

1  
2  
3  
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF MULTNOMAH

6 SCOTT FORRESTER AND MICHAEL )  
PAPADOPOULOS, )

7 Plaintiffs, )

8 v. )

9 THE KBOO FOUNDATION, ET AL., )

10 Defendants. )  
11

Case No. 0902-02464

ANSWER AND AFFIRMATIVE  
DEFENSES TO FIRST AMENDED  
COMPLAINT

12 Defendants appear and respond to plaintiffs' First Amended Complaint as follows:

13 1.

14 Paragraph 1 of plaintiffs' First Amended Complaint is an introduction and  
15 preliminary statement that does not contain allegations relevant to plaintiffs' Claims for  
16 Relief. There do not appear to be allegations to which defendants can admit or deny and  
17 defendants do not admit or deny the statements contained in paragraph 1. Paragraph 1 should  
18 be stricken as irrelevant.

19 2.

20 Defendants deny that plaintiff Forrester was a Board of Director of The KBOO  
21 Foundation as all times relevant to the derivative action filed by plaintiff Forrester. Except as  
22 denied, defendants admit paragraph 2 of plaintiffs' First Amended Complaint.

23 3.

24 Defendants admit paragraphs 3 to 6, 8, 19 and 23 of plaintiffs' First Amended  
25 Complaint.  
26

1 4.

2 Defendants deny paragraphs 9 to 15 of plaintiffs' First Amended Complaint and the  
3 whole of the First Claim for Relief.

4 5.

5 Defendants admit that plaintiff Forrester, "has made a demand for records" at various  
6 times without admitting that plaintiff Forrester followed the proper statutory procedures to  
7 inspect and copy The KBOO Foundation's records. Defendants do not have sufficient  
8 knowledge or information to form a believe as to the truth or falsity of the specific dates  
9 upon which plaintiff Forrester alleges that he demanded records and therefore denies the  
10 allegations about the specific dates upon which he requested those records. Defendants  
11 provided plaintiff Forrester with a membership list on September 8, 2009. Except as  
12 admitted or clarified, defendant denies paragraph 17 of plaintiffs' First Amended Complaint.  
13 Defendants deny paragraph 18 of plaintiffs' First Amended Complaint and the whole of the  
14 Second Claim for Relief.

15 6.

16 Defendants admit that plaintiff Papadopoulos made a demand for The KBOO  
17 Foundation's membership list on December 12, 2008 without admitting that plaintiff  
18 Papadopoulos followed the proper statutory procedures to inspect and copy the membership  
19 list. Except as admitted, defendants deny paragraph 21 of plaintiffs' First Amended  
20 Complaint. Defendants deny paragraph 22 of plaintiffs' First Amended Complaint and the  
21 whole of the Third Claim for Relief.

22 FIRST AFFIRMATIVE DEFENSE  
23 Failure to State Ultimate Facts Sufficient to Constitute a Claim

24 7.

25 ORS 65.174(3) requires that, in a claim brought as a derivative action, plaintiff  
26 Forrester must allege with particularity the demand made to obtain action by the board of  
directors. Plaintiff Forrester has not stated the demand made with particularity. Instead,

1 plaintiff Forrester has made only general allegations that he made a demand to obtain action  
2 by the board and attempted to convince Board members to provide a membership list.  
3 Plaintiff Forrester has not alleged the manner in which he made demand and attempted to  
4 convince Board members to act or the specifics of his demand and attempts to convince.  
5 Therefore paragraphs 9 to 11 of plaintiffs' First Amended Complaint do not state ultimate  
6 facts constituting a claim.

7 8.

8 KBOO is not required to keep records of, "the minutes of the organization, and its  
9 subdivisions and subcommittees" as alleged in paragraph 12 of plaintiffs' First Amended  
10 Complaint. Therefore, paragraphs 12 and 13 of plaintiffs' First Amended Complaint do not  
11 state ultimate facts constituting a claim and paragraph 14 does not state such ultimate facts to  
12 the extent it incorporates or relies on the allegations of paragraphs 12 or 13.

13 9.

14 Plaintiffs' First Claim for Relief does not state ultimate facts constituting a claim for  
15 relief.

16 SECOND AFFIRMATIVE DEFENSE  
17 Failure to State Ultimate Facts Sufficient to Constitute a Claim  
18 10.

19 Plaintiffs have not alleged that KBOO is failing to enforce a right that it has against  
20 third parties.

21 11.

22 Plaintiffs' First Claim for Relief does not state ultimate facts necessary for a  
23 derivative action on behalf of KBOO and therefore has not alleged a claim for relief as a  
24 derivative action.

25 THIRD AFFIRMATIVE DEFENSE  
26 Failure to Comply with Statutory Requirements—Forrester August 5, 2009 Request

12.

As alleged below, plaintiff Forrester's August 5, 2009 request for KBOO's membership list failed to comply with the requirements of ORS Chapter 65 imposed upon members who request a membership list.

13.

Plaintiff Forrester requested the membership list for the purpose of communicating with other members concerning KBOO's annual membership meeting.

14.

Pursuant to ORS 65.224, the membership list is not available for inspection and copying by a member until two business days following the date upon which notice of the annual meeting is given.

15.

KBOO gave notice of its annual membership meeting on August 25, 2009. KBOO made its membership list available for inspection and copying two business days following the date upon which notice of the annual meeting was given. Plaintiff Forrester and all other persons within the class of those allowed to inspect and copy KBOO's membership list were able to do so within the statutory period.

FOURTH AFFIRMATIVE DEFENSE  
Committee Minutes Not Required to be Kept

16.

Generally, KBOO's committees do not take action in place of the board of directors on behalf of the corporation and KBOO does not keep minutes of committee meetings. ORS 65.771 does not require KBOO to keep such records and they are not records subject to inspection and copying under ORS 65.774.

17.

To the extent that KBOO may not have provided records of committee meetings requested by plaintiff Forrester, defendant did not violate any statutes.

1 FIFTH AFFIRMATIVE DEFENSE  
2 Failure to Comply with Statutory Requirements—Papadopoulos December 2008 Request  
3 18.

4 As alleged below, plaintiff Papadopoulos' December 12, 2008 request for KBOO's  
5 membership list failed to comply with the requirements of ORS Chapter 65 imposed upon  
6 members who request a membership list.

7 19.

8 Plaintiff Papadopoulos requested that KBOO provide him with an electronic copy of  
9 the list. ORS 65.774 only provides the right to inspect and copy the membership list at a  
10 reasonable time and place specified by the organization, not the right to demand that the list  
11 be directly provided to the member.

12 20.

13 Plaintiff Papadopoulos requested only an electronic copy of the membership list.  
14 KBOO is not required to provide an electronic copy of the membership list.

15 21.

16 Plaintiff Papadopoulos' December 2008 request for KBOO's membership list was not  
17 made for proper purposes.

18 22.

19 Plaintiff Papadopoulos' December 2008 request for KBOO's membership list was not  
20 made in good faith.

21 SIXTH AFFIRMATIVE DEFENSE  
22 Failure to Comply with Statutory Requirements—Papadopoulos August 5, 2009 Request  
23 23.

24 As alleged below, plaintiff Papadopoulos' August 5, 2009 request for KBOO's  
25 membership list failed to comply with the requirements of ORS Chapter 65 imposed upon  
26 members who request a membership list.

1 24.

2 Plaintiff Papadopoulos requested the membership list for the purpose of  
3 communicating with other members concerning KBOO's annual membership meeting.

4 25.

5 Pursuant to ORS 65.224, the membership list is not available for inspection and  
6 copying by a member until two business days following the date upon which notice of the  
7 annual meeting is given.

8 26.

9 KBOO gave notice of its annual membership meeting on August 25, 2009. KBOO  
10 made its membership list available for inspection and copying two business days following  
11 the date upon which notice of the annual meeting was given. Plaintiff Papadopoulos and all  
12 other persons within the class of those allowed to inspect and copy KBOO's membership list  
13 were able to do so within the statutory period.

14 SEVENTH AFFIRMATIVE DEFENSE  
15 Individual Directors are not Proper Parties

16 27.

17 Plaintiffs have not alleged that the individual defendants have breached any duty that  
18 those individuals owe to plaintiffs.

19 28.

20 Plaintiffs have not prayed for any relief against the individual defendants. Plaintiffs'  
21 only requests for relief are against KBOO.

22 29.


23 The individual defendants named by plaintiffs are not proper party defendants and the  
24 claims should be dismissed as to those defendants.

25 WHEREFORE, defendants pray for judgment against plaintiffs as follows:

- 26 1. Dismissing plaintiffs' Complaint with prejudice.

- 1                   2. For defendants' reasonable attorney fees in an amount to be determined by the  
2                   court.  
3                   3. For costs and disbursements incurred herein.  
4

5  
6 By


  
\_\_\_\_\_  
Scott O. Pratt  
Attorney for Defendants

## CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer and Affirmative Defenses on plaintiffs by mailing, postage prepaid, a true and exact copies thereof on September 29, 2009 to:

Daniel J. Stotter  
IRVING & STOTTER LLP  
408 SW Monroe Ave.  
Suite L163  
Corvallis, OR 97333  
Attorney for Plaintiffs

DATED: September 29, 2009

  
Scott O. Pratt OSB# 813423  
Attorney for Defendants