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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

DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
SUPPORTING MEMORANDUM OF
LAW

12 DEFENDANT'S REQUEST FOR ORAL ARGUMENT

13 Defendants request oral argument on this motion and estimate that 30 minutes are
14 necessary for argument. Defendants request court reporting services.

15 DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

16 Pursuant to ORCP 47, defendants move for summary judgment against plaintiffs Claims
17 for Relief. As discussed below there are no genuine material issues of fact and, as a matter of
18 law, plaintiffs are not entitled to the relief they are requesting from the court.

19 PLAINTIFFS MEMORANDUM OF LAW IN SUPPORT
20 OF THEIR MOTION FOR SUMMARY JUDGMENT

21 I. BACKGROUND

22 Plaintiffs are members of The KBOO Foundation. Plaintiff Forrester was a director of
23 KBOO for a few months as alleged in paragraph 8 of plaintiffs' Amended Complaint. Mr.
24 Forrester sent an email to KBOO's station manager announcing his candidacy for re-election to
25 the KBOO Board of Directors and made a request for KBOO's membership list on November
26 30, 2008, ten months before the annual membership meeting at which the election was to be

1 held. Pratt Declaration, Exhibit 1. KBOO did not provide the membership list to Mr. Forrester
2 in response to this request.

3 Mr. Papadopoulos made several written requests for KBOO's membership list, starting
4 in October 2008. On December 12, 2008, he sent his final request. In each request, Mr.
5 Papadopoulos stated that he intended to use the list to conduct his own fundraising campaign.
6 The final request also included three other purposes. KBOO did not provide the membership
7 list to Mr. Papadopoulos in response to this request.

8 Plaintiffs filed this lawsuit in February 2009. Their original Complaint included
9 numerous claims that have been removed from their Amended Complaint. In late December,
10 defendants' counsel consented to allow plaintiffs' counsel to amend the Amended Complaint.
11 The text of plaintiffs' counsel's email request to amend, to which defendants' counsel
12 consented, is:

13 I am writing as a follow-up to our recent phone conversation earlier this week in the above referenced
14 matter to confirm that the Defendants have no objection, and will agree to stipulate to Plaintiffs
amending their First Amended Complaint in the above referenced action as follows:

15 (1) On Plaintiffs' Second Claim For Relief, amending paragraph 17 to replace the reference to
16 "August 5, 2009" with the correct date of November 30, 2008, and by deleting the two subsequent
references to membership list requests by Plaintiff Forrester of September 2008 and August 26, 2009
on on lines 10-14 of that paragraph.

17 and,

18 (2) On Plaintiffs' Third Claim For Relief, amending paragraph 21 by deleting the reference to
Plaintiff Papadopoulos's "demand of August 5, 2009" on line 9 of this paragraph.

19 These revisions have the effect of restricting plaintiffs' claims to KBOO's refusal to
20 provide the membership list to plaintiffs pursuant to Mr. Forrester's request on November 30,
21 2008 and Mr. Papadopoulos' request on December 12, 2008. Defendants have not yet been
22 served with a second amended Complaint with these revisions. These revisions were verified
23 by counsel immediately prior to Mr. Forrester's deposition. Pratt Declaration, Exhibit 9.
24 Plaintiffs' depositions proceeded on the basis that those amendments would be made and the
25 claims would be so limited. The argument below is presented on that basis.
26

1 II. STANDARDS FOR SUMMARY JUDGMENT

2 On review of a summary judgment motion, a court must view the facts and all
3 reasonable inferences that may be drawn from the facts in the light most favorable to the
4 nonmoving party. *Jones v. General Motors Corp.*, 325 Or. 404, 408, 939 P2d 608 (1997).

5 The court should review the record to determine whether a genuine issue exists as to
6 any material fact and whether the moving party is entitled to judgment as a matter of law.

7 ORCP 47 C; *Jones*, 325 Or at 413-14.

8 ORCP 47C provides in pertinent part:

9 “ . . . The court shall grant the motion if the pleadings, depositions, affidavits,
10 declarations and admissions on file show that there is no genuine issue as to
11 any material fact and that the moving party is entitled to prevail as a matter of
12 law. No genuine issue as to a material fact exists if, based upon the record
13 before the court viewed in a manner most favorable to the adverse party, no
14 objectively reasonable juror could return a verdict for the adverse party on the
15 matter that is the subject of the motion for summary judgment. The adverse
16 party has the burden of producing evidence on any issue raised in the motion
17 as to which the adverse party would have the burden of persuasion at trial.
18 The adverse party may satisfy the burden of producing evidence with an
19 affidavit or a declaration under section E of this rule. A summary judgment,
20 interlocutory in character, may be rendered on the issue of liability alone
21 although there is a genuine issue as to the amount of damages.”

22 The Oregon Supreme Court, in *Jones, supra*, added:

23 The phrase "no objectively reasonable juror could return a verdict for the
24 adverse party" also is new to ORCP 47 C, but, like the other phrases already
25 discussed, the concept that that phrase embodies is a familiar one. In *Seeborg*
26 *v. General Motors Corporation*, 284 Or. 695, 700-01, 588 P2d 1100 (1978),
this court held that a court may allow a summary judgment motion, due to the
absence of a genuine issue as to any material fact for trial, if the record fails to
show the existence of a "triable issue," that is, sufficient evidence to entitle a
party to a jury determination . . . ”

325 Or at 413

1 III. ARGUMENT

2 A. Second Claim for Relief

3 Plaintiffs' Second Claim for Relief is very narrow. Plaintiffs allege that Mr. Forrester
4 made a proper request for a copy of KBOO's membership list and that KBOO did not provide
5 the list as required by law.

6 The legal issues involved in plaintiffs' Second Claim are also very narrow. The only
7 questions involved are whether Mr. Forrester made a proper request to inspect and copy the
8 membership list as required by ORS 65.774 and whether KBOO was legally required to allow
9 Mr. Forrester to inspect and copy that list.

10 Mr. Forrester made his request by email on November 30, 2008. A copy of that email is
11 attached to Scott O. Pratt's Declaration as Exhibit 1. KBOO did not provide the membership
12 list to Mr. Forrester in response to this request.

13 A nonprofit corporation must give its members the opportunity to inspect and copy the
14 corporation's membership list if the member makes a written demand and that demand complies
15 with ORS 65.774(3). ORS 65.774(3)(a) required Mr. Forrester to state a proper purpose for
16 which he was requesting the membership list. Mr. Forrester's stated purpose was to use the
17 membership list to communicate with other members in his campaign for re-election to the
18 KBOO Board of Directors. The election was not to be held for 10 months, as stated in Mr.
19 Forrester's email (Pratt Declaration, Exhibit 1). Mr. Forrester's reliance on ORS 65.774 is not
20 well-taken. Instead, Mr. Forrester's request for the membership list is governed by ORS 65.224
21 because his purpose was to communicate with KBOO's members concerning a membership
22 meeting.

23 In a nonprofit corporation with members entitled to vote for directors, such as KBOO,
24 the members elect the directors at the annual meeting of members. ORS 65.311(1). The
25 requirements that apply to a member's access to the membership list prior to a membership
26 meeting for purposes of communicating with other members concerning the meeting are

1 specifically described in ORS 65.224(2). The list is not required to be available for inspection
2 until 2 business days after notice of the meeting is given. The nonprofit organization does not
3 have to deliver the list to the member. Rather, the list has to be made available for inspection at
4 the corporation's principal office and the corporation must provide the member with the
5 opportunity to copy the list at reasonable times at the member's expense.

6 In the present case, notice of the annual meeting at which directors would next be
7 elected had not been given on November 30, 2008, when Mr. Forrester made his request for the
8 list. Notice of that meeting would not be given for almost nine months. Davis Declaration,
9 Paragraph 3. Mr. Forrester's only stated purpose was to communicate with other members
10 about his re-election at the next annual membership meeting to be held in September 2009. His
11 request was substantially premature.

12 Plaintiffs' counsel has argued that a member can request the membership list for the
13 purpose of communicating with members about a meeting under ORS 65.774 as well as ORS
14 65.224. Such an interpretation of ORS 65.774 would violate a basic premise of statutory
15 interpretation. Specific provisions control over general provisions. *Safeway Stores, Inc. v.*
16 *State Board of Agriculture*, 198 Or. 43, 255 P.2d 564, 567 (1953); *State v. Wagner*, 305 Or.
17 115, 752 P.2d 1136 (1988).

18 ORS 65.224 is entitled, "**Members' List for Meeting; Attorneys Fees.**" It provides
19 specific guidance about members' access to the membership list, and no other corporate
20 record, for purposes of communicating with other members about a membership meeting.
21 Subparagraph 1 mandates that the corporation prepare a list of the names, addresses **and**
22 **membership dates**. The corporation has a continuing duty to maintain a current list of
23 members entitled to vote that are not on the main list. Under subparagraph 2, the list must be
24 available for inspection by a member for one specific purpose, the purpose of communicating
25 with other members about the meeting. The list must be available for inspection beginning
26 no later than two days after notice of the meeting is given continuing through the date of the

1 meeting. Since notice must be given at least 30 but no more than 60 days prior to the
2 meeting, ORS 65.214(3)(b), the membership list is available to the members for this specific
3 purpose for a limited time prior to the meeting.

4 In contrast, ORS 65.774 sets general standards for a member's access to a variety of
5 corporate records. Subparagraph 3 states that the written notice requesting the right to
6 inspect and copy the records must include some general information, such a reasonably
7 particular statement of the records demanded and the member's purpose. The purpose must
8 be proper, the request must be made in good faith and the records must be directly connected
9 to the stated purpose. The terms "proper purpose", "good faith", "reasonable particularity"
10 and "directly connected" are not defined or described in any manner.

11 Unlike ORS 65.224, which requires the membership list to be available for inspection
12 and copying during reasonable times at a specific place, the corporation is given five days to
13 comply with a written demand made under the general provisions of ORS 65.774.
14 Presumably, this distinction is due to the fact that the corporation has an affirmative duty to
15 keep the membership list available at all times for member meeting communications but will
16 have to compile records requested under ORS 65.774.

17 Another distinction between ORS 65.224 and 65.774 is that the membership dates do
18 not have to be provided under the general statute. ORS 65.771(3) only requires that
19 members' names and addresses be maintained and that is the only membership information
20 that is available in a request made under ORS 65.774(2).

21 ORS 65.774(4)(a) also shows that this statute is controlled by the specific provisions
22 of ORS 65.224. ORS 65.774 does not affect a member's inspection rights under ORS
23 65.224. Member's rights and the corporation's obligations relating to membership list access
24 for the purpose of communicating with other members about a membership meeting are
25 governed by ORS 65.224, not ORS 65.774.
26

1 There are good policy reasons to restrict access to the membership list for the purpose of
2 communicating with other members about a membership meeting. Members may take action at
3 a membership meeting. ORS 65.201(4)(b). Only members of record may vote at a membership
4 meeting. ORS 65.211. The record date for members entitled to vote at a meeting is determined
5 by the corporation's Bylaws. In this case, the Bylaws provide that the record date is the day
6 before the first notice of the meeting is given. Pratt Declaration, Exhibit 2. The membership
7 can change substantially in the months prior to the record date. Davis Declaration, Paragraph 4.
8 A list of members ten months prior to the membership meeting will include many people who
9 will not be members on the record date and therefore not entitled to vote at the membership
10 meeting. That list will not include many people who will be members of record and therefore
11 entitled to vote at the meeting. Therefore, communications about actions that may be taken at
12 the membership meeting will not be properly directed to members of record entitled to vote at
13 the meeting.

14 A nonprofit organization also has a significant interest in maintaining the privacy of its
15 members and protecting them from unwanted communications. KBOO members are KBOO's
16 primary source of revenue. Davis Declaration, Paragraph 5. Numerous unwanted
17 communications from other members create the risk of alienating members, thereby causing
18 them to terminate their memberships and depriving KBOO of funds. Davis Declaration,
19 Paragraph 5. Therefore, ORS 65.224 restricts such communications to the one to two month
20 period prior to the membership meeting, a period when members will be expecting to receive
21 communications about the meeting.

22 Mr. Forrester requested KBOO's membership list for the purpose of communicating
23 with other KBOO members about the election at the membership meeting to be held ten months
24 after his request. Access to the membership list for this purpose is governed by ORS 65.224. A
25 member does not have the right to inspect and copy the list until two days after notice of the
26

1 meeting is given. Mr. Forrester's request was made long before that date. Therefore, KBOO
2 acted properly in withholding the membership list.

3 B. Third Claim for Relief

4 Mr. Papadopoulos asserts that he was entitled to a copy of KBOO's membership list
5 based on a request he made on December 12, 2008. Mr. Papadopoulos made this request by
6 email to the KBOO Board of Directors. A copy of that email is attached to the Pratt Declaration
7 as Exhibit 3. Mr. Papadopoulos stated four purposes in his email request. The first purpose is
8 titled "Second Amended Request". Mr. Papadopoulos titled it as such because he had made two
9 prior mail requests stating essentially that same purpose. The first mail request was dated
10 November 12, 2008. Pratt Declaration, Exhibit 4. The second mail request was dated
11 November 22, 2008 and was titled "Amended Request". Pratt Declaration, Exhibit 5. Mr.
12 Papadopoulos also had an email exchange with KBOO staff in October 2008 making the same
13 request for the same purpose but he apparently didn't consider that a formal request in
14 compliance with ORS Chapter 65. Pratt Declaration, Exhibit 6.

15 In his earlier requests and the Second Amended Request contained in his December 12
16 email, Mr. Papadopoulos stated that his purpose was to conduct his own fundraising campaign
17 using KBOO's membership list. Mr. Papadopoulos apparently concedes that the purpose stated
18 in the earlier requests for the membership list were not for proper purposes. His amended
19 Complaint does not include an allegation that KBOO violated its obligations by refusing to
20 provide him with the list for the purpose of allowing him to conduct his own fundraising
21 campaign.

22 Mr. Papadopoulos' Third Claim for Relief fails as a matter of law for two reasons. First,
23 in each of his "Requests", Mr. Papadopoulos requested an electronic copy of the membership
24 list. Neither state law nor KBOO's Bylaws require that KBOO provide an electronic copy of
25 the list. ORS 65.771 describes the records that a nonprofit corporation must maintain and
26 specifically states that a nonprofit corporation, "shall maintain its records in written form or in

1 another form capable of conversion into written form within a reasonable time.” ORS
2 65.771(4). ORS 65.774 describes the standards under which a member can inspect and copy
3 the records described in ORS 65.771. A member has a right to obtain only a written copy of
4 the records because the member can only obtain the records described in ORS 65.771 and
5 subparagraph 4 of that statute requires the corporation to maintain those records in written
6 form or a form readily convertible to written form.

7 Further, a member does not have the right to compel the corporation to deliver
8 records to the member. Rather, the member’s right is to inspect and copy the records at a
9 reasonable time and place specified by the nonprofit corporation. ORS 65.774. This
10 supports the conclusion that a member can only obtain a written copy of the records, not an
11 electronic copy. A right to inspect and copy necessarily implies that a member can see a
12 written version of a record, not an electronic version. The right of the corporation to set a
13 reasonable time and place also implies that it must provide a written version but not an
14 electronic version. There is no need to set a time and place if the corporation has to provide
15 an electronic version of the list.

16 There are good policy reasons to prohibit a member from obtaining an electronic
17 version of records. If a member could inspect and copy an electronic version of the records,
18 particularly the membership list, there is a substantial risk that a sophisticated computer user
19 could obtain far more information than the name and address of members provided by ORS
20 65.771(3). By limiting the member to a written copy of the list, the member can verify and
21 obtain the other members’ names and addresses but cannot obtain other member information
22 maintained by the corporation, such as telephone numbers, contribution dates and amounts,
23 employment or any other information that a nonprofit corporation finds helpful to include in
24 its membership database.

25 Another problem with Mr. Papadopoulos’ December 12 demand is that he was asking
26 KBOO to provide him with member information that KBOO is not required to provide. A

1 nonprofit corporation is only required to maintain the names and addresses of members under
2 ORS 65.771(3). Mr. Papadopoulos' various demands for the membership list indicated that
3 he intended to send email solicitations to other members. Obviously, he was not asking to
4 inspect and copy only the names and addresses of the members. He was asking for a list of
5 the email addresses of the members. The applicable statutes do not require KBOO to provide
6 this information. KBOO therefore properly denied Mr. Papadopoulos' demand for the
7 membership list.

8 The second reason that Mr. Papadopoulos' December 12 demand fails is because he
9 did not request the membership list for a proper purpose. Mr. Papadopoulos' written demand
10 starts by describing KBOO's response to his earlier written demands for the membership list,
11 demands that stated only one purpose; Mr. Papadopoulos' intent to use the membership list
12 to conduct his own fundraising campaign independent of any control by KBOO or
13 coordination with KBOO's solicitation plans and strategies. His demand then contends that
14 the station manager's previous refusals to provide him with the list for that purpose were
15 illegal and that any director who supported that position was acting illegally. Mr.
16 Papadopoulos reiterates his demand that he be provided an electronic copy of the list for the
17 purpose of conducting his solo fundraising activities. Only after restating this purpose and
18 his opinion that a denial of that purpose was illegal, an opinion that he apparently does not
19 now hold, does Mr. Papadopoulos state the purposes that he now claims were improperly
20 denied.

21 After his November 12 request to obtain membership information for his own
22 fundraising purposes, KBOO provided a detailed explanation of the reasons for its refusal
23 and suggested another method by which Mr. Papadopoulos could achieve his goal in concert
24 with KBOO staff. Pratt Declaration, Exhibit 7. Mr. Papadopoulos refused to accept that
25 explanation and reiterated the same request on November 22. KBOO's manager again
26 refused to provide the list, referencing the prior explanation, Pratt Declaration, Exhibit 8.

1 Again, Mr. Papadopoulos would not accept an explanation that was both reasonable and
2 legal. Instead, Mr. Papadopoulos made his email demand on December 12. Given this
3 history and Mr. Papadopoulos' statements in the December 12 demand that he continued to
4 believe he had a right to use KBOO's membership list for his own fundraising purposes,
5 KBOO had no assurances that Mr. Papadopoulos would not use the list for fundraising.

6 KBOO rejected Mr. Papadopoulos' December 12 because it concluded that he still
7 intended to use the membership list for the improper purpose of fundraising. Davis
8 Declaration, Paragraph 7. KBOO was entitled to reject this demand because the other
9 purposes listed in the demand appeared to be nothing more than an attempt to state proper
10 purposes so that Mr. Papadopoulos could obtain the membership list for an improper
11 purpose.

12 The purposes stated in the three "Supplementary Requests" included in Mr.
13 Papadopoulos' December 12 demand are also improper. Mr. Papadopoulos is asking that he
14 be provided with KBOO resources so he can take action against the Board of Directors. He
15 wants to take action against Board and staff because they are refusing his demand that he be
16 provided with the list to use for an improper purpose. While the nonprofit statutes allow a
17 certain number of members to take such actions, nothing in those statutes requires the
18 corporation to provide a member with its resources to contact other members for those
19 purposes.

20 For instance, ORS 65.174 allows 20 members to bring a derivative lawsuit. ORS
21 65.204 allows members constituting at least 5% of the voting power to call a special
22 membership meeting. In neither case does the statute state that the nonprofit corporation
23 must provide a member with membership information so that the member can recruit others
24 for these purposes. These are not proper purposes to inspect and copy the membership list
25 because these purposes are clearly to take action contrary to the desires of the corporation's
26 governing body, its Board. (ORS 65.301 states that the Board exercises all corporate

1 powers.) If a nonprofit Board is taking action that contravenes the desires of a significant
2 number of its members, it will not be difficult to find the necessary number of members to
3 join in these actions. A sole member should not have access to the membership list for the
4 purpose of stirring up discontent among the members. There should be a high bar before
5 members can take action contrary to the governing body and the governing body should not
6 be compelled to make it easier for a single member to recruit others to take such action.

7 Mr. Papadopoulos' Third Claim for Relief should be dismissed because he did not
8 make a proper demand for the membership list. He did not ask to be provided with a
9 reasonable opportunity to inspect and copy a written version of the list. He asked for an
10 electronic copy of the list to be delivered to him

11 C. First Claim for Relief

12 Plaintiffs' First Claim for Relief is titled a derivative action by Mr. Forrester as a
13 director of KBOO. As stated in paragraph 8 of the Amended Complaint, Mr. Forrester is no
14 longer a director and therefore doesn't have standing to bring a derivative action.

15 The derivative action claims that the improper actions by the KBOO Foundation and its
16 Board are the same actions claimed to be improper in the Second and Third Claims for Relief.
17 Plaintiffs ask for the same relief for their First Claim as for their Second and Third Claims. The
18 First Claim for Relief fails for the same reasons that the other two claims fail as described
19 above.

20 A derivative action is not appropriate in this case even if the underlying claims were
21 valid. A "derivative action" or "derivative suit" is "a suit by a beneficiary of a fiduciary to
22 enforce a right belonging to the fiduciary; esp., a suit asserted by a shareholder on the
23 corporation's behalf against a third party (usu. a corporate officer) because of the
24 corporation's failure to take some action against the third party." Black's Law Dictionary, 7th
25 Ed. (1999). "A derivative action is a suit by a shareholder to enforce a corporate cause of
26 action. The corporation is a necessary party to the suit. And the relief which is granted is a

1 judgment against a third person in favor of the corporation.” *Price v. Gurney*, 324 U.S. 100,
2 105, 65 S.Ct. 513 (1945).

3 Plaintiffs have not filed a derivative suit. Plaintiffs do not allege that the corporation
4 has a claim against third parties that the Board has improperly failed to pursue. Rather,
5 plaintiffs have alleged that their statutory rights have been violated by the corporation. The
6 prayer for relief illustrates this problem. Plaintiffs seek declaratory and injunctive relief only
7 against KBOO, and not against any individual defendant. The relief sought is not on behalf
8 of the KBOO Foundation itself but on behalf of the plaintiffs. KBOO is not harmed by its
9 refusal to provide plaintiffs with the membership list. Only the individual plaintiffs can
10 claim such harm.
11

12 Whether an individual may pursue a derivative claim due to a third party's breach of a
13 duty owed to a corporation depends on whether the damages suffered by the individual are
14 distinct from, rather than derivative of, the damages claimed by the corporation. *Hampton*
15 *Tree Farms, Inc. v. Jewett*, 125 Or. App. 178, 193 (1994). Plaintiffs have not alleged that
16 they have suffered injury derivative of an injury suffered by the corporation. In fact, they
17 have not alleged that the corporation has suffered any injury. Plaintiffs have alleged that they
18 have suffered injury due to statutory breaches by the corporation. This is a direct action
19 against the corporation. It is not a derivative action of the corporation against third parties.
20

21 The individual defendants should be dismissed from this case. Plaintiffs have not
22 alleged that they have a claim directly against the individual defendants. They have not
23 alleged that the corporation has a claim against the individual defendants. Plaintiffs have not
24 asked for any relief against the individual defendants. The individual defendants are
25 therefore improper parties to this action.
26

1 IV. CONCLUSION.

2 This court should grant summary judgment because there is no genuine issue as to any
3 material fact and the plaintiffs are entitled to judgment on defendants' counterclaims as a matter
4 of law. There is no legal basis for a derivative action and there is no legal basis for an action
5 against the individual defendants. The individual defendants and the First Claim for Relief
6 should be dismissed for these reasons.

7 Mr. Forrester's Second Claim for Relief also fails as a matter of law. He requested the
8 membership list for the purpose of communicating with other members about the annual
9 membership meeting to be held ten months after his request. ORS 65.224 governs requests for
10 the membership list made for this purpose. The membership list does not have to be available
11 for this purpose until two days following the date that notice of the membership meeting is
12 given. Mr. Forrester's request was made long before the date on which KBOO was required to
13 make the membership list available for inspection and copying for this purpose.

14 Mr. Papadopoulos' Third Claim for Relief did not state a proper purpose. He continued
15 to request the list for the improper purpose of conducting his own fundraising campaign. He
16 had repeatedly requested the membership list for this purpose and he had continually asserted
17 that KBOO was not entitled to reject his request based made for this purpose. KBOO's station
18 manager rightfully concluded that Mr. Papadopoulos would use the list for this purpose.

19 The other three purposes stated in Mr. Papadopoulos' December 12 demand are
20 improper in their own right because they are made for the purpose of contacting other KBOO
21 members so as to express his discontent to them and attempt to stir up a similar discontent
22 among the members. Such an action creates a substantial risk that the corporation will lose
23 members and revenue and its ability to carry out its public benefit purposes will be seriously
24 impaired. In this case, there is the additional factor that the other three purposes stated by Mr.
25 Papadopoulos appeared to be little more than cover for the improper purpose of fundraising.
26

