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

5 SCOTT FORRESTER, in his capacity as a
6 Board Director in the right of The KBOO Foundation,
7 and as a member of the KBOO Foundation, and
8 MICHAEL PAPADOPOULOS, as a member of the
9 KBOO Foundation,

10 Plaintiffs,

11 v.

12 THE KBOO FOUNDATION, a nonprofit
13 corporation, MARK ALLYN, JOE AZAVEDO,
14 JAMILAH BOURDON, ERIN BRAND,
15 REBECCA CHIAO, JUDY FIESTAL,
16 GENEVIEVE MATHEWS, ANTHONY PETCHEL,
17 IVONNE RIVERO, ERIC ROBINSON, and LOUIS
18 SOWA, each such individual in their capacity as a Board
19 of Director of The KBOO Foundation,

20 Defendants.

Case No. 090202464

FIRST AMENDED COMPLAINT

Derivative Action Per ORS 65.174
For Declaratory and Injunctive
Relief

Jury Trial Requested

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I. INTRODUCTION AND PRELIMINARY STATEMENT

1.

This action is brought as a nonprofit corporation derivative suit, pursuant to ORS 65.74,
on behalf of the KBOO Foundation by Plaintiff Scott Forrester, in his capacity as a Board
Director of The KBOO Foundation, to redress ongoing violations of the statutory requirements
for nonprofit corporations by the above captioned Defendants, who are acting in their capacity as
Board Directors of The KBOO Foundation, and in addition, presents claims by Plaintiffs Scott
Forrester and Michael Papadopoulos as members of The KBOO Foundation, to redress ongoing
violations by the above captioned Defendants' failure to provide records of the nonprofit
corporation as required by ORS 65.774 in response to requests by said Plaintiffs for proper and
appropriate purposes, and in furtherance of the purpose and mission of The KBOO Foundation.

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Plaintiff SCOTT FORRESTER was, at the time of filing this action, and at all times relevant to the derivative action herein, a duly elected Board of Director of THE KBOO FOUNDATION, and at all times relevant herein, was, and is, a member of THE KBOO FOUNDATION, and a resident of Multnomah County, Oregon. THE KBOO FOUNDATION is a nonprofit corporation, organized under the laws of the State of Oregon, that provides community-run radio programs, and its principle place of business is located in Multnomah County, Oregon.

Plaintiff MICHAEL PAPADOPOULOS is, and at all times relevant herein was, a member of THE KBOO FOUNDATION, and a resident of Benton County, Oregon.

Defendant THE KBOO FOUNDATION is a nonprofit corporation, organized under the laws of the State of Oregon, that provides community-run radio programs, and its principle place of business is located in Multnomah County, Oregon.

Defendants MARK ALLYN, JOE AZAVEDO, JAMILAH BOURDON, ERIN BRAND, REBECCA CHIAO, JUDY FIESTAL, GENEVIEVE MATHEWS, IVONNE RIVERO, and LOUIS SOWA, are each Board Members of THE KBOO FOUNDATION, and are named herein in their capacity as Board Members of THE KBOO FOUNDATION to redress their violations of the Oregon nonprofit statutes in that capacity as set forth herein.

Defendants ANTHONY PETCHEL and ERIC ROBINSON were Board Members of THE KBOO FOUNDATION within the time periods of the claims presented in the derivative action as set forth herein, and are named in their capacity as former Board Members of THE KBOO FOUNDATION to redress their violations of the Oregon nonprofit statutes in that capacity.

1 **FIRST CLAIM FOR RELIEF**
2 **DERIVATIVE SUIT BY DIRECTOR SCOTT FORRESTER**

3 7.

4 Plaintiffs hereby realleges, and expressly incorporates by reference herein, paragraphs 1 - 6
5 as set forth above.

6 8.

7 Plaintiff Scott Forrester was a Board of Director of The KBOO Foundation from
8 September 28, 2008, until February 23, 2009.

9 9.

10 Prior to filing this action, Plaintiff Forrester made demand to The KBOO Foundation and
11 its Board of Directors to comply with their statutory duty to comply with the requests of KBOO
12 members for access to membership lists made for proper purposes under ORS 65.774, and the
13 KBOO Foundation and its Board have ignored and otherwise refused to comply with said demand
14 to provide KBOO members with said membership lists as required by ORS 65.754.

15 10.

16 More specifically, the KBOO Foundation and its Board of Directors ignored and otherwise
17 refused to comply with their statutory duty for the membership list demands set forth by a
18 November 30, 2008 request of KBOO member Scott Forrester, and by a December 12, 2008
19 request of KBOO member Michael Papadopoulos (First, Second and Third Supplementary
20 Requests), and by a February 20, 2009 request of KBOO member Jan Senten, each of whom
21 expressly sought membership lists from The KBOO Foundation for appropriate purposes per ORS
22 65.754.

23 11.

24 Plaintiff SCOTT FORRESTER, as a Board Member of The KBOO Foundation, attempted
25 to convince the other members of The KBOO Foundation of their statutory duty to provide KBOO
26 members with copies of the organization's membership list as required by Oregon's nonprofit
27

1 corporation statutory requirements; however the other KBOO Board members refused to comply
2 with their legal obligations to provide said membership lists as required by law.

3 12.

4 Plaintiff SCOTT FORRESTER, as a Board Member of The KBOO Foundation, also made
5 demand for the organization to provide him with documents of the minutes of the organization, and
6 its subdivisions and subcommittees, required for the discharge of his duties and for the oversight of
7 The KBOO Foundation, and said records were required to be provided to Plaintiff Forrester
8 pursuant to ORS 65.754. However, the KBOO Foundation and its Board ignored and otherwise
9 refused to comply with said demands as required by ORS 65.754.

10 13.

11 As a direct and proximate result of Plaintiff SCOTT FORRESTER's efforts to try to
12 encourage the other KBOO Board members of their need to comply with all of the requirements of
13 Oregon's nonprofit corporation statutory requirements in providing the organization's records to its
14 members as required by ORS 65.754, the other Directors of the KBOO Foundation Board elected
15 to remove Plaintiff Forrester from The KBOO Foundation's Board on February 23, 2009.

16 14.

17 To date, The KBOO Foundations has failed to provide its members with the organization's
18 records requested as set forth above in paragraphs 9-12 above, and as required by ORS 65.754, and
19 consequently, Plaintiff Forrester brings this derivative action, on behalf of The KBOO Foundation,
20 to compel the staff and Board of The KBOO Foundations to provide said records to the
21 organization's members as required by law.

22 15.

23 Declaratory and injunctive relief are appropriate pursuant to ORS 65.174, to (a) declare
24 that The KBOO Foundation's failure and refusal to provide its members with records of the
25 organization required by ORS 65.754 violates this statute, and (b) for an injunction to compel The
26 KBOO Foundation to provide said records to its members as required by ORS 65.754

1 **SECOND CLAIM FOR RELIEF**
2 **FAILURE TO PROVIDE RECORDS TO MEMBER SCOTT FORRESTER - ORS 65.781**

3 16.

4 Plaintiffs hereby realleges, and expressly incorporates by reference herein, paragraphs 1 -
5 14 as set forth above.

6 17.

7 KBOO member SCOTT FORRESTER has made a demand for records from The KBOO
8 Foundation, and The KBOO Foundation has failed, refused or otherwise ignored Plaintiff's
9 records request, and to date has not provided said Plaintiff with these records of the nonprofit
10 organization as required by law. More specifically, Plaintiff Forrester has made demand for: (a)
11 copies of The KBOO Foundation's membership list on August 5, 2009, (b) copies of the KBOO
12 Foundation's minutes of the organization's committee meetings in September of 2008, and (c)
13 copies of the organization's membership list on August 26, 2009, and each of these records were
14 requested for good faith purposes, and are otherwise appropriate for release per ORS 65.774. To
15 date, The KBOO Foundation has not provided Plaintiff Forrester with said records.

16 18.

17 This court has jurisdiction, pursuant to ORS 65.781, to redress Defendant The KBOO
18 Foundation's failure to provide Plaintiff with the nonprofit organization records set forth in
19 Paragraph 17, and to compel The KBOO Foundation to make said records available to Plaintiff at
20 this time above pursuant to ORS 65.781(2).

21 19.

22 This court may award reasonable attorney fees to the prevailing party in an action under this
23 section pursuant to ORS 65.781(3).

1 **THIRD CLAIM FOR RELIEF**
2 **FAILURE TO PROVIDE RECORDS TO MICHAEL PAPADOPOULOS - ORS 65.781**

3 20.

4 Plaintiffs hereby realleges, and expressly incorporates by reference herein, paragraphs 1 - 6
5 as set forth above.

6 21.

7 Plaintiff Papadopoulos made demand for copies of The KBOO Foundation's membership
8 list in his First Supplementary Request of December 12, 2008, and in his Second Supplementary
9 Request of December 12, 2008, and in his Third Supplementary Request of December 12, 2008,
10 and also in his demand of August 5, 2009 to The KBOO Foundation, and each of these requests
11 were made for good faith purposes, and are appropriate for the release of said organization's
12 records per ORS 65.774. The KBOO Foundation has failed, refused or otherwise ignored
13 Plaintiff's member records request, and has not provided Plaintiff with these records of the
14 nonprofit organization as required by law.

15 22.

16 This court has jurisdiction, pursuant to ORS 65.781, to redress Defendant The KBOO
17 Foundation's failure to provide Plaintiff Papadopoulos with the nonprofit organization records set
18 forth above, and to compel The KBOO Foundation to make said records available to Plaintiff at
19 this time above pursuant to ORS 65.781(2).

20 23.

21 This court may award reasonable attorney fees to the prevailing party in an action under this
22 section pursuant to ORS 65.781(3).

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs seeks the following relief in this action:

- 25 1. For declaratory and injunctive relief as to Plaintiff Forrester's derivative action in
26 Plaintiff's First Claim For Relief, declaring the actions of The KBOO Foundation to violate
27

1 ORS 65.774, and for an injunction compelling The KBOO Foundation to promptly provide
2 said records to its members as required by law.

3 2. For an order compelling The KBOO Foundation to provide the organization's records
4 to Plaintiff Scott Forrester as requested in Plaintiffs' Second Claim For Relief.

5 3. For an order compelling The KBOO Foundation to provide the organization's records to
6 Plaintiff Michael Papadopoulos as requested in Plaintiffs' Third Claim For Relief.

7 4. For Plaintiffs' reasonable Attorney Fees and costs pursuant to ORS 65.781(3), and,

8 5. For such other relief as the Court deems just and equitable.

9 Dated this August 27, 2009.

10 

11 DANIEL J. STOTTER, OSB #911090
12 IRVING & STOTTER LLP
13 408 SW Monroe Ave., Ste. L163
14 Corvallis, OR 97333
15 (541) 738-2601
16 Attorney Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I certify that on the 27th day of August, 2009, I served a true copy of the foregoing **FIRST**
3 **AMENDED COMPLAINT** on the following as listed below by:

4 () BY FAX: Facsimile transmission (followed up by hand or
5 mail delivery):

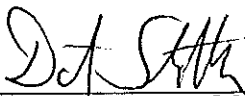
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7 (X) BY MAIL: Depositing in the United States mail a true copy
8 thereof, enclosed in a sealed envelope with postage paid and
9 addressed to the last known address of that party: or

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11 () BY HAND: Regular delivery to the office address of that party's
12 attorney, or by causing to be hand delivered to that same address
13 a true copy thereof.

14 Scott O. Pratt
15 Attorney At Law
16 The Jackson Tower, Ste. 1200
17 806 SW Broadway
18 Portland, OR 97205

19 DATED this August 27, 2009.

20 IRVING & STOTTER LLP

21 
22 Daniel J. Stotter, OSB #91109
23 IRVING & STOTTER LLP
24 Attorney for Plaintiffs
25
26
27