole a company that the Christensen family had spent

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1 decades building, and destroyed the Christensen family's legacy in Southwest
2 Washington. He has now filed this \$30 million lawsuit in hopes of taking the building
3 that houses CSL's shipbuilding operations and moving what is left of CSL back to his
4 home state of Tennessee.

5 2. From 1985 until 2015, CSL built midsize, composite yachts in
6 Vancouver, Washington. CSL was a relatively small family business and employed
7 hundreds of people throughout the area. Thanks to the quality craftsmanship of its
8 workers and to the leadership of David Christensen, CSL eventually developed a
9 reputation as one of the best composite yacht builders in the world.

10 3. Composite yachts are very expensive to build, and have a small profit
11 margin. Only the very wealthy can afford to buy yachts. So, with a small profit margin
12 and a narrow clientele, finding buyers and keeping workers employed at a company like
13 CSL was no small task.

14 4. Luken was a customer of CSL and learned about the difficulties that
15 faced small shipbuilders like CSL. In 2003, he offered to use his own personal wealth
16 to act as a financier for CSL's shipbuilding operations. In exchange, he would take
17 50% of CSL's stock and serve as one of three members of CSL's board of directors.
18 Due to CSL's susceptibility to fluctuations in the U.S. economy and the Christensen
19 family's desire to spare its employees from any corresponding layoffs, the Christensen
20 family agreed to Luken's proposal.

21 5. That turned out to be a bad idea. Once Luken worked his way into CSL,
22 he started to use the company to benefit himself personally. For example, Luken
23 routinely skimmed the profit on the sale of CSL "spec boats" that he funded. He also
24 forced CSL to give him a substantial discount on the purchase of a yacht that a
25 customer had traded in.

26

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1 6. Unfortunately, the Christensen family could not stop Luken. Luken
2 wielded considerable power at CSL, not only because of his position as a 50% owner
3 and board member of CSL, but also because he acted as the financier of CSL's
4 shipbuilding operations.

5 7. The problem worsened when the U.S. economy went into a deep
6 recession in 2008. Once the recession hit, Luken saw an opportunity to take CSL for
7 himself and edge the Christensen family out.

8 8. Luken started by cutting off all funding for the company – the very
9 funding that he had promised to provide in exchange for his 50% ownership interest in
10 CSL.

11 9. By 2010, Luken's conduct had put CSL into serious financial distress.
12 Adding to it, CSL's founder and business leader, David Christensen, was diagnosed
13 with Alzheimer's disease and could no longer manage the company.

14 10. Luken then claimed to have a plan to "save the company." Luken's plan
15 was to (1) restart construction on a personal yacht that he had contracted to build with
16 CSL; and (2) have CSL build similar yachts for two of his best friends – one of which
17 was a billionaire listed on the Forbes 400 list. This, Luken claimed, would provide
18 CSL with an ongoing income while the U.S. economy recovered.

19 11. The problem, however, was that these were unfair insider deals for
20 Luken and his friends. Indeed, Luken insisted that CSL sell each of the three yachts for
21 approximately \$9 million less than it would cost CSL to even build them. When CSL's
22 officers – the defendants in this case – tried to tell Luken about the problems that these
23 deals would create for the company over the long term, Luken used his position in the
24 company, and high pressure tactics, to force CSL into the deals.

25 12. Not long after forcing CSL into those insider deals, Luken stole
26 approximately \$5 million that his billionaire friend, Forrest Preston, had entrusted him

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1 with to build Preston’s CSL yacht. Luken spent the money on a personal airplane, six
2 exotic cars, and to pay off his personal credit card charges. Not surprisingly, Preston
3 then halted construction on his yacht and cut off all funding to CSL on the yacht for
4 over a year.

5 13. Eventually, Luken and Preston worked out a deal to pay back the stolen
6 funds. But rather than repay Preston himself, Luken pocketed the money and caused
7 CSL to give Preston a \$5 million credit on the purchase of his yacht.

8 14. By 2014, Luken’s conduct had sent CSL into an economic tailspin. This
9 had been Luken’s plan all along. Luken then claimed, once again, that he could “save
10 the company” by funding employee payroll and medical benefits and by fulfilling
11 CSL’s obligations to its customers. “Saving the company,” however, would require the
12 Christensen family to turn over the rest of their shares in CSL to Luken. In addition,
13 Luken demanded that the Christensen family’s land holding company, Christensen
14 Group, Inc. (“CGI”), give him the deed to the building that housed CSL’s shipbuilding
15 operations.

16 15. Giving Luken the deed to the shipyard would have given him a major
17 financial windfall. But shutting down CSL would have deprived CSL’s employees of
18 paychecks, benefits, and ongoing employment. It also would have left CSL’s
19 customers without the ships they had been promised and had partially paid for.
20 Allowing those things to happen would have violated one of the Christensen family’s
21 core values and tainted David Christensen’s legacy. So, the Christensen family
22 reluctantly agreed to Luken’s terms. Luken, the Christensen family, and CGI then
23 signed a written agreement incorporating Luken’s terms in December 2014. By
24 entering into the agreement, the Christensen family was committing to give Luken all
25 of the company’s assets and their shipyard building in return for Luken’s performance
26

1 under the agreement to protect CSL's employees, creditors, and boat owners and to
2 preserve the reputation of the Christensen Yachts name.

3 16. But Luken then realized he could take the company for much cheaper.
4 So he reneged on the agreement and shut CSL's doors, thereby putting CSL's workers
5 out of work. Luken then tried to renegotiate the terms of an even more favorable deal
6 for himself.

7 17. The Christensen family, however, refused to renegotiate the agreement.
8 This – as Luken planned – created a deadlock between CSL's only two remaining board
9 members: Luken and defendant Joe Foggia. With the deadlock in place, Luken filed a
10 lawsuit to place CSL into involuntary receivership.

11 18. A receiver was later appointed, and Luken bought the remaining assets
12 of CSL for \$5.5 million. He took on none of CSL's debt.

13 19. But Luken still did not have title to the shipyard that CGI owned. So
14 Luken filed this lawsuit for \$30 million against the officers and directors of CSL, along
15 with CGI. Luken now hopes to leverage the threat of the lawsuit to secure title to the
16 CGI shipyard. Once Luken obtains the CGI shipyard, he plans to sell it and move
17 shipbuilding operations to Tennessee.

18 **SPECIFIC ALLEGATIONS SUPPORTING DEFENDANTS' ANSWER,
19 AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

20 The allegations supporting defendants' answer, affirmative defenses, and
21 counterclaims in this action are more fully alleged below.

22 **I. Plaintiff Henry Luken – corporate raider.**

23 20. Luken amassed a \$170 million fortune as a telecommunications and TV
24 mogul. He owns or has owned numerous cable television stations, along with a portion
25 of the NBC network.

1 21. Luken is a corporate raider. His raid on CSL was not his first. For
2 example, in 2013, Luken Communications, a company owned by Luken, was hit with a
3 \$47.4 million jury verdict in Arkansas for Luken’s fraudulent transfer of assets.

4 22. In that case, Luken had sold the rights in one of his cable television
5 stations to a company called Equity Media. Equity Media then began to experience
6 severe cash shortages. In early 2008, Luken managed to work his way into Equity
7 Media as its President, Chief Executive Officer, and Chairman of the Board. Luken
8 then announced that he had a proposal to “save the company.” His proposal, as it
9 turned out, was for his company, Luken Communications, to buy the cable station back
10 from Equity Media for only \$18.5 million. Equity Media would then have the option to
11 repurchase the cable station for \$27.7 million within six months – providing Luken with
12 a handsome \$9.2 million profit.

13 23. Just before Luken made his proposal, an independent company had
14 issued a valuation of the cable station, setting its fair market value between \$65.9
15 million and \$155.5 million. Luken was well aware of the valuation.

16 24. Due to Equity Media’s financial distress, Equity Media had no choice
17 but to accept the deal.

18 25. Before the six month period to buy the cable station back from Luken
19 expired, Equity Media filed for bankruptcy. With Equity Media unable to exercise the
20 re-purchase option, Luken took a cable station valued at a minimum of \$69.5 million
21 for only \$18.5 million – less than one quarter of its true value.

22 26. Equity Media’s bankruptcy trustee then sued Luken Communications for
23 fraudulent transfer. A jury later awarded the trustee \$47.4 million against Luken
24 Communications. A bankruptcy judge later adopted that verdict and expressly found
25 that Luken Communications “did not take the [cable station] in good faith or for
26 reasonably equivalent value.”

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1 27. On information and belief, Luken has similarly raided other companies.

2 28. While Luken was plundering Equity Media in 2008, he was also setting
3 up CSL and the Christensen family to acquire CSL's assets for cheap.

4 **II. Christensen Shipyards and the yacht industry.**

5 29. In 1985, David Christensen formed CSL to build midsize, composite
6 yachts.

7 30. Before long, CSL became one of the world's premier yacht builders.
8 CSL employed various members of the Christensen family, and at times employed up
9 to 500 people throughout the Vancouver, Washington area.

10 31. David Christensen and the Christensen family cared deeply for their
11 employees and considered many of them to be like family. The Christensen family
12 took great pride in providing an income to hundreds of families in the Southwest
13 Washington area, and they were fiercely loyal to their employees.

14 32. That was no small feat. The yacht industry is fickle and subject to
15 market conditions. Luxury yachts typically take two to five years to build, and the
16 labor and materials costs for construction are very high. Profit margins on yacht sales
17 are thin, particularly given the amount of time that it takes to build a yacht.

18 33. Luxury yachts cost many millions of dollars to build, and banks and
19 financial institutions are rarely willing to finance a buyer's construction. Instead, the
20 buyer must pay cash. Consequently, there is a limited pool of buyers who have enough
21 wealth and liquidity to buy yachts.

22 34. Due to the luxury nature of yachts and the high risks associated with
23 yacht building and their small profit margins, banks and financial institutions are also
24 unwilling to advance substantial credit to yacht builders, like CSL, for yacht
25 construction. Consequently, CSL was typically unable to build yachts based on
26 speculation ("spec boats") that it would one day find a buyer.

1 35. Instead, CSL first needed to commit a buyer to build a yacht. Once a
2 buyer was committed to building a yacht, CSL would begin the two to five year
3 construction process. CSL would then send “progress bills” to its customers as work
4 was completed on their yachts. This allowed CSL to receive revenue and pay its
5 employees during the long process of yacht-building.

6 36. But luxury yachts are just that – a luxury. So when economic conditions
7 in the U.S. and abroad sour, it becomes difficult for CSL and other small yacht builders
8 to find new buyers. In addition, when CSL customers who have yachts under
9 construction experience financial problems, like during an economic downturn, they
10 often halt construction of their yachts. This causes CSL to curtail its yacht-building
11 operations and lose its revenue stream.

12 37. Finding buyers who were wealthy enough to buy yachts, and keeping
13 CSL’s workforce fully occupied, presented a constant challenge to CSL over the years.
14 Yet, throughout it all, CSL emerged as one the world’s premier yacht builders and
15 provided an income for hundreds of families throughout the Vancouver, Washington
16 area.

17 **III. Henry Luken infiltrates CSL with the promise of funding a spec boat**
18 **program.**

19 38. Luken bought a yacht from CSL in 1998.

20 39. During the construction of his yacht, Luken spent considerable time at
21 CSL’s facilities in Vancouver. He eventually became friends with David Christensen
22 and learned about the challenges that face the yacht building industry.

23 40. In 2001, Luken expressed interest to David Christensen in becoming a
24 CSL owner.

25 41. At the time, the U.S. economy was just emerging from the “dotcom
26 crash,” and finding buyers for yachts was challenging. Since Luken knew about the

1 difficulties of yacht building and the inability of yacht builders to finance spec boats on
2 credit, Luken flaunted his personal net worth of approximately \$170 million and
3 offered to use his money to fund a spec boat program for CSL. Specifically, Luken
4 would fund the construction of two spec boats for \$11.7 million each. In exchange,
5 Luken would receive an option to purchase 20% of CSL's equity shares and a high
6 interest rate on the money that he loaned to CSL.

7 42. Luken's offer and the ability to start a spec boat program was very
8 attractive to CSL. A spec boat program would give CSL the ability to sell yachts that
9 were already in progress, which was a major incentive to yacht buyers who did not wish
10 to wait the standard two to five years to build a yacht. In addition, building spec boats,
11 and receiving the corresponding "progress payments" from Luken in the form of loans,
12 would allow CSL to weather difficult economic circumstances and avoid employee
13 layoffs.

14 43. The Christensen family accepted Luken's offer. Luken and CSL then
15 entered into a loan contract under which Luken agreed to finance the building of two
16 spec boats for \$11.7 million each.

17 44. CSL and Luken also executed an option contract, which gave Luken the
18 option to buy 20% of CSL's stock. That option, however, was contingent on Luken's
19 performance of his agreement to fund the two spec boats.

20 45. By 2003, CSL had completed the spec boats, and the U.S. economy was
21 again struggling in the continued wake of the September 11, 2001 terrorist attacks.
22 Finding yacht buyers and keeping CSL's employees working became even more
23 difficult.

24 46. On information and belief, Luken saw an opportunity to gain a larger
25 equity position in CSL. Although Luken's stock option agreement only allowed him to
26 buy 20% of CSL's common stock, Luken wanted to buy 50%. In exchange, Luken

1 would pay \$5 million to the Christensen family, a substantial portion of which would
 2 stay in the company to fund operations. In addition, and critically, Luken would
 3 personally finance the construction of three spec boats per year going forward.
 4 Essentially, Luken would control CSL by becoming its bank, along with buying 50% of
 5 its stock.

6 47. Over the years, the Christensen family had spent significant amounts of
 7 their own personal funds to keep CSL's doors open and its workers employed. With a
 8 down economy and the prospect of an ongoing spec boat program, the Christensen
 9 family agreed to the deal.

10 48. To that end, on August 28, 2003, Luken and CSL executed a Stock
 11 Purchase Agreement under which Luken received 50% of the voting stock of CSL, and
 12 50% of the non-voting stock of CSL. Following Luken's execution of the Stock
 13 Purchase Agreement, CSL's voting and non-voting shares were owned as follows:

Voting	Shares	Percentage
Henry Luken	950,000	50%
David Christensen	950,000	50%

Non-Voting	Shares	Percentage
Henry Luken	4,643,750	50%
David Christensen	1,846,875	20%
Kathryn Maynard	559,375	6%
Cindi Curtin	559,375	6%
Teri Kelly	559,375	6%
Joe Foggia	1,118,750	12%

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1 49. Under the new ownership structure, all of CSL’s owners, except for
2 Luken, were members of the Christensen family.

3 50. Under the Stock Purchase Agreement, Luken also agreed to finance the
4 spec boat program.

5 51. Pursuant to the Stock Purchase Agreement, Luken was also granted a
6 place on CSL’s three member board of directors, along with David Christensen and his
7 step-son, Joe Foggia.

8 **IV. Luken uses the sale of his personal yacht to fund CSL’s spec boat program**
9 **and operating expenses, in exchange for a credit on a future yacht.**

10 52. In 2005, Luken bought a yacht from CSL that eventually came to be
11 known as Hull 32.

12 53. Consistent with his obligation to provide CSL with funds to build spec
13 boats, Luken came up with a plan for CSL to re-sell Hull 32 to another buyer and use
14 the proceeds to fund spec boats and also to help fund CSL’s operations. In exchange,
15 Luken would receive a credit toward the purchase of a future CSL-built yacht.

16 54. In 2007, pursuant to Luken’s plan, CSL bought Hull 32 back from Luken
17 and re-sold it to another buyer in exchange for payment (the “Hull 32 Funds”). Luken
18 then took \$1.5 million of the Hull 32 Funds, and left the rest in CSL to fund spec boats
19 and operations. In exchange, CSL gave Luken a credit toward the purchase of another
20 yacht.

21 55. At no time did CSL or any of the defendants offer or agree to hold the
22 Hull 32 Funds or Luken’s credit in a trust for Luken. To the contrary, Luken and CSL
23 were fully aware that the Hull 32 Funds would be used to finance the spec boat program
24 and other operations.

25 56. The IRS later conducted an audit of CSL and examined the sale of Hull
26 32 and the credit that Luken had claimed on his tax returns. Although Luken had

1 reported the sale value as only approximately \$18 million, the IRS concluded that he
2 had received an unfair insider deal and increased the value of the sale to \$19,782,707
3 and forced Luken to pay additional taxes on the sale. Therefore, Luken's credit toward
4 the purchase of a new yacht was valued at \$19,782,707, minus the \$1,500,000 he had
5 received in cash, for a total credit of \$18,282,707.

6 57. Through a series of subsequent transactions, Luken's credit was
7 eventually reduced by another \$5,957,859.80, which resulted in a total credit of
8 \$12,824,847.20 toward the purchase of a new CSL yacht.

9 58. Luken later contracted with CSL for the construction of a yacht known
10 as Hull 36. Rather than drawing money from a CSL trust (which Luken knew never
11 existed) to pay for construction, Luken applied his credit from the Hull 32 sale to his
12 purchase toward Hull 36 and had CSL progress bill him for any additional amounts.

13 59. As part of his agreement to purchase Hull 36, on June 6, 2010, Luken
14 requested, and CSL prepared and executed, an agreement with Luken's entity,
15 Christensen Brokerage East, LLC, acknowledging that Hull 36 had already been
16 "partially funded" by his credit with CSL in the amount of \$19,000,000 – an inflated
17 and incorrect amount. In other words, Luken acknowledged that the Hull 32 Funds had
18 been applied to the construction of Hull 36 rather than held in a trust. Since any credit
19 on the Hull 32 Funds had already been applied to the construction of Hull 36, Luken
20 took security interests in Hull 36 and two other CSL yachts.

21 60. At all times, Luken was aware that his credit toward the purchase of a
22 new yacht was merely a credit. At no point did CSL, the defendants, or Luken agree to
23 place funds to support Luken's credit into a trust. To the contrary, Luken was aware
24 that CSL often had cash flow problems, and he frequently examined CSL's books,
25 which showed that no trust had been created to set aside funds for the construction of
26 Luken's yacht.

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1 **V. Luken abuses his position in CSL to skim profits from the sale of spec boats.**

2 61. As 50% shareholder, and board member of CSL, Luken held
3 considerable power within CSL. Adding to his power, Luken acted as the financier of
4 CSL's spec boat program, and Luken often provided operating loans to CSL to allow
5 CSL to continue its operations.

6 62. Soon after Luken became a CSL shareholder and board member he
7 began abusing his power. Luken's conduct created a gradual economic decline in CSL
8 that eventually led to its collapse.

9 63. Notably, Luken would force imprudent or improper transactions on
10 CSL's other directors, officers, and employees. When CSL would protest, Luken
11 would directly or implicitly threaten to cut off financing to CSL, or threaten to exercise
12 his power as a board member and shareholder to shut CSL down. Given CSL's
13 precarious financial position, CSL's officers and directors felt that they had no choice
14 but to bend to Luken's will.

15 64. Luken used his power at CSL to devise and execute a scheme to receive
16 a personal commission on the sale of CSL spec boats.

17 65. Specifically, Luken considered the spec boats that he financed for CSL
18 to be his own property and refused to sign documentation evidencing the terms of the
19 loans. CSL's officers often protested and reminded Luken that the spec boats were
20 company property and that he had merely loaned money to the company to build those
21 boats, as he had promised to do under the Stock Purchase Agreement. Luken, however,
22 refused to treat the spec boats as company property.

23 66. Instead, when CSL sold spec boats to new buyers, Luken considered the
24 sale of the spec boat to be the sale of his own personal yacht. According to Luken,
25 selling the spec boats was the equivalent of Luken selling his "place in the
26 manufacturing line." Accordingly, upon the sale of a spec boat, Luken would demand a

1 hefty fee for himself on the sale, typically in the range of \$1 million to \$2 million.
2 Those “commissions” ate up the profit that CSL could have hoped to gain on the sale.
3 This undermined the benefit of Luken’s role as financier of the spec boat program, and
4 violated the Stock Purchase Agreement he had signed with CSL in 2003.

5 67. CSL and its shareholders had very little room to negotiate the fees with
6 Luken. When pressed on the issue, Luken would simply note or imply that he held the
7 bulk of CSL’s stock, that he was a board member, and that he would stop financing the
8 construction of spec boats if he did not get his way. David Christensen and the other
9 CSL shareholders had no choice but to accept Luken’s terms and provide him with the
10 fees he demanded.

11 **VI. Luken cuts off CSL’s funding during the Recession.**

12 68. In 2008, the U.S. economy began a descent into the worst economic
13 recession (the “Recession”) since the Great Depression. As a result, it became more
14 difficult for CSL to find buyers for its yachts.

15 69. Due in part to Luken’s “personal commissions” on CSL’s spec boats,
16 CSL was not in a strong position to weather the effects of the Recession and needed
17 ongoing financing to stay in business. During the Recession, commercial credit
18 markets largely froze, and standard bank financing – which had already been very
19 difficult for CSL to obtain – was not available to CSL.

20 70. Luken was fully aware of the difficulties that the Recession imposed on
21 CSL. Yet, in 2008, and in violation of paragraph 11.1 of the Stock Purchase
22 Agreement, Luken stopped funding CSL’s spec boat program altogether.

23 71. Luken took this action with CSL at the same time that he was striking his
24 bad faith deal with Equity Media and securing a \$47.4 million windfall for the sale of
25 Equity Media’s cable station.

26

1 **VII. Luken pushes CSL closer to the brink by forcing CSL to accept trade-ins for**
2 **his own personal benefit.**

3 72. In 2004, Luken forced CSL to accept a trade-in for his own personal
4 benefit. In 2004, Cacique Holdings Limited (“CH Limited”) began negotiating with
5 CSL to purchase a CSL yacht known as Hull 28. CH Limited had a personal yacht
6 called the “Cacique.” Luken had previously owned the Cacique and wanted it back.

7 73. So Luken proposed that CSL take the Cacique as a trade-in and give CH
8 Limited a credit toward the purchase of Hull 28.

9 74. Due to the expense of repairing and reselling trade-ins and of paying
10 yacht brokers to resell used yachts, CSL typically did not allow its buyers to trade in
11 yachts for credit.

12 75. Luken, however, pushed forward on the trade-in.

13 76. CSL agreed to accept the Cacique as a trade-in and credited CH Limited
14 \$6,500,000 toward the purchase of Hull 28. CSL then spent \$577,416.22 on re-fittings
15 and repairs.

16 77. Luken then insisted that he personally purchase the Cacique at a
17 discount. Although the trade-in value on the Cacique had been \$6,500,000, and CSL
18 had spent another \$577,416.22 preparing it for re-sale, Luken insisted that he buy it for
19 only \$4,900,000 – a loss of \$2,177,416.42 to CSL. Luken claimed that CSL needed to
20 enter into the deal because Luken was the financier, board member, and 50%
21 shareholder of CSL.

22 78. Then, rather than paying CSL the \$4,900,000 in cash, Luken simply
23 reduced the credit that CSL owed to him toward the purchase of a yacht by \$4,900,000.

24 79. In 2005, Luken pushed CSL into another trade-in. Specifically, ACA
25 Yacht Sales LLC (“ACA Yacht”) was interested in purchasing a yacht known as Hull
26 27 from CSL.

1 80. ACA Yacht had a personal yacht called the “Nice n Easy.” When Luken
2 learned about the Nice n Easy, he proposed that CSL accept it as a trade-in on the
3 purchase of Hull 27.

4 81. Luken again insisted on the trade-in and used his position as board
5 member, shareholder, and financier to force CSL into the deal. Consequently, CSL
6 accepted the Nice n Easy on trade-in and gave ACA Yacht a \$9 million credit toward
7 the purchase of Hull 27.

8 82. CSL then spent \$1,361,914 on repairs to the Nice n Easy. Eventually,
9 CSL sold the Nice n Easy for \$9,850,000, minus a \$500,000 commission to a yacht
10 broker. In light of the \$9,000,000 trade-in credit that Luken gave to ACA Yachts, the
11 \$1,361,914 that CSL spent on repairs to the Nice n Easy, and the \$500,000 broker
12 commission that CSL paid to resell the Nice n Easy, CSL took a \$1,011,914 loss on the
13 resale of the Nice n Easy.

14 83. Adding to CSL’s losses, the resale buyer of the Nice n Easy also traded
15 in a personal yacht called the Dumb Luck for credit on the purchase of the Nice n Easy.
16 Again, at Luken’s insistence, CSL agreed to take the trade-in and to give the owner a
17 \$2,650,000 credit toward the purchase of the Nice n Easy.

18 84. CSL then paid \$253,054 to repair the Dumb Luck. CSL could only resell
19 the Dumb Luck for \$2,150,000, and paid a yacht broker a commission of \$200,000 on
20 the sale. Consequently, CSL lost \$953,054 on the resale of the Dumb Luck.

21 85. Through these maneuvers, Luken purposefully forced CSL into financial
22 distress by cutting off CSL’s spec boat funding and forcing CSL to accept bad trade-in
23 deals. Luken then hoped to purchase the remaining assets of CSL for cheap.

24 86. Further motivating Luken, in 2006, Luken built a shipyard on a river in
25 his home state of Tennessee. He had hoped to convince the Christensen family to move
26

1 CSL's shipbuilding operations to his new shipyard in Tennessee, but David Christensen
2 refused.

3 87. So in late 2009 and early 2010, Luken attempted to negotiate the
4 purchase of the Christensen family's remaining shares of CSL with David Christensen.
5 Luken, however, offered only a fraction of the real value of the Christensen family's
6 shares. Although cash was tight, the CSL brand was still strong in the yacht industry,
7 and CSL had considerable value in the long term. Consequently, David Christensen
8 refused to sell the Christensen family's remaining shares to Luken on Luken's proposed
9 terms.

10 **VIII. David Christensen's Alzheimer's disease.**

11 88. In 2010, David Christensen began to experience intermittent dementia.
12 Members of the Christensen family and Luken observed David Christensen's dementia.
13 David Christensen was soon diagnosed with Alzheimer's disease and began a rapid
14 physical and mental descent.

15 89. By the spring of 2010, David Christensen was starting to scale back his
16 involvement in CSL. With his stepfather in decline, Joe Foggia assumed a greater
17 leadership role in CSL.

18 90. Between David Christensen's Alzheimer's, the Recession, and Luken's
19 prior misconduct, by 2010 CSL's cash and work flow was severely limited. As a result,
20 CSL had no choice but to lay off many of its workers.

21 91. Luken then hatched a plan to put CSL into even further distress and then
22 buy its remaining assets for himself.

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1 **IX. Luken kills the company by imposing on CSL three insider deals for himself**
2 **and his rich friends.**

3 92. In June 2010, Luken called Foggia about a deal that he said would “save
4 the company” – the very same language that Luken had used two years earlier to bait
5 Equity Media into selling him its cable network.

6 93. Specifically, Luken proposed that CSL re-start construction on his
7 personal yacht, Hull 36. During the Recession, Luken had halted construction and
8 financing on Hull 36.

9 94. Luken further proposed that CSL agree to renegotiate and lower the price
10 of Hull 36 to only \$23 million. Once the price had been renegotiated, Luken said,
11 construction on Hull 36 would restart and CSL could “progress bill” Luken for the cost
12 of the yacht. This, Luken argued, would provide CSL with a much needed revenue
13 stream and allow CSL to keep its doors open.

14 95. However, the revenue stream for further construction of Hull 36 would
15 not be sufficient to keep CSL afloat because, as alleged above, CSL had already applied
16 a credit to Luken’s yacht stemming from the sale of Hull 32.

17 96. To bridge the revenue gap, Luken proposed that Forrest Preston – a
18 billionaire on the Forbes 400 List and one of Luken’s friends and business partners –
19 buy an identical 164-foot yacht from CSL, also for \$23 million. Preston’s yacht was
20 known as Hull 38. Selling the yacht to Preston would, according to Luken, provide
21 CSL with much needed cash flow and the ability to inform the yacht industry that CSL
22 was actively building two ships.

23 97. The problem with Luken’s plan, however, was that both Hull 36 and
24 Hull 38 would cost far more than \$23 million to build. The fair market value for a 164-
25 foot CSL yacht exceeded \$33 million, and it would cost CSL approximately \$31
26 million just to build the yacht. Thus, Luken and his billionaire friend would receive the

1 yachts for \$8 million less than the cost to build them and at least \$10 million less than
2 fair market value. This would eventually lead CSL into financial ruin.

3 98. Foggia, along with CSL's estimating team, tried repeatedly to explain the
4 problem to Luken. But Luken insisted that the yachts could be built for around \$23
5 million. This "break even" arrangement, Luken argued, would give CSL time to find
6 new buyers for other yachts and turn the company around as the U.S. economy emerged
7 from the Recession.

8 99. Foggia disagreed and tried to convince Luken to simply fund the spec
9 boat program, as Luken had promised to do under the Stock Purchase Agreement.
10 Luken refused.

11 100. Luken then began placing intense pressure on Foggia to agree to the
12 insider deals for Luken and his friend Preston. Since David Christensen was largely
13 incapacitated due to his Alzheimer's disease and could not perform his role as board
14 member and officer of CSL, Foggia was left to deal with Luken on his own.

15 101. Luken told Foggia numerous times that CSL would have to lay off its
16 workers and close CSL's doors if Foggia did not agree to Luken's proposed deal on
17 Hulls 36 and 38. Since David Christensen was incapacitated and could not effectively
18 serve as a board member, shareholder, or officer of CSL, Foggia had no real ability to
19 stop Luken from closing CSL.

20 102. Foggia and CSL were then left in a major predicament. Either they
21 would have to close the company and immediately lay off all of their workers, or accept
22 Luken's terms and hope (1) that CSL could complete Hulls 36 and 38 for around \$23
23 million each; and (2) that CSL could turn itself around enough to make up for the
24 shortfall on Hulls 36 and 38.

25 103. On June 2, 2010, Luken called Foggia by telephone. Luken told Foggia
26 that he and Preston were about to board Preston's private jet and would be at CSL's

1 facilities within four hours to finalize contracts on Hulls 36 and 38. Luken further told
2 Foggia that he had only four hours to agree to his proposal, or Luken would revoke his
3 proposal and CSL would shut down. According to Luken, this was Foggia's "last
4 chance" to save CSL and keep its workers employed.

5 104. Approximately four hours later, Luken and Preston arrived at CSL's
6 facilities in Vancouver, Washington. Foggia and CSL's estimating team then met with
7 Luken and tried to explain to him that Hulls 36 and 38 could not be built for under \$28
8 million.

9 105. Luken, however, refused to listen. Instead, he told Foggia that the
10 estimating team needed to be fired and that "guys like them" were the reason why CSL
11 was in financial trouble in the first place. Luken further attempted to convince Foggia
12 that the yachts could be built for approximately \$23 million, that building the yachts
13 would give CSL the ability to inform the market that it was building ships again, and
14 that building the yachts was the only way to keep CSL out of bankruptcy.

15 106. Luken then told Foggia that he and Preston would be boarding Preston's
16 jet within a few hours to return to Tennessee. Luken said that once he and Preston left
17 CSL, the deal would expire, and CSL would shut down.

18 107. In light of Luken's position as board member and a controlling
19 shareholder, and his threats that CSL would shut down, Foggia felt that he had no
20 choice but to agree to Luken's terms. Accordingly, on June 2, 2010, Foggia signed two
21 contracts with Luken and Preston for CSL to build Hulls 36 and 38 for only \$23 million
22 each.

23 108. A few months later, Luken approached Foggia about assigning Hull 37
24 to his close friend and business partner, Donald Burns, who had a financial net worth of
25 around \$250 million. Hull 37 was already under construction as a spec boat that was
26

1 paid for, in part, with the Hull 32 Funds. CSL had stopped construction on Hull 37
2 after Luken stopped funding the spec boat program.

3 109. Consistent with Luken's and Preston's insider deals on Hulls 36 and 38,
4 Luken insisted that Hull 37 be sold to Burns for only \$23 million – an amount
5 significantly below fair market value and the cost to build the boat.

6 110. Since Hull 37 had been a spec boat and was already under construction,
7 Burns made a down payment of \$1,107,850.76. However, Burns paid that money
8 directly to Luken, which Luken never turned over to CSL. Instead, Luken kept those
9 funds for himself.

10 111. Later, through a sales flip, CSL sold Hull 37 for \$32 million to another
11 buyer.

12 112. In order for CSL to sell Hull 37 for more money, Burns demanded he
13 enter into a new yacht contract to purchase Hull 40 for the same price as Hull 37 plus
14 the cost of his change orders. The new contract price would be \$25,174,572.55. Luken
15 gave Burns insider information so Burns could obtain a credit on the purchase of
16 \$3,250,000 for Burns' prior willingness to allow CSL to sell Hull 37. This effectively
17 reduced the price of Hull 40 to \$21,924,572.55. The fair market value of Hull 40
18 exceeded \$33 million, and the yacht would eventually cost CSL approximately \$32.7
19 million to construct.

20 113. CSL then entered into a contract to build Burns Hull 40 on Luken's
21 insider terms.

22 **X. Luken causes Preston to halt construction on Hull 38 for a full year, and then**
23 **has CSL repay Preston money that Luken stole.**

24 114. In order to fund the construction of their twin CSL yachts, Luken and
25 Preston formed a limited liability company called Christensen Brokerage East, LLC
26

1 (“CBE”). On information and belief, Preston deposited his \$23 million dollars for the
2 purchase of Hull 38 into CBE’s bank account.

3 115. Luken acted as the managing member of CBE and had full access to
4 CBE’s bank account, including the money that Preston had deposited to fund the
5 construction of Hull 38.

6 116. In 2013, without Preston’s knowledge or consent, Luken withdrew
7 \$5 million of Preston’s money from CBE’s bank account. Luken then used Preston’s
8 money to buy a private airplane, six exotic cars, and to pay off several personal
9 American Express bills.

10 117. When Preston learned about Luken’s conduct, he immediately halted
11 construction on Hull 38. This deprived CSL of revenue on an already severely
12 discounted contract.

13 118. Over the next year, Preston and Luken argued over Luken’s theft of
14 Preston’s \$5 million. During the entire time of their dispute, Preston halted the
15 construction on Hull 38, and with it, the revenue stream that CSL had been receiving –
16 the very revenue stream that Luken claimed would “save the company.”

17 119. Luken and Preston then swapped yachts, with Preston taking Hull 36,
18 and Luken taking Hull 38. As part of the swap, and to repay the money that he had
19 stolen from Preston, Luken traded with Preston for a \$5 million credit off the purchase
20 price of Hull 36. In other words, Luken had CSL pay his debt and pocketed the \$5
21 million that he had taken from Preston. Luken took this action without CSL’s
22 knowledge or consent.

23 120. Luken’s theft of Preston’s money, Preston’s consequent halt of the
24 construction on Hull 38, and the \$5 million discount that Luken provided to Preston
25 created even further financial strain on CSL.

26

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COUNTERCLAIMS TO PLAINTIFF’S FIRST AMENDED
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1 **XI. Luken reneges on an agreement to buy CSL.**

2 121. As construction on Hulls 36, 38, and 40 sporadically progressed, it
3 eventually became clear that – just like Foggia and CSL’s estimating team had
4 predicted – construction of the yachts would cost far more than the sale prices
5 contained in the contracts.

6 122. By 2014, the shortfall on the yachts and Luken’s other misconduct had
7 sent CSL into an economic tailspin. David Christensen’s trust and the Christensen
8 family’s land holding company, CGI, were funding payroll and other expenses due to
9 Luken’s behavior.

10 123. While Luken was using CSL for his own personal benefit – harming the
11 employees, vendors, and CSL all the while – the Christensen family was foregoing
12 personal gain. CGI leased to CSL the shipyard building (the “Shipyard”) that housed
13 CSL’s shipbuilding operations, as well as a boat basin for launching its ships. Every
14 month when CSL’s rent came due, the Christensen family, through David Christensen’s
15 real estate holding company, CGI, forgave rent owed by CSL. By November 2014 the
16 Christensen family, through CGI, had forgiven CSL’s rent obligations of nearly \$3
17 million so that CSL could continue to pay employees and vendors and build its world-
18 renowned yachts.

19 124. But by November of 2014, CSL was in serious financial distress. Luken
20 then saw his opportunity to buy CSL for cheap.

21 125. In November 2014, Luken again approached Foggia about CSL’s
22 financial situation. He again told Foggia that he could “save the company” and
23 personally pay CSL’s payroll and employee benefits. He would also indemnify the
24 Christensen family for any liabilities of the company.

25 126. However, in exchange, Luken would require the Christensen family to
26 give him the remainder of their stock in CSL, thereby making Luken the sole owner of

1 CSL. In addition, Luken would require CGI – a separate company that Luken had no
2 ownership in or control over – to give him the deed to the Shipyard.

3 127. Foggia and the Christensen family protested and proposed that Luken,
4 Preston, and Burns should simply pay the fair market value for Hulls 36, 38, and 40.
5 Payment of those amounts would have largely alleviated CSL’s financial burdens and
6 placed CSL back on track.

7 128. Luken refused and became irate. He blamed Foggia for not efficiently
8 manufacturing the yachts. Luken continued to insist that CSL agree to the terms of his
9 deal, or he would use his position in the company to place CSL into receivership.
10 Indeed, this was very possible. At the time, only Foggia, Luken, and David Christensen
11 were members of CSL’s three-member board of directors. Since David Christensen
12 was no longer able to function in that role, a board deadlock would be created between
13 Luken and Foggia that would force the company into receivership.

14 129. The Christensen family was then faced with a dilemma. They had no
15 obligation to give the Shipyard to Luken, and doing so would give Luken a major
16 windfall. Indeed, the Shipyard was worth more than CSL’s debt. But it was nearly
17 Christmas time, and the deadlock would force CSL’s workers out of a job. Deadlock
18 would also deprive a number of CSL employees of health benefits that they were
19 depending on during that time. Furthermore, David Christensen had always made it a
20 priority to pay his bills, and abandoning CSL’s obligations to its customers violated one
21 of the Christensen family’s core values.

22 130. Allowing CSL to go under would hurt too many people, and it would put
23 a permanent stain on David Christensen and the Christensen family’s legacy.

24 131. The Christensen family eventually realized that they had no choice but to
25 agree to Luken’s terms and to give him the Shipyard.

26

1 132. So on December 4, 2014, Luken, the David Christensen Trust, Foggia,
2 Cindi Curtin, and CGI entered into a written agreement (the “December 2014
3 Agreement”) to transfer their CSL shares and the deed to the Shipyard to Luken. In
4 exchange, Luken agreed to pay employee payroll and benefits, indemnify the
5 Christensen family for any CSL debts, release the Christensen family of any claims,
6 and have CSL fill its remaining orders with personal guarantees from Luken.

7 133. But then Luken realized he could manipulate an even better deal.

8 134. Luken demanded that CSL lock its doors and put CSL’s employees on a
9 “temporary furlough.” CSL’s officers spent the night calling as many CSL employees
10 as they could to tell them not to come to the Shipyard for work the next day, but they
11 were not able to reach everyone. Consequently, a number of CSL employees showed
12 up to work the next day to find CSL’s gates locked. On information and belief, Luken
13 notified local reporters about the situation, who then reported in *The Columbian*
14 newspaper that CSL had closed its doors.

15 135. Then, Luken refused to perform the terms of the December 2014
16 Agreement, including funding payroll and benefits for CSL’s workers.

17 136. Among other excuses, Luken claimed that he had never signed the
18 December 2014 Agreement. Instead, his Tennessee lawyer had signed Luken’s name to
19 the deal. This, Luken claimed, made the December 2014 Agreement unenforceable.
20 Luken’s lawyer later confirmed that he, indeed, had received authority from Luken to
21 sign the agreement.

22 137. Luken then demanded that the Christensen family negotiate a new deal
23 with him. Luken was adamant that a new agreement not include any obligation on his
24 part to indemnify the members of the Christensen family for CSL’s debt. Yet, Luken
25 still demanded that he receive title to the Shipyard and all of CSL’s shares for himself.
26

1 138. Around the same time, Luken’s friend, Don Burns, cut off payments for
2 Hull 40. On information and belief, Luken and Burns coordinated Burns’ actions to
3 place pressure on CSL to sign a new agreement.

4 139. The Christensen family rejected Luken’s proposed offer. In February
5 and March 2015, David Christensen advanced approximately \$400,000 to CSL in order
6 to keep the company afloat.

7 Over the next months, Luken repeatedly used the local media to paint himself
8 as a “white knight” who had tried to save CSL from closing.

9 140. Eventually, Luken, CGI, and the Christensen family agreed that the
10 December 2014 Agreement was no longer enforceable.

11 **XII. Luken forces CSL into receivership and buys its assets for cheap.**

12 141. On February 22, 2015, Luken and Foggia – the only functioning
13 members of CSL’s board of directors – met to discuss what to do with CSL. Luken
14 insisted that the members of the Christensen family either accept his proposal, or close
15 its doors for good. Foggia refused to agree, thereby creating a deadlock of CSL’s board
16 of directors.

17 142. With the board deadlocked, Luken filed a lawsuit in Clark County
18 Superior Court for the State of Washington seeking the appointment of a receiver.

19 143. The Clark County court eventually appointed a receiver, who was tasked
20 with devising a plan to pay CSL’s creditors and either liquidate or sell CSL.

21 144. Luken and his friend Burns then bought CSL’s assets, including the
22 “Christensen Shipyards” name, from the receiver for \$5.5 million – a far better deal
23 than Luken would have received under the December 2014 Agreement.

24 145. Thus, Luken raided CSL by forcing it into financial distress, forcing it
25 into receivership, and then purchasing CSL’s assets for cheap.

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1 146. The receiver had numerous claims against Luken for his misconduct
2 relating to CSL and filed suit against Luken. Luken also claimed to have claims against
3 CSL, including as a creditor of CSL. In March 2016, Luken and the receiver entered
4 into a settlement agreement in which Luken would subordinate his claims against CSL
5 to the claims of all other creditors.

6 147. Once CSL's other creditor claims are paid, there will be little to nothing
7 left for Luken to recover on his subordinated claims.

8 148. Accordingly, although his claims are merely creditor claims against
9 CSL, Luken has filed this lawsuit seeking recovery of his boat credits against the
10 directors and officers of CSL. Luken has further included CGI in the complaint in
11 hopes of obtaining title to the Shipyard, selling it, and then moving the company to
12 Tennessee.

13 **ANSWER AND RESPONSES TO ALLEGATIONS IN LUKEN'S**
14 **AMENDED COMPLAINT**

15 149. In response to the allegations set forth in paragraph 1 of the Amended
16 Complaint, defendants admit that CSL was a manufacturer of yachts that were sold to
17 specialized customers who could afford luxury yachts, that its principal place of
18 business was in Vancouver, Washington, that it leased a shipyard located in Vancouver
19 from CGI, that David Christensen and Joe Foggia were directors of CSL during certain
20 times, that defendants served as CSL officers during certain times, and that David
21 Christensen owned 50% of CSL's voting stock and 20% of its non-voting stock, that
22 other members of the Christensen family owned portions of CSL's non-voting stock,
23 and that Luken owned the remainder of CSL's voting and non-voting stock. The
24 remaining allegations in paragraph 1 are denied.

25 150. In response to the allegations set forth in paragraph 2, defendants admit
26 that Luken agreed to buy an unnamed yacht to be constructed by CSL known as "Hull

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1 32,” that Hull 32 was sold to another customer, and that CSL paid \$1.5 million as part
2 of that sale. The remaining allegations in paragraph 2 are denied.

3 151. In response to the allegations set forth in paragraph 3, defendants admit
4 that Luken bought a used yacht taken as trade-in by CSL named the “Cacique.” The
5 remaining allegations in paragraph 3 are denied.

6 152. The allegations set forth in paragraph 4 are denied.

7 153. In response to the allegations set forth in paragraph 5, defendants admit
8 that Indian Marine II Limited entered into agreements related to the construction of an
9 unnamed yacht known as “Hull 42” in February 2013, and that it paid a deposit.

10 Defendants are without knowledge or information sufficient to form a belief as to the
11 truth of Luken’s allegation that Indian Marine II has assigned all of its claims related to
12 Hull 42 to Luken. The remaining allegations in paragraph 5 are denied.

13 154. The allegations in paragraph 6 are denied.

14 155. The allegations in paragraph 7 are denied.

15 156. In response to the allegations set forth in paragraph 8, defendants admit
16 that CSL is insolvent and is the subject of a receivership proceeding and that Luken
17 bought its assets. The remaining allegations in paragraph 8 are denied.

18 157. The allegations in paragraph 9 are denied.

19 158. In response to the allegations set forth in paragraph 10, defendants reallege
20 their responses to paragraphs 1-9.

21 159. The allegations in paragraph 11 are denied.

22 160. In response to the allegations set forth in paragraph 12, defendants reallege
23 their responses to paragraphs 1-11.

24 161. In response to the allegations set forth in paragraph 13, defendants reallege
25 their responses to paragraphs 1-12.

26

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- 1 e. Luken forced CSL to sell yachts to him and his friends and
2 business partners for substantially less than CSL's costs to build those yachts;
3 f. Luken pocketed the down payment that Burns paid CSL for the
4 purchase of Hull 37;
5 g. Luken gave Burns an improper, \$3.25 million credit toward the
6 purchase of Hull 40;
7 h. Luken stole \$5 million from Preston, thereby causing Preston to
8 halt construction on Hull 38 and cut off revenue to CSL;
9 i. Luken caused CSL to repay the \$5 million that he had stolen from
10 Preston;
11 j. Luken reneged on the December 2014 Agreement and created a
12 deadlock of the board of directors; and
13 k. Luken forced CSL into receivership and bought its assets at a
14 discount.

15 169. Luken took all of these actions with the intent to put CSL in financial
16 distress or otherwise benefit himself.

17 170. Luken's equitable claims are barred by the doctrine of unclean hands.

18 **Second Affirmative Defense**

19 **(Lack of Causation)**

20 171. Without assuming the burden of proof as to the causation element of
21 Luken's claims, defendants allege that Luken caused the demise of CSL and his own
22 claimed harm in the following ways:

- 23 a. Luken took unwarranted "commissions" on the sale of spec boats;
24 b. Luken refused to fund CSL's spec boat program as promised in
25 his Stock Purchase Agreement;

26

1 c. Luken forced CSL to accept trade-ins of used yachts and then sell
2 those yachts at a loss;

3 d. Luken induced CSL to accept a trade-in of the Cacique and then
4 sold the yacht to himself at a loss to CSL;

5 e. Luken forced CSL to sell yachts to him and his friends and
6 business partners for substantially less than CSL’s costs to build those yachts;

7 f. Luken pocketed the down payment that Burns paid CSL for the
8 purchase of Hull 37;

9 g. Luken gave Burns an improper, \$3.25 million credit toward the
10 purchase of Hull 40;

11 h. Luken stole \$5 million from Preston, thereby causing Preston to
12 halt construction on Hull 38 and cut off revenue to CSL;

13 i. Luken caused CSL to repay the \$5 million that he had stolen from
14 Preston;

15 j. Luken reneged on the December 2014 Agreement and created a
16 deadlock of the board of directors; and

17 k. Luken forced CSL into receivership and bought its assets at a
18 discount.

19 172. As the result of Luken’s misconduct, he cannot prove the causation
20 element of his claims.

21 **Third Affirmative Defense**

22 **(Business Judgment Rule)**

23 173. CSL’s officers and directors had the power and authority to use the Hull
24 32 Funds and the funds paid by Indian Marine II for Hull 42 (the “Indian Marine Funds”)
25 to fund CSL’s shipbuilding operations and to pay CSL’s business expenses. CSL’s
26

1 officers and directors used the Hull 32 Funds in good faith for legitimate business
2 operations and transactions of CSL.

3 174. At all times CSL’s officers and directors used the Hull 32 Funds in a
4 manner and with such care as a reasonably prudent person in a like position would use
5 under similar circumstances.

6 175. CSL’s officers and directors had the power and authority to use the Indian
7 Marine Funds for the construction of Hull 42 to fund CSL’s shipbuilding operations and
8 to pay CSL’s business expenses. CSL’s officers and directors used those funds in good
9 faith for legitimate business operations and transactions of CSL. At all times CSL’s
10 officers and directors used those funds in a manner and with such care as a reasonably
11 prudent person in a like position would use under similar circumstances.

12 176. CSL’s officers and directors are accordingly immunized from liability on
13 Luken’s claims under the business judgment rule.

14 **Fourth Affirmative Defense**

15 **(Setoff/Offset)**

16 177. By engaging in the misconduct identified in defendants’ counterclaims
17 and in the related lawsuit that the Christensen Trust and members of the Christensen
18 family have filed in this Court, Luken caused damages to defendants, the Christensen
19 Trust, and members of the Christensen family.

20 178. Any damages that Luken argues he can recover in this action should be set
21 off and offset by the damages that he has caused to defendants, the Christensen Trust, and
22 members of the Christensen family.

23 **Fifth Affirmative Defense**

24 **(Laches)**

25 179. Luken had full knowledge of, and consented to, CSL’s use of the Hull 32
26 Funds and the Indian Marine Funds for CSL’s operations and business expenses as far

1 back as 2007. Luken took no action and made no complaint about the use of those funds.
2 In fact, Luken knew that CSL later experienced significant cash flow problems, and he
3 had full access to – and often examined – CSL’s books, in which he could see that no
4 trust had been created to hold the Hull 32 Funds or the Indian Marine Funds. Luken
5 delayed an unreasonable amount of time in bringing his equitable claims for relief,
6 resulting in the loss of evidence that could have been used to defeat them. As a result,
7 defendants have been prejudiced in their defense of Luken’s claims and it would be
8 inequitable to allow Luken to recover on his equitable claims.

9 **Sixth Affirmative Defense**

10 **(Statute of Limitations)**

11 180. Luken had full knowledge of, and consented to, CSL’s use of the Hull 32
12 Funds and the Indian Marine Funds for CSL’s operations and business expenses as far
13 back as 2007. Luken took no action and made no complaint about the use of those funds.
14 In fact, Luken knew that CSL later experienced significant cash flow problems and did
15 not have the Hull 32 Funds or the Indian Marine Funds in a trust.

16 181. Luken’s claims are barred by the applicable statutes of limitation.

17 **Seventh Affirmative Defense**

18 **(Waiver)**

19 182. Luken had full knowledge of, and consented to, CSL’s use of the Hull 32
20 Funds for CSL’s operations and business expenses as far back as 2007. Luken instead
21 agreed to repayment of those funds in the form of a credit toward the purchase of a new
22 CSL yacht. In fact, Luken acknowledged in a June 6, 2010 agreement that the Hull 32
23 Funds had been applied to the construction of Hull 36. Luken has accordingly waived his
24 right to seek damages for the use of the Hull 32 Funds.

Eighth Affirmative Defense

(Estoppel)

183. Luken had full knowledge of, and consented to, CSL’s use of the Hull 32 Funds for CSL’s operations and business expenses as far back as 2007. Luken instead agreed to repayment of those funds in the form of a credit toward the purchase of a new CSL yacht. In fact, Luken acknowledged in a June 6, 2010 agreement that the Hull 32 Funds had been applied to the construction of Hull 36.

184. Defendants relied on Luken’s statements and actions and used the Hull 32 Funds for the legitimate operating and business expenses of CSL.

185. If Luken were allowed to repudiate his prior statements and actions, injury would result to defendants.

186. In order to prevent manifest injustice to defendants, Luken should be estopped from asserting his claims in this action.

187. Estoppel will not impair any governmental function.

Ninth Affirmative Defense

(Statute of Frauds)

188. Luken’s alleged agreement with CSL’s directors and officers to hold the Hull 32 Funds and the Indian Marine Funds in a trust never existed, and in any event, was never made in writing. Luken’s claims for the use of the Hull 32 Funds and the Indian Marine Funds are consequently barred by the statute of frauds.

Tenth Affirmative Defense

(Illegality)

189. The trust agreement that Luken alleges in his complaint is illegal and unenforceable because it would have improperly placed Luken ahead of other creditors of CSL.

Eleventh Affirmative Defense

(Lack of Standing/Real Party in Interest)

190. Luken lacks standing to bring his claims in this case. Any such claims, to the extent they exist, belong to CSL.

Twelfth Affirmative Defense

(Failure to Join Necessary Parties)

191. Any claims that Luken has relating to the use of the Hull 32 Funds or relating to any debt owed to Indian Marine II must be asserted as a creditor against CSL. Luken has failed to join CSL as a necessary party in this action.

Thirteenth Affirmative Defense

(Failure to State a Claim)

192. Luken has failed to state a claim for breach of fiduciary duty, fraudulent transfer, and violation of the Consumer Protection Act.

193. Defendants expressly reserve the right to assert additional affirmative defenses as additional information and evidence becomes available in this case.

COUNTERCLAIMS

Defendants assert the following counterclaims against Luken:

First Counterclaim

(Attorney Fees – All Defendants Against Luken)

194. Defendants incorporate paragraphs 1 through 193 above as if fully stated herein.

195. Luken’s allegation that the officers and directors of CSL agreed to place the Hull 32 Funds in a trust is false, and Luken knows it. Luken knew at all times that the Hull 32 Funds were to be used for CSL’s operations and business expenses. Moreover, he frequently inspected CSL’s books and knew that no such trust had ever been created.

1 In fact, Luken was well aware of CSL's ongoing cash flow problems, and of the fact that
2 CGI had forgiven millions of dollars of rent owed by CSL.

3 196. Luken's allegation that CSL's officers and directors agreed to place Indian
4 Marine II's alleged payment of \$7,266,640 (the "Indian Marine Funds") into trust or to
5 otherwise hold those funds for Indian Marine II is also false. Luken is well aware of the
6 falsity of his allegation.

7 197. Luken has concocted his story about the trusts because his claims, if any,
8 should be asserted as a creditor against CSL, and Luken has subordinated his claims
9 against CSL in the Receivership action.

10 198. In addition, Luken has grossly inflated the value of his yacht credit with
11 CSL for the purposes of this lawsuit, and he seeks improper damages against defendants
12 for items such as (1) the amount of money that he spent to purchase CSL's assets out of
13 receivership; (2) money that he actually paid toward the construction of his yacht; and (3)
14 approximately \$5 million that he acknowledges was never "diverted."

15 199. Moreover, Luken purposefully raided CSL and in the process caused both
16 CSL's demise and his own alleged damages. Specifically, Luken engaged in the
17 following actions:

- 18 a. Luken took unwarranted "commissions" on the sale of spec boats;
- 19 b. Luken refused to fund CSL's spec boat program as promised in
20 his Stock Purchase Agreement;
- 21 c. Luken forced CSL to accept trade-ins of used yachts and then sell
22 those yachts at a loss;
- 23 d. Luken induced CSL to accept a trade-in of the Cacique and then
24 sold the yacht to himself at a loss to CSL;
- 25 e. Luken forced CSL to sell yachts to him and his friends and
26 business partners for substantially less than CSL's costs to build those yachts;

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1 f. Luken pocketed the down payment that Burns paid CSL for the
2 purchase of Hull 37;

3 g. Luken gave Burns an improper, \$3.25 million credit toward the
4 purchase of Hull 40;h. Luken stole \$5 million from Preston, thereby
5 causing Preston to halt construction on Hull 38 and cut off revenue to CSL;

6 h. Luken caused CSL to repay the \$5 million that he had stolen from
7 Preston;

8 i. Luken reneged on the December 2014 Agreement and created a
9 deadlock of the board of directors; and

10 j. Luken forced CSL into receivership and bought its assets at a
11 discount.

12 200. Luken filed claims against Withee, who received only a midrange salary
13 from CSL and had nothing to do with Luken’s disputes with the Christensen family.
14 Withee was a long time, loyal employee and friend of the Christensen family, and Luken
15 has included Withee in this lawsuit in order to place additional pressure on CGI and the
16 Christensen family to give him title to the Shipyard.

17 201. Luken’s complaint is frivolous and is being advanced without reasonable
18 cause. Accordingly, pursuant to RCW 4.84.185, defendants are entitled to the attorney
19 fees and costs that they incur to defend this action.

20 **Second Counterclaim**

21 **(Declaratory Judgment)**

22 **(Count I – All Defendants Against Luken)**

23 202. Defendants incorporate paragraphs 1 through 201 above as if fully stated
24 herein.

25 203. An actual and substantial controversy exists between Luken and the
26 defendants concerning the parties’ alleged agreement to create a trust to hold the Hull 32

1 Funds and the Indian Marine Funds. The parties' interests are adverse, and this
2 controversy is of sufficient immediacy and reality to require a declaratory judgment.

3 204. Luken claims that defendants agreed to place the Hull 32 Funds in a trust
4 and apply them only to the construction of his personal yacht. Defendants claim that
5 Luken authorized the use of the Hull 32 Funds for CSL's operations and business
6 expenses and was aware of that use at all times.

7 205. Luken further claims that defendants agreed to place the Indian Marine
8 Funds in a trust or to otherwise apply them only to the construction of Indian Marine's
9 yacht. Defendants claim that no such trust was ever agreed to or created, that such a
10 trust agreement would have been inconsistent with CSL's obligations to its non-
11 shareholder creditors, and that the Indian Marine Funds were properly used for CSL's
12 legitimate business expenses.

13 206. This Court has the power to declare the rights, status, and other legal
14 relations between the parties to this action. A declaratory judgment will terminate the
15 controversy and remove uncertainty now confronting the parties.

16 207. Defendants seek and are entitled to a declaration by the Court that the
17 parties did not agree to place the Hull 32 Funds in a trust for Luken or that any such
18 agreement is invalid.

19 208. Defendants also seek and are entitled to a declaration by the Court that the
20 defendants did not agree to place the Indian Marine Funds in a trust or otherwise hold
21 them, or that any such agreement is invalid.

22 **(Count II – All Defendants Against Luken)**

23 209. Defendants incorporate paragraphs 1 through 208 above as if fully stated
24 herein.

25 210. An actual and substantial controversy exists between Luken and the
26 defendants concerning the value of the credits that CSL owed to Luken. The parties'

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1 interests are adverse, and this controversy is of sufficient immediacy and reality to
2 require a declaratory judgment.

3 211. Luken claims that CSL owed him a credit toward the purchase of a new
4 yacht in the amount of \$18,188,384.43. Defendants claim that CSL owed Luken a credit
5 of \$12,824,847.20.

6 212. In addition, defendants claim that Luken's credit was later reduced by an
7 additional \$9,357,850.76 due to Luken's misconduct in taking Burns' \$1,107,850.76
8 deposit on Hull 37, giving Burns an improper credit of \$3.25 million on Hull 40, and
9 causing CSL to give Preston a \$5 million credit for the money that Luken stole from him.
10 Luken denies that his credit was or should have been further reduced.

11 213. This Court has the power to declare the rights, status and other legal
12 relations between the parties to this action. A declaratory judgment will terminate the
13 controversy and remove uncertainty now confronting the parties.

14 214. Defendants seek and are entitled to a declaration by the Court that Luken's
15 credit from CSL toward the purchase of a yacht was reduced to \$3,466,966.44, or some
16 other amount less than the credit he alleges in his complaint.

17 **(Count III – All Defendants Against Luken)**

18 215. Defendants incorporate paragraphs 1 through 214 above as if fully stated
19 herein.

20 216. An actual and substantial controversy exists between Luken and the
21 defendants concerning the application of the credits that Luken received toward the
22 purchase of a new yacht from CSL. The parties' interests are adverse, and this
23 controversy is of sufficient immediacy and reality to require a declaratory judgment.

24 217. Luken claims that defendants were required to hold the Hull 32 Funds in a
25 trust and then apply those credits toward the purchase of Luken's new CSL yacht.

26

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- 1 c. Luken forced CSL to accept trade-ins of used yachts and then sell
2 those yachts at a loss;
- 3 d. Luken forced CSL to accept a trade-in of the Cacique and then
4 sold the yacht to himself at a loss to CSL;
- 5 e. Luken forced CSL to sell yachts to him and his friends and
6 business partners for substantially less than CSL's costs to build those yachts;
- 7 f. Luken pocketed the down payment that Burns paid CSL for the
8 purchase of Hull 37;
- 9 g. Luken gave Burns an improper, \$3.25 million credit toward the
10 purchase of Hull 40;
- 11 h. Luken stole \$5 million from Preston, thereby causing Preston to
12 halt construction on Hull 38 and cut off revenue to CSL;
- 13 i. Luken caused CSL to repay the \$5 million that he had stolen from
14 Preston;
- 15 j. Luken reneged on the December 2014 Agreement and created a
16 deadlock of the board of directors; and
- 17 k. Luken forced CSL into receivership and bought its assets at a
18 discount.

19 225. Luken's conduct was burdensome, harsh, and wrongful. Luken's conduct
20 was also a visible departure from the standards of fair dealing and a violation of fair play
21 on which every shareholder who entrusts his or her money to a company is entitled to rely.

22 226. Luken's conduct further violated the reasonable expectations of CSL's
23 shareholders at the time that they admitted him into CSL as a shareholder.

24 227. In light of Luken's purchase of CSL's assets in the Receivership action,
25 dissolution of CSL is no longer an adequate remedy. Instead, pursuant to RCW
26 23B.14.300, Foggia and the other CSL shareholders who plan to join him in this action are

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1 entitled to an award of damages in an amount to be determined at trial, but in any event,
2 not less than \$15,000,000.

3 **Fourth Counterclaim**

4 **(Intentional Interference with Economic Relations - Defendants CGI and David**
5 **Christensen Against Luken)**

6 228. Defendants incorporate paragraphs 1 through 227 above as if fully stated
7 herein.

8 229. On or before December 29, 2011, Luken abused his corporate position and
9 power in CSL to force CSL into financial distress as follows:

10 a. Luken took unwarranted “commissions” on the sale of spec boats;

11 b. Luken refused to fund CSL’s spec boat program as promised in
12 his Stock Purchase Agreement;

13 c. Luken forced CSL to sell yachts to him and his friends and
14 business partners for substantially less than CSL’s costs to build those yachts;
15 and

16 d. Luken forced CSL to accept trade-ins of used yachts and then sell
17 those yachts at a loss.

18 230. Luken’s misconduct forced David Christensen to loan money to CSL to
19 enable the company to pay a judgment that had been entered against CSL in a case filed
20 in the U.S. District Court for the District of Oregon, titled *Yacht West, Ltd. v. Christensen*
21 *Shipyards, Ltd., et al*, USDC No. 3:07-cv-1547. The loan was in the amount of
22 \$1,141,399.34, and repayment was promised in a note from CSL to David Christensen,
23 dated December 29, 2011.

24 231. After December 2011 and before November 2014, Luken abused his
25 corporate position and power in CSL to force CSL into financial distress as follows:

1 a. Luken induced CSL to accept a trade-in of the Cacique and then
2 sold the yacht to himself at a loss to CSL;

3 b. Luken pocketed the down payment that Burns paid CSL for the
4 purchase of Hull 37;

5 c. Luken stole \$5 million from Preston, thereby causing Preston to
6 halt construction on Hull 38 and cut off revenue to CSL; and

7 d. Luken caused CSL to repay the \$5 million that he had stolen from
8 Preston.

9 232. Luken's misconduct forced David Christensen and CGI to loan additional
10 money to CSL in order to keep the company solvent. These advances were used to fund
11 payroll, payroll tax, employee vacation pay, and other company expenses necessary to
12 keep CSL's remaining operations going and to retain CSL's remaining employees. The
13 loans were made by wire transfer or by check, and were supported by promissory notes
14 from CSL to CGI/David Christensen, as follows:

15 a. November 19, 2014, loan from CGI to CSL with promissory note
16 by CSL in favor of CGI in the amount of \$681,993.20;

17 b. January 23, 2015, loan from CGI to CSL, with promissory note
18 by CSL in favor of CGI in the amount of \$18,361.88;

19 c. February 13, 2015, loan from CGI to CSL, with promissory note
20 by CSL in favor of David Christensen in the amount of \$151,136.76;

21 d. February 17, 2015, loan from CGI to CSL, with promissory note
22 by CSL in favor of David Christensen in the amount of \$109,963;

23 e. February 18, 2015, loan from CGI to CSL, with promissory note
24 by CSL in favor of David Christensen in the amount of \$42,611.24;

25 f. February 20, 2015, loan from CGI to CSL, with promissory note
26 by CSL in favor of David Christensen in the amount of \$42,000; and

1 g. March 10, 2015, loan from CGI to CSL, with promissory note by
2 CSL in favor of David Christensen in the amount of \$38,355.85.

3 233. Each of the promissory notes contained a promise by CSL to repay the
4 principal amount of the loans, plus interest at an annual rate of 0.4%. Luken, in his
5 position as a director and shareholder of CSL, was aware of all of the above loans and
6 promissory notes.

7 234. After November 2014, Luken reneged on the December 2014 Agreement
8 and created a deadlock of the board of directors and he forced CSL into receivership and
9 bought its assets at a discount. By his conduct after the promissory notes were executed,
10 Luken intentionally interfered with CGI/David Christensen’s expectation that the loans
11 would be repaid.

12 235. By his conduct, Luken did not intend to benefit CSL. Instead, Luken’s
13 conduct was taken for the improper purpose of forcing CSL into financial distress,
14 forcing it into receivership, and then purchasing CSL’s assets for cheap. As such, Luken
15 did not act in good faith.

16 236. As a result of Luken’s conduct, CGI and David Christensen have been
17 damaged in the amount of \$2,225,821.22, plus interest at an annual rate of 0.4%.

18 **JURY DEMAND**

19 237. Defendants demand a jury trial on all issues so triable.

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PRAYER FOR RELIEF

WHEREFORE, defendants pray for relief as follows:

A. That judgment be entered in their favor and against Luken on Luken’s claims for relief;

B. On the First Counterclaim (Attorney Fees), that defendants be awarded their attorney fees and costs incurred to defend this action;

C. On Count I of the Second Counterclaim (Declaratory Judgment), a declaration by the Court that (1) the parties did not agree to place the Hull 32 Funds in a trust for Luken or that any such agreement is invalid; and (2) the defendants and Indian Marine II did not agree to place the Indian Marine Funds in a trust or otherwise hold them, or that any such agreement is invalid;

D. On Count II of the Second Counterclaim (Declaratory Judgment), a declaration by the Court that Luken’s credit toward the purchase of a yacht was reduced to \$3,466,996.44, or some other amount less than the credit he alleges in his complaint;

E. On Count III of the Second Counterclaim (Declaratory Judgment), a declaration by the Court that Luken applied his credit toward the purchase of a new yacht; that Luken instead received a security interest in certain CSL property; and that any credit owed to Luken is owed solely by CSL;

F. On the Third Counterclaim (Shareholder Oppression) that defendants David Christensen and Joe Foggia be awarded damages against Luken in an amount to be determined at trial, but in any event, not less than \$15,000,000;

G. On the Fourth Counterclaim (Intentional Interference with Economic Relations), that defendants David Christensen and CGI be awarded damages against Luken in an amount to be determined at trial, but in any event, not less than \$2,225,821.22, plus interest at an annual rate of 0.4%; and

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1 H. For such other relief as the Court deems just and proper under the
2 circumstances.

3
4 DATED this 25th day of May, 2016.

5 MARKOWITZ HERBOLD PC

6 By: */s/ Kerry J. Shepherd*

7 Kerry J. Shepherd, WSBA #19070
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18 Of Attorneys for Defendant Joe Foggia

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**DEFENDANTS CHRISTENSEN GROUP, INC., DAVID
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ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2016, I have made service of the foregoing **DEFENDANTS CHRISTENSEN GROUP, INC., DAVID CHRISTENSEN, PAT WITHEE, AND JOE FOGGIA’S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO PLAINTIFF’S FIRST AMENDED COMPLAINT** on the parties listed below in the manner indicated:

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DATED this 25th day of May, 2016.

/s/ Kerry J. Shepherd

Kerry J. Shepherd, WSBA #19070
Attorney for Defendants Christensen Group,
Inc., David H. Christensen, and Pat Withee