

2. Martha and her children own 25% of Dardanelle's common stock. One of Martha's brothers, Dwight D. Sutherland, Jr. ("Dwight Jr."), together with his children own another 25% of Dardanelle's common stock. Dwight Jr. fully supports Martha in this action.

3. Martha's other two brothers, Perry and Todd, are twins and together with their children they own the other 50% of Dardanelle's common stock. Perry and Todd have for many years systematically abused their positions as directors and officers of Dardanelle and its wholly owned subsidiary Sutherland Lumber-Southwest, Inc. ("Southwest"), and thereby effectively transformed these two closely-held, family-owned companies into Perry and Todd's own personal vaults.

4. Perry and Todd have had no trouble committing or concealing their wrongful conduct. There has never been any regular financial or other reporting provided to Martha or other Dardanelle shareholders regarding the operational results of Dardanelle or Southwest. Perry and Todd together have exercised operational and managerial control over Dardanelle and Southwest at all relevant times. Perry and Todd later obtained absolute voting control of Dardanelle and thus absolute control over all facets of Dardanelle and Southwest when, in October 2003, Dwight D. Sutherland, Sr. ("Dwight Sr.") suddenly and tragically died after years of failing health.

5. Perry and Todd's absolute control merely bolstered their desire to take from Dardanelle and Southwest what they want, whenever they want, and however they want, without regard to Martha, Dwight Jr., or any of Dardanelle's other shareholders. One of Dardanelle's other shareholders is Norma Sutherland ("Norma"), the mother of Martha, Dwight Jr., Perry and Todd. Perry and Todd have done so despite that Dardanelle and Southwest have experienced substantial losses from those companies' operations, which is the retail lumber business.

6. Indeed, Dardanelle and Southwest for the last several years have sustained operational losses which have approached or exceeded \$1 million per year. Perry and Todd have “financed” those operational losses by increasing the two companies’ debt obligations, as well as by selling the companies’ real estate or other assets to generate cash that is used to “offset” losses and thus hide Dardanelle and Southwest’s true financial condition. During that same time frame, Perry steadfastly opposed even beginning preliminary discussions of a potential sale of the Sutherland Lumber Company to a third party which had expressed interest in such a transaction, despite that Dardanelle and Southwest were losing money and a sale could substantially benefit Dardanelle’s shareholders.

7. Perry and Todd have undertaken the foregoing actions to allow themselves to continue their long-standing practice of utilizing Dardanelle and Southwest for their own personal benefit, without regard to Dardanelle’s other shareholders, and further to hide the negative impacts to Dardanelle and Southwest from such misconduct. Throughout the same time period, Perry and Todd have siphoned funds and assets from Dardanelle and Southwest in order to fund the lavish and expensive lifestyles to which Perry and Todd, and their respective families, have become accustomed. Even as the substantial operational losses have continued to mount, Perry and Todd have caused Dardanelle and Southwest to, among other things, (a) spend \$1.8 million for a 50% interest in a private jet that serves as little more than an expensive toy for Perry and Todd to use for personal trips at the expense of Dardanelle and Southwest; (b) award Perry and Todd unwarranted and excessive compensation, including extravagant perquisites such as *unlimited* personal use of the company jet and *unlimited* tax and accounting services at the expense of Dardanelle and Southwest; (c) award Perry and Todd self-dealing employment agreements to formalize the foregoing compensation and perquisites, as well as to allow Perry

and Todd to work only part time to receive their lavish compensation and further to compete with the family companies; and (d) pay for a variety of “expenses” that were exclusively for the personal benefit of Perry and Todd and unrelated to legitimate company business. All of the foregoing have provided no benefits whatsoever to Dardanelle or Southwest, but rather merely wasted company funds and increased the substantial operational losses of those companies.

8. In early 2004, Martha could not stand by silently and thus sought to obtain corporate information to inform herself about the operations of Dardanelle and Southwest. But the Individual Defendants flatly refused to provide Dardanelle and Southwest books and records to Martha, and instead responded to her informal requests for information by carrying-out Perry’s directive to secretly remove Martha as a Southwest director and officer. Perry and Todd hand-picked their cousin, defendant Mark, to replace Martha as a director of Southwest, because (as alleged more fully below) Mark was (and still is) willing to relinquish any independent judgment and simply rubber-stamp any action Perry and Todd want to implement regardless of the harm to Dardanelle and Southwest.

9. Perry and Todd took full advantage of Mark’s appointment to continue their long history of breaches of duty and corporate wrongdoing. For example, Perry and Todd immediately entered into self-dealing employment agreements with Dardanelle and Southwest, which they “approved” in self-interested votes despite that those agreements provided compensation and other lucrative benefits and perquisites for Perry and Todd that were harmful to Dardanelle and Southwest.

10. The Individual Defendants also sought to entrench and to insulate themselves from liability for their breaches of duty and other wrongdoing. They did so by amending, unilaterally, Dardanelle’s Articles of Incorporation (“Articles”) to include new provisions that

eliminated shareholder cumulative voting and purported to exculpate themselves from liability for wrongful conduct in their positions as directors and officers of Dardanelle and Southwest.

11. The Individual Defendants also then forced Dardanelle to mount a scorched-earth defense against Martha's action pursuant to 8 *Del. C.* § 220 to inspect Dardanelle's and Southwest's books and records (the "Section 220 Action"). Martha was forced to bring the Section 220 Action after the Individual Defendants refused to provide Martha with access to the basic corporate books and records that she informally requested in March 2004. Martha succeeded in the Section 220 Action, which was for the proper purpose of investigating her credible beliefs that the Individual Defendants were engaging in breaches of duty and other wrongdoing. Martha's victory was pyrrhic at best, however. The Individual Defendants caused Dardanelle's operational losses to increase by well in excess of \$500,000 for attorney fees and costs to defend that action, and further, despite this Court's judgment in the Section 220 Action, the Individual Defendants caused Dardanelle to produce only a handful of documents to Martha.

12. Throughout all of this time, Dardanelle has *never* paid a single penny in dividends to its shareholders. And Perry has told Martha that no dividends will ever be paid. Thus, Martha has been forced to stand by and watch while Perry and the other Individual Defendants cause the assets of Dardanelle and Southwest to be siphoned-off and wasted, and the value of the 25% stock interest owned by her and her children decline quickly toward nothing.

13. In this action, Martha seeks to remedy the Individual Defendants' breaches of their fiduciary duties and waste of corporate assets. Martha seeks awards of damages against the Individual Defendants, as well as any and all appropriate equitable relief to remedy the Individual Defendants' misconduct. Martha believes that appropriate equitable relief can and should include this Court's appointment of a receiver for Dardanelle and Southwest, particularly since

only the appointment of a receiver will: (a) end the pervasive and continuing wrongful conduct by the Individual Defendants that continues to drain the assets of Dardanelle and Southwest, and (b) ensure that the damages awarded in this action will be a meaningful remedy, by preventing the Individual Defendants from simply depleting those funds through similar wrongdoing in the future.

THE PARTIES

14. Nominal defendant Dardanelle is a closely-held, family-owned Delaware corporation. Nominal defendant Southwest is a wholly-owned subsidiary of Dardanelle. Dardanelle and Southwest are in the business of, *inter alia*, operating retail lumber yards and stores.

15. Plaintiff Martha beneficially (via trust) owns 17% of Dardanelle's common stock. Her children are the beneficiaries of other trusts that own (through gifts from Martha) approximately 8% of Dardanelle's common stock. Martha and her children have never received any benefits from their stock ownership. No dividends have ever been paid to them, and Perry has told Martha that no dividends will ever be paid.

16. Defendant Perry is one of Dardanelle's and Southwest's three directors and the President and Chief Executive Officer of both companies. Perry and his children directly and beneficially own 25% of Dardanelle's common stock. Perry also controls a voting trust for the preferred shares of Dardanelle and thus holds the power to vote all of the outstanding preferred shares.

17. Defendant Todd is Perry's twin brother and another of Dardanelle's and Southwest's three directors, as well as an officer of both companies. Todd and his children directly and beneficially own 25% of Dardanelle common stock.

18. Defendant Mark is the cousin of Perry and Todd, and the third of Dardanelle's and Southwest's three directors. Mark holds no equity interest in either of these companies. He was hand-picked and appointed by Perry and Todd to be the third of three directors of Dardanelle. Later, Perry and Todd hand-picked Mark to become the third of Southwest's three directors in the meetings in and through which Perry, Todd and Mark secretly removed Martha as a Southwest director. Mark was chosen by Perry and Todd to be a Dardanelle and Southwest director because they knew Mark would abdicate his duties and accede to their wishes.

PERRY'S AND TODD'S CONTROL OF DARDANELLE AND SOUTHWEST

19. Dardanelle's predecessor-in-interest was founded by Martha's father, Dwight Sr., who held the titles of President and Chief Executive Officer of Dardanelle and Southwest until his sudden and tragic death in October 2003. Dardanelle and Southwest remain part of what has been known for years as the "Sutherland Lumber Company."

20. The "Sutherland Lumber Company" is comprised of separate operating companies originally owned by Dwight Sr. and his siblings. Ownership of each of those operating companies has changed over time. In Dardanelle's case, all of the common stock in Dardanelle's predecessor-in-interest was transferred to Martha and her siblings in approximately 1976. Though managed and operated somewhat independently, each of the Sutherland family operating companies share certain overall business goals and operational functions. For example, Cimarron Lumber & Supply Company ("Cimarron") is a partnership owned equally by Dardanelle and each of the other operating companies. For years, Cimarron has been the centralized wholesale-lumber buying arm that acquires all lumber and other inventory for resale to each of the separate family operational companies (including Dardanelle and Southwest, as well as various partnerships or limited liability companies owned by a number of members of the

extended Sutherland family). Cimarron also operates a central office (the “General Office” or “G.O.”) that provides administrative support to each of the family companies, and, members of the extended Sutherland family also receive tax and accounting services from Cimarron.

21. As noted, in approximately 1976, ownership of Dardanelle’s predecessor-in-interest was divided. At that time, the common stock became owned equally by Dwight Sr.’s four children, *i.e.*, 25% to each of plaintiff Martha, defendants Perry and Todd, and non-party Dwight Jr. The preferred shares were owned jointly by Dwight Sr. and his wife Norma. Dardanelle’s voting common stock is currently owned directly or beneficially (via trusts) by Martha, Dwight Jr., Perry, Todd and certain of their respective children. Since Dwight Sr.’s death, the Dardanelle voting preferred shares have been and still are controlled solely by Perry in his capacity as trustee of a voting trust (the “Voting Trust”) that was created in 2001 when Dwight Sr. was in declining health and had effectively ceased to be actively involved in the management and operation of Dardanelle and Southwest.

22. Since Dwight Sr.’s death in October 2003, Perry and Todd have had, and have exercised, absolute voting and operational control over Dardanelle and Southwest. In the Section 220 Action, this Court found as follows:

The votes of the preferred shares set aside for Norma’s benefit are controlled by Perry, as trustee. This authority means that, although he personally controls only 25% of the Dardanelle and Southwest common stock, Perry can control both corporations with the cooperation of one of the Dwight Sr. children, with whom he would control 50% of the common stock, and also the voting preferred. The facts adduced at trial show clearly that Perry controls both companies exactly in this way with the help of his twin brother, Todd. Specifically, Perry and Todd constitute a majority of Southwest’s three-member board, a majority of Dardanelle’s board, and serve as the principal officers of both companies.

A true and correct copy of the Court's May 16, 2006, Memorandum Opinion and Order is attached hereto as Exhibit A.

23. Even prior to Perry and Todd acquiring their current absolute control over Dardanelle and Southwest, Perry had exercised operational control over the companies for at least the last ten years. Dwight Sr. was effectively out of the day-to-day decision-making and operation of Dardanelle and Southwest for approximately a decade preceding his death. During that time, Perry asserted himself and took over more and more of the operation and management of the companies while holding the title of Vice President. Dwight Sr. acquiesced in Perry assuming that control. As Dwight Sr. grew older and eventually his health began to fail, he effectively relinquished operational control of the companies to Perry.

24. During the time that Perry and Todd have had operational control of Dardanelle and Southwest, the financial conditions of those family companies have declined precipitously. Based upon the limited financial information that Martha has, upon information and belief, over at least the last seven or so years the losses from operations for Dardanelle -- which includes the results of Southwest, since Dardanelle's results are reported on a consolidated basis with Southwest-- have averaged approximately \$1 million per year. During the same time, Perry and Todd have sought to "cover" those losses by causing Dardanelle and Southwest to increase their debt obligations and/or sell assets, in order to allow the reported financial results to make it appear as if the family companies were doing better than they really were doing.

25. For example, for the fiscal year ended July 31, 2005, actual net losses from operations amounted to nearly \$1.1 million for Dardanelle and Southwest. Reported losses from operations were approximately \$600,000, but the reported losses were minimized by approximately \$268,000 representing a gain on the sale of a real estate asset as well as another

approximately \$221,000 in income from investments in partnerships that are unrelated to the companies' operations. Beyond the sale of the real estate asset, the Individual Defendants sought in this period to hide the companies' losing financial performance (or at least its immediate effects) by increasing borrowings by some \$2.8 million. Nonetheless, the net result for the fiscal year was a net operating loss of almost \$ 1.1 million and a decrease of retained earnings by over \$900,000, leaving equity of *only* approximately \$15.7 million in the family companies (of which approximately \$14 million was comprised of inventory) *and* future debt obligations which the companies have little or no prospect of being able to repay.

26. And for the fiscal year ended July 31, 2004, Dardanelle and Southwest each suffered similar net losses from operations. Dardanelle's consolidated (with Southwest) tax return reflected a reported tax loss in excess of \$850,000 for that fiscal year. Deducting from earnings the approximately \$176,000 in income generated from non-operational investments in partnerships, the total operational loss for the companies again was over \$1 million for the fiscal year. Dardanelle and Southwest reported net earnings for the fiscal year, but those earnings resulted *solely* from the over \$2 million in net life insurance proceeds paid out on the key man life insurance policy on Dwight Sr. (following Dwight Sr.'s death in October 2003). As explained below, the Individual Defendants ultimately sought to hide from Martha the key reason for the reported net earnings by failing and refusing to produce to Martha the integral Notes to the 2004 financials (which is the only place where the essential information is conveyed to explain the sole, non-operational reason that net earnings were reported by the companies).

27. Upon information and belief, based upon the limited financial information that Martha possesses, Dardanelle and Southwest have suffered similar operational losses for years. Indeed, the companies' 2004 tax returns reflect Net Operating Loss ("NOL") carryforwards in

excess of \$5.1 million. NOL carryforwards in such amounts can only mean that the companies have suffered substantial net operating losses for years. To make matters worse, such losses have occurred despite the fact that Perry and Todd have caused Dardanelle and Southwest to sell other valuable real estate assets during the same time periods, as part of their continuing effort to generate cash and cover the mounting losses through such sales of assets and/or increases in the companies' borrowings. But all of the substantial proceeds from those sales of assets have been lost during the time that Dardanelle and Southwest have been under the control of Perry and Todd, as a direct result of the manner in which they have caused the companies to be operated for the benefit of themselves and no other Dardanelle shareholders (as alleged more fully below).

MARTHA HAS NOT BEEN INVOLVED WITH DARDANELLE AND SOUTHWEST

28. Martha, on the other hand, has never had any active involvement in the management or operations of the companies. Around the time Martha received her Dardanelle common stock, she was told by her father Dwight Sr. that she was also being made a Vice President and director of Southwest. Despite those titles, Martha's involvement in the family companies was limited to executing form unanimous consents which she dutifully signed in accord with her father's wishes or which, from time to time, Dwight Sr. executed on her behalf.

29. There were compelling reasons for Martha's limited involvement. Chief among them was that Dwight Sr. was "old-fashioned" and did not believe that Martha, as a woman, should be involved in management. Accordingly, Dardanelle and Southwest were always operated in a manner which conveyed the unmistakable message to Martha that her active involvement in any aspect of these companies' management was not welcome. Martha was not consulted about major company decisions for either Dardanelle or Southwest, nor did she receive regular or periodic information or reports while she nominally was a director of Southwest. And

when Martha did request information about the family companies, her requests were met with resistance and hostility from Perry and Todd. Thus, for example, she had no advance or contemporaneous knowledge of the fact that in 2001, while she was a Southwest director, Perry and Todd caused Southwest to spend nearly \$1.9 million to purchase a 50% interest in a new private jet. Martha only learned of that extraordinary capital expenditure well after the fact, from discussions with her mother and Dwight Jr.

30. Another reason for Martha's limited involvement was her demanding career. Beginning in 1981, Martha was a member of the Central Intelligence Agency ("CIA") and spent significant periods of time on missions overseas. Martha's service and missions were during tumultuous times, including, for example, her service in China during the infamous Tiananmen Square incident. Consequently, Martha was absent from the United States for extended periods of time until shortly before she left the CIA altogether in late 1999. As this Court found in the Section 220 Action, regarding Martha's lack of substantive involvement in the management of the family companies: "it suffices to say that Martha's demanding career as an active CIA agent precluded her from becoming intimately involved in the management of a private corporation." Ex. A at 2-3.

**MARTHA ATTEMPTS TO INFORM HERSELF ABOUT
DARDANELLE AND SOUTHWEST**

31. Following Dwight Sr.'s death in October 2003, Martha was determined to inform herself and take a more active role in the family companies. Among other things, Martha decided she would no longer execute unanimous consents without information or discussion of the actions they concerned.

32. At every turn, however, Perry and Todd obstructed Martha's efforts to inform herself about and be involved in family company matters. Perry simply would not discuss family company matters with Martha. In late 2003 and early 2004, he repeatedly demanded through company personnel that Martha simply execute form unanimous consents for a Southwest directors' meeting and other actions. But the form consents contained no information that would allow Martha to make an informed decision. For instance, one of the form consents was to appoint Perry President and Chief Executive Officer of Southwest, yet it failed to include any information regarding the terms and conditions under which Perry would serve.

33. Martha each time declined to simply execute the form consents that were provided to her without information or discussion. Confronted with Perry's repeated demands that she execute the consents, Martha eventually contacted her brother Dwight Jr. and asked for his help because he was a lawyer and better understood company matters and history.

34. Dwight Jr. agreed to help and in late January 2004 contacted David Dotson ("Dotson") about the consents. Dotson was a long-time employee of Cimarron who was substantially involved in the operation of the General Office and provided tax, accounting and other services and advice to Dardanelle, Southwest, other Sutherland entities, as well as various Sutherland family members. Dwight Jr. asked Dotson to send the consents to Dwight Jr. for review so he could discuss them with Martha. Although Dotson agreed and even drafted a letter to send the consents to Dwight Jr., Perry intervened and ordered Dotson to not send the letter or consents to Dwight Jr. Dotson obeyed Perry, and so the consents were not sent to Dwight Jr.

35. Perry had no intention of allowing Martha to make informed decisions or be involved in any discussions about company matters. Unbeknownst to Martha, Perry already was planning as of the beginning of February 2004 to eliminate Martha from her only positions in the

family companies as a Southwest director and officer. As this Court found in the Section 220 Action, “[o]n February 2, 2004, Perry responded to Martha’s refusal [to simply execute the unanimous consents] by directing David Dotson of [the General Office] to begin preparing documents to secretly remove Martha from the board of [Southwest].... Perry executed his plan to remove Martha by secretly holding the Southwest annual stockholder’s meeting on February 20, 2004[.]” Ex. A at 5-6.

36. Indeed, on February 20, 2004, through a series of unanimous consents for Dardanelle and Southwest, Perry, Todd and Mark consummated the plan to secretly remove Martha as a Southwest director and officer. The Individual Defendants first acted through unanimous consent to have Dardanelle, as Southwest’s sole shareholder, call Southwest’s annual meeting. The Individual Defendants then acted as Dardanelle directors to cause Dardanelle, as the sole shareholder of Southwest, to execute a unanimous consent for the Southwest annual meeting to reduce the number of Southwest directors to three, to remove Martha from the Southwest board and her position as a Southwest officer, and to elect Mark in Martha’s place as a Southwest director. None of Perry, Todd or Mark gave Martha any advance notice that she was going to be removed from her positions with Southwest, much less the other actions the Individual Defendants took in those unanimous consents in breach of their fiduciary duties.

37. Perry and Todd chose Mark to replace Martha because of his willingness to abdicate the fiduciary duties as a director and accede blindly to their wishes. Mark has a close familial connection with Perry and Todd as their cousin. Mark is dominated and controlled by Perry and Todd with regard to actions involving Dardanelle and Southwest. That domination and control is evidenced by, among other things, Mark’s complicity in the secret February 20, 2004 actions to remove Martha from her positions as a director and officer of Southwest. Mark did not

ask any questions, obtain any information, or exercise any independent judgment before authorizing the actions in and through those February 20, 2004 unanimous consents. He simply did what Perry and Todd told him to do.

38. Perry's and Todd's domination and control of Mark is further evidenced by Mark's contemporaneous vote in those same unanimous consents of a written employment agreement for Perry with Southwest, as well as yet another separate but contemporaneous vote in a unanimous consent to approve written employment agreements for Perry and Todd with Dardanelle. None of those written employment agreements were in the best interests of Dardanelle or Southwest, and in fact were a transparent attempt to legitimize going forward Perry's and Todd's long history of engaging in corporate wrongdoing and wasting corporate assets for their personal benefit (as alleged more fully below). Again, Mark simply executed the unanimous consents blindly and without independent judgment or thought.

39. Perry's and Todd's control over Mark also is manifested in Mark's admitted views regarding what Perry and Todd can do with Dardanelle and Southwest. In a telephone conversation with Dwight Jr. in 2004, Mark told Dwight Jr. that "I know he [*i.e.*, Perry] is an a__hole,... but unless you can prove criminal acts on [Perry's] part, he can do anything he wants. He has got control [of Dardanelle and Southwest], and he can do anything with the company that he wants."

40. Finally, Mark has a long history of deferring to Perry's decisions regarding the operations and management of other companies in the Sutherland Lumber Company despite the fact that Mark holds positions in those other companies where it is Mark, and not Perry, who should be making the decisions. For example, one of the many other companies owned by Sutherland family members is Sutherland Lumber Company of Kansas City, LLC ("SLKC"),

where Mark holds the title of manager and Perry has no formal managerial position. Nonetheless, when SLKC received a demand from Martha (who is a member) to inspect SLKC books and records, as is her right under the SLKC operating agreement and applicable law, Mark simply deferred to Perry in all decisions regarding SLKC's response to that demand including, among others, the decisions to refuse to comply with the demand, to litigate when Martha commenced an action to enforce her inspection rights, and to settle that litigation on terms acceptable to Perry after SLKC wastefully spent attorney fees to defend that action.

**PERRY'S AND TODD'S SELF-INTERESTED EMPLOYMENT AGREEMENTS
AND THEIR HISTORY OF CORPORATE MISCONDUCT**

41. At the secret February 20, 2004 meetings, the Individual Defendants contemporaneously acted by unanimous consent to appoint Perry as Dardanelle's President and Chief Executive Officer and to appoint Todd as Dardanelle's Vice President and Secretary. Furthermore, the Individual Defendants each voted in those unanimous consents to approve written employment agreements (the "Employment Agreements") between Perry and Todd and the family companies. Those Employment Agreements were the first and only such written agreements in the history of Dardanelle and Southwest. And while those agreements were shocking for that reason alone, there were other reasons as well.

42. Perry voted for himself to receive two separate Employment Agreements, one with Dardanelle and one with Southwest, each of which are in all material respects identical. The Employment Agreements bestow on Perry an array of lavish compensation and perquisites that serve no legitimate corporate purpose and are harmful to Dardanelle and its shareholders.

43. Perry's Employment Agreements provide that Perry will receive two separate base salaries of \$100,000 per year for only part-time work with each of Dardanelle and Southwest. In

effect, these provisions award Perry two full-time salaries for performing the duties of one part-time job. That is because Perry performs the same work for the part-time positions he holds with Dardanelle and Southwest, in the same office, and during the same hours. The jobs are one and the same, notwithstanding the fact that Perry and the other Individual Defendants granted Perry multiple titles in the two different companies where he performs his part-time duties.

44. Perry's aggregate \$200,000 salary for part time work in those positions stands in stark contrast to the salary that Dwight Sr. received for serving in those same positions during the last two years of his life. Dwight Sr. received only a total of about \$75,000 in the aggregate from Dardanelle and Southwest in 2002, and was set to receive only a total of about \$45,000 in the aggregate from Dardanelle and Southwest in 2003. The Individual Defendants more than doubled Perry's combined salaries versus those of Dwight Sr. for the same positions for 2002, and more than quadrupled them versus what Dwight Sr. was set to receive in 2003. Further evidencing Perry's bad faith, immediately after Martha made her demands to inspect books and records and continuing throughout the Section 220 Action, Perry repeatedly lied about the compensation he voted himself to receive by stating that it was comparable to that received by Dwight Sr. prior to Dwight Sr.'s death. Notably, when the foregoing comparison was set forth in Martha's pleadings during the Section 220 Action and Perry's lies about his compensation (excluding perquisites) were exposed, there was no response whatsoever.

45. Perry's Employment Agreements also provide for him to receive lavish perquisites. The first such perquisite is that Perry shall have *unlimited* personal use of the company jet at company expense. This provision permits Perry to continue his long-standing practice of using the company jet for personal trips at minimal cost to himself but at great burden and expense to Dardanelle and Southwest. It is Dardanelle and Southwest that bear the

substantial expenses associated with maintaining and operating that jet. Those expenses include, but are not limited to, the costs of maintenance, fuel, storage, insurance and pilots' salaries. Moreover, upon information and belief based upon corporate records produced in the Section 220 Action, Perry does not even pay the tax from income attributed to him for personal use of the jet. Rather, Perry receives additional compensation from the companies such that the taxes resulting from the amount of income "attributed" to him are actually paid by the companies, thus eliminating (at the companies' expense) the cost to himself for personal use of the jet.

46. Perry's Employment Agreements also provide that he shall have the right to receive *unlimited* personal tax and accounting services at company expense. The potential costs to Dardanelle and Southwest of providing these services are substantial because (among other things) this perquisite does not state any limitations on what constitutes tax and accounting services for Perry. Thus, Perry can utilize company assets to provide tax and accounting services for any of his business ventures under the premise that such services are for him personally. Indeed, as alleged more fully below, Perry has done just that and obtained extensive tax and accounting services at company expense for his personal horseracing venture, commonly known as Choctaw Racing Stables ("Choctaw").

47. Perry's Employment Agreements also provide that he shall receive unlimited use of a Sutherland Lumber Company facility commonly known as the Maysville Training Center ("Maysville") at company expense. Perry thus has the right to have Dardanelle and Southwest bear the expense for Perry and his family (or even Perry's friends, if Perry authorizes it) to vacation at Maysville, and Perry has exercised that right.

48. Finally, Perry's Employment Agreements give him the unlimited right to compete with Dardanelle and Southwest and also provide that, upon termination "for any reason," Perry

will receive continued payments under the purported agreements for two years. Thus, Perry is free to disregard his fiduciary duties to Dardanelle and Southwest and their shareholders by competing with Dardanelle and Southwest and working for any other business venture of any nature, no matter how the family companies are harmed. And, even if Perry is terminated for committing criminal or fraudulent acts, no matter what the harm caused to Dardanelle and Southwest and their shareholders, Perry will still be entitled to receive his compensation from Dardanelle and Southwest for two full years after termination.

49. Todd's Employment Agreement provides that he shall receive a salary of approximately \$15,000 per year as well as various perquisites, ostensibly for being the secretary of Dardanelle. But the entire compensation Todd receives is effectively a gift because Todd has and performs no real duties for Dardanelle. Todd has admitted as much in the past. He has described his duties as occasionally talking to Perry about various matters and otherwise signing unanimous consents that Perry wants him to sign. The various corporate documents that a corporate secretary is to prepare and maintain are not prepared by Todd. Rather, those documents are prepared at Perry's direction by others as evidenced by Perry's direction to Dotson to prepare the necessary unanimous consents to take the secret actions on February 20, 2004, removing Martha as a director and officer of Southwest and approving the Employment Agreements.

50. Todd's Employment Agreement with Dardanelle also contains some of the same terms as those in Perry's agreements. For example, Todd also (a) has the unlimited right to compete with Dardanelle, (b) shall receive unlimited personal tax and accounting services at company expense, and (c) upon termination "for any reason" he shall nonetheless continue to receive his compensation for two full years. These provisions have the same harmful

consequences to Southwest and its shareholder as the identical provisions in Perry's Employment Agreements. This is particularly so with respect to, for example, the unlimited personal tax and accounting services provided for in Todd's Employment Agreement. Like the identical provision in Perry's Employment Agreements, the provision in Todd's agreement does not state any limitations on what constitutes such tax and accounting services and thus Todd is free to use them for any of his other business ventures under the premise that such services are for him personally. Todd owns and manages a bank (as he has for years), which obviously requires extensive accounting work, and is involved in other business ventures as well, so the cost to Southwest and Dardanelle for providing tax and accounting services to Todd is potentially quite substantial.

51. Todd's Employment Agreement also provides him with unlimited personal use of the company jet at "the prevailing rate then being charged by the owner of such aircraft for third party usage." And Todd has used the company jet for his personal benefit, both before and after his Employment Agreement. However, upon information and belief based upon corporate records produced in the Section 220 Action, Todd has never actually paid for his personal use of the company jet. Instead, Perry and Todd neatly circumvented that provision of Todd's Employment Agreement by recording Todd's personal use of the company jet as part of *Perry's* income. Thus, Todd effectively has had the same free and unlimited access to the company jet for personal use as his twin brother Perry. Even further, and evidencing bad faith, Perry and Todd caused Dardanelle in the Section 220 Action to argue that there was nothing wrong with Todd having this perquisite because Todd purportedly was required to pay for his personal use of the company jet despite the falsity of that argument.

52. Finally, to ensure that Todd receives benefits similar to Perry's, Todd's Employment Agreement also provides that he shall receive unlimited use of Maysville at company expense. Todd has used Maysville regularly, including at least annual family trips as well as for special occasions where friends are invited. Dardanelle and Southwest receive no benefit whatsoever from providing this, or any of the other perquisites or compensation awarded to Todd in his Employment Agreement (or previously).

53. Perry's and Todd's Employment Agreements are quintessential examples of self-dealing. The unanimous consents approving Perry's and Todd's Employment Agreements show that Perry and Todd each voted to approve their own agreements and, as *quid pro quo* for the other's vote, also voted to approve each other's agreements as well. The compensation packages provided are excessive, particularly in the context of closely-held family companies that are in financial decline and where the lavish perquisites Perry and Todd voted themselves are entirely unnecessary to induce them to hold their positions at Dardanelle and Southwest. Indeed, as this Court noted in the Section 220 Action: "Most troublesome to the court are the lavish perquisites allowed to Perry and Todd under the employment agreements, which they approved, including access to the company plane, access to effectively free financial services and access to the Sutherland training facility [*i.e.*, Maysville]." Ex. A at 22.

54. Furthermore, the Employment Agreements purport to "reflect" past practices in an attempt to legitimize Perry's and Todd's long history of personal use of company assets. For many years before the Individual Defendants secretly "approved" the Employment Agreements through the February 20, 2004, unanimous consents, Perry and Todd had engaged in a pattern and practice of using company funds and assets for their own personal benefit and to the substantial harm of Dardanelle and Southwest and their shareholders.

55. For example, until 2001, Southwest owned its own private jet. But that jet served virtually no purpose related to Southwest's retail lumber business. As evidenced by a stipulation filed in a Tax Court proceeding regarding deductions taken by Southwest for expenses related to personal use of that jet, styled *Sutherland Lumber-Southwest, Inc. v. Commissioner of Internal Revenue*, No. 23936-97, the jet was used for Southwest's retail lumber business only 2-3% of the time in the years 1992-1993. In contrast, there was extensive personal use of the company jet at company expense, including flights by Perry and Todd in connection with vacations as well as by Perry in connection with his horseracing venture, Choctaw Racing Stables ("Choctaw"), which he owned jointly with Dwight Sr. until October 2003 and thereafter has owned in its entirety. Perry and Todd never reimbursed Dardanelle or Southwest for their personal use of the company jet but, instead, merely reported the costs of their use as part of the operating expenses and losses on Southwest's income tax returns (and also caused additional salary to be paid to them personally to "cover" their related personal tax consequences from personal use of the jet).

56. In spite of the company's steadily deteriorating financial condition, almost immediately after Southwest sold the jet in 2001, Perry and Todd caused Southwest to pay nearly \$1.9 million to purchase a 50% interest in a new private jet and to continue to bear substantial expenses associated with maintenance and operation of that jet. They did so despite that the jet served no legitimate business purpose since it was used, at best, minimally for the retail lumber business of Dardanelle and Southwest. Indeed, Perry has admitted in the past that it was too expensive to use the company jet for company business. Yet, Perry never then explained why Southwest invested nearly \$1.9 million for the 50% interest in the new jet. Nor, for that matter, have Perry, Todd or Mark explained why Southwest has recently committed to spend another

almost \$1 million for a partial interest in yet another new jet that is to be delivered in 2008, particularly given the precarious financial condition of Dardanelle and Southwest.

57. Based upon the terms of the Employment Agreements alleged above, the limited books and records that Dardanelle produced to Martha following the Section 220 Action, and publicly available flight records regarding the use of the current jet, upon information and belief, Perry's and Todd's unlimited personal use of the company jet at company expense has continued unabated since September 2001. For example, just the flight records indicate, based upon the identified destinations, that personal use of the jet was made on at least approximately 12 occasions in 2001, 26 occasions in 2002, 16 occasions in 2003 and 17 occasions in 2004. The destinations suggest that such trips included Perry pursuing his personal interest in horseracing, or Perry and Todd pursuing their mutual interest in hunting, or simply for vacations.

58. Also quite troubling is that the limited books and records Dardanelle produced after the Section 220 Action contain what purport to be schedules summarizing Perry's personal use of the jet, for purposes of calculating compensation to be attributed to him (for tax purposes) for personal use of the jet. Those summary schedules, however, do not include all of the trips identified in the flight records that appear to be for personal use of the jet, which in turn suggests that Perry may have caused his compensation to be understated for the periods in question and shifted even more burden and expense to Dardanelle and Southwest for his personal use of the company jet.

59. Even further, the foregoing do *not* include or cover all of the personal trips that have been taken, but for which formal flight records do not exist. Flight records are not required for trips that are less than a specified distance. Upon information and belief, based upon all of the facts alleged herein, there are many more such personal flights beyond the number of flights

listed in required flight records, and thus the personal flights equal or exceed 20 flights per year. The associated costs are quite substantial as the average cost per hour of operation of the jet was approximately \$2,000 during the relevant time frame, based upon information relating to the operation of such a jet, and the costs for each personal flight thus were, upon information and belief, approximately \$10,000 or so on average.

60. At all relevant times, Perry's and Todd's personal use of the company jet has provided no benefit to Dardanelle's or Southwest's retail lumber business. Yet Dardanelle and its shareholders have for years shouldered the burden of substantial costs associated with the jet, including, but not limited to, its operation, maintenance, storage, fuel costs, and insurance. Perry and Todd never contributed any funds to defray any of the costs imposed on Dardanelle and its shareholders by Perry and Todd's personal use of the company jet.

61. For years, Perry and Todd have also enjoyed the benefits of free personal tax and accounting services at significant expense to Dardanelle. These services were provided through Cimarron. Cimarron personnel have, for years, performed tax and accounting services for members of the Sutherland family. But while Martha has always been charged for and paid in full for such services, Dardanelle and Southwest have "absorbed" and paid for at least Perry to receive such services at no cost to himself.

62. The cost to Dardanelle and Southwest of providing Perry with such free tax and personal accounting services has been substantial. For example, as of at least 2001 or so, Perry's personal horseracing venture, Choctaw, has been the subject of a substantial ongoing IRS audit of deductions taken for substantial losses by Choctaw. Upon information and belief, based upon statements made by former company employees, at various times since the audit began, Perry has had a General Office employee working full-time on Choctaw accounting matters, at the expense

of Dardanelle and Southwest. Dardanelle and Southwest realized no benefit from Choctaw or the substantial accounting services provided to it, which have been entirely for Perry's benefit. Perry's motive to have Dardanelle and Southwest bear such expenses is obvious, since he receives substantial personal benefits from not having to pay for such tax and accounting services. Even further, however, is that it helps Perry to defray his losses from Choctaw. Perry admitted to his siblings in late 2003, after Perry became the 100% owner of Choctaw, that the venture has lost so much money that it would be very difficult for him to maintain that business and, in fact, that trying to maintain Choctaw could "break him".

63. Perry and Todd also have used Dardanelle to fund their personal use of the company's retreat, Maysville. Perry has used Maysville for private vacations at company expense. Likewise, Todd and his family for years have used Maysville on an annual basis for private vacations as well as for other special occasions where friends are invited to stay. For example, Todd used Maysville to host a birthday party for his daughter and approximately twelve guests in the Summer of 2003. The expenses associated with Perry's and Todd's personal use of Maysville, including room and board and associated costs, provide no benefit whatsoever to Dardanelle or Southwest. Yet those companies bear the costs.

64. Upon information and belief, over the years, Perry and Todd have also indulged in a myriad of other personal extravagances at company expense, including such things as rental cars, expensive hotels, limousines, club memberships, chartered private railroad cars for extended personal trips, private parties, and personal living expenses, among many others. The cumulative expenses for these extravagances are considerable and there is no business reason why Dardanelle or Southwest should have or did bear them.

65. There is no legitimate business reason for Perry and Todd to have awarded themselves, or received, any of the foregoing perquisites, much less to then try and legitimize them by inclusion in the self-dealing Employment Agreements secretly approved in the February 20, 2004 unanimous consents. The perquisites were entirely unnecessary to induce Perry and Todd to continue running such a family company as Perry and Todd had been doing so for years. Moreover, the harm to Dardanelle and Southwest has been magnified by the fact that, during the years Perry and Todd have been taking those benefits at company expense, Dardanelle and Southwest have been in serious financial decline. Further, Perry and Todd have blocked all shareholder input into corporate decision-making and have not issued any reports to shareholders that disclose their personal use of corporate funds and assets.

66. Perry's and Todd's long history of exploiting corporate assets to support their lifestyles stands in stark contrast to the lack of benefits that Dardanelle's other shareholders have received. Dardanelle has *never* paid a dividend, and Perry has assured Martha that there will never be any dividends. Incredibly, Perry and Todd even found it appropriate to have the companies make a \$360,000 charitable contribution in the fiscal year ended July 31, 2003, where net operating losses from operations were again approximately over \$1 million, rather than minimizing the companies' losses or distributing such amounts to shareholders rather than Perry and Todd's chosen charity.

MARTHA'S REQUESTS FOR CORPORATE BOOKS AND RECORDS

67. Martha was unaware of all that took place at the secret February 20, 2004 meetings of Dardanelle and Southwest. Martha had no knowledge that she had been removed as a director of Southwest and replaced by Mark. Nor did Martha have any knowledge that the Individual Defendants had approved Perry's and Todd's self-interested Employment Agreements.

68. Nonetheless, Perry's behavior in refusing to discuss company matters with Martha or Dwight caused Martha to believe that Perry and Todd were engaged in wrongdoing that they were attempting to conceal. Perry also engaged in other behavior that contributed to Martha's belief that he and Todd were concealing their corporate misconduct.

69. For example, on March 11, 2004, a meeting was held of the directors of the Dwight D. Sutherland Foundation (the "Foundation"). The Foundation was a charitable institution created by Dwight Sr., and the directors of which (following Dwight Sr.'s death) included his widow Norma, Dwight Jr., Perry, Todd, and Mark.

70. At the meeting, Dwight Jr. raised concerns regarding potential "self dealing" issues and resulting penalties to the Foundation and its directors (including his mother Norma) under IRS regulations, if the directors agreed with Perry's proposal that they ratify the purchase of certificates of deposit from the bank run by Todd (and substantially owned by Sutherland family members including Todd, Perry, Norma and Martha). Rather than addressing Dwight Jr.'s legitimate concern, Perry simply disregarded it, angrily "called the question" for a vote, and then voted (together with defendant Mark) in favor of the proposal over Dwight Jr.'s opposition. Immediately following the March 11 Foundation meeting, Perry angrily confronted Dwight Jr. in the hall and bluntly explained his attitude and approach toward any attempt to question his conduct. Perry told Dwight Jr. "we are going to keep having these f__king meetings and [you are] going to keep f__king losing." The message was clear to Dwight Jr. that Perry was not just referring to the Foundation, but also to Perry's management and operation of Dardanelle and Southwest. Notably, defendant Mark witnessed Perry confronting Dwight Jr., but Mark said nothing and instead simply walked away after it was over

71. Dwight Jr. was shocked and concerned by Perry's conduct. Dwight Jr. called Martha that evening and told her what had happened. Martha was similarly shocked and concerned when she learned what had occurred. She was prompted to make the first of several informal requests for information regarding Dardanelle's and Southwest's corporate affairs. On the next day, she telephoned Dotson to make her request, but he was not available.

72. On March 13, 2004, Martha tried again to contact Dotson by telephone. She requested certain company records and information, including pertinent organizational documents for Dardanelle and Southwest and other family businesses in which she had an ownership interest, a breakdown of her ownership interests in these companies, complete financial information regarding the companies' performance for the last 10 years or so, and the minutes of meetings, unanimous consents and other documents regarding the companies' actions for the last 10 years or so. Dotson told Martha that she must request these records in writing, so Martha did so in an e-mail on March 15, 2004.

73. Martha then received a letter dated March 17, 2004, two days after her email, regarding the billing and payment for tax and accounting services provided by Cimarron to various family business entities and family members. The letter stated that the costs for such services historically had been "absorbed" by Dardanelle and Southwest, including for the personal Choctaw horseracing operation that was then owned 100% by Perry. The letter went on to explain a purported "change" in the billing and payment for such services, with a prominent reference to a "change" relating to Choctaw that would be "retroactive" to the time immediately following Dwight Sr.'s death in October 2003.

74. The March 17 letter evidenced the Individual Defendants' wrongdoing and bad faith. First, the letter "announced" a "change in accounting" almost immediately after Martha's

March 15 email requesting books and records, which suggested that the “change” was a reaction to her informal request for information about the companies. Second, the letter contradicted the historic arrangements for billing and payment for services by Cimarron. As noted above, Martha (obviously a family member) had always been billed for and then paid directly to Cimarron the costs and expenses for tax and accounting services that Cimarron provided. These costs and expenses were never “absorbed,” as the letter stated. Third, the prominent change in the handling of Choctaw, which conveniently was made retroactive to the date of her father's death, appeared to be an effort by Perry to place blame on her father for the prior “absorption” of Choctaw expenses.

75. The Employment Agreements that Perry and Todd secretly engineered a month before the March 17 letter also evidence Perry’s and Todd’s bad faith. The purported “change” in payment for tax and accounting services for Perry and Todd (as well as Choctaw) was pure fiction, since the Employment Agreements secretly approved a month earlier provided that Perry and Todd would receive unlimited tax and accounting services at company expense. Dardanelle and Southwest thus continued to absorb the substantial fees and costs for, among other things, the substantial ongoing IRS audit of Choctaw. The purported “changes” described in the March 17 letter were a sham, at least as far as Perry and Todd and their interests were concerned.

76. On April 13, 2004, Perry sent Martha an incomplete production comprised of only a handful of the basic corporate documents she had requested. Perry provided Martha with financial statements for only the most recent fiscal year, and even those financials were materially incomplete because the separate Southwest financials were not included and the integral “Notes” for the Dardanelle financials were not provided. Further evidencing bad faith, Perry later tried to explain that he did not include the integral “Notes” because Martha had not

specifically requested them. But the “Notes” quite clearly are an essential part of the financials and necessary to understand what is presented in the financials. Without the “Notes” to the 2004 financials, for example, Martha would not have known that Southwest’s results were benefited by well over \$2 million in net proceeds from her father’s key man life insurance policy. Those proceeds transformed a substantial “net loss” for Southwest into a “net profit” for that fiscal year. That change in Southwest’s bottom line also had an impact on Dardanelle’s bottom line, and likewise transformed a substantial “net loss” into a “net profit” for Dardanelle. Upon information and belief, based upon the foregoing as well as other facts alleged herein, Perry and Todd were trying to conceal that substantial net loss and the deteriorating financial condition of Dardanelle and Southwest.

77. Perry’s incomplete production also included documents revealing to Martha for the first time that she had been secretly removed as a Southwest director, and that the Individual Defendants had approved Perry’s and Todd’s self-interested Employment Agreements.

**MARTHA’S SECTION 220 ACTION AND THE INDIVIDUAL
DEFENDANTS’ MISCONDUCT**

78. Apart from the incomplete production of limited information on April 13, 2004, the Individual Defendants refused to produce to Martha any books and records from Dardanelle or Southwest. Martha therefore hired counsel and made a formal demand under Section 220 of the Delaware General Corporation Law for several discrete categories of documents for the proper purpose of investigating potential wrongdoing by the Individual Defendants.

79. At all relevant times, though not a party to the Section 220 Action, Dwight Jr., who also controlled 25% of the shares of Dardanelle, supported Martha’s request to examine books and records. The Individual Defendants had at all relevant times known this to be the

case. Thus, the Individual Defendants have always known that fully 50% of Dardanelle's common shareholders wanted the company's books and records open to inspection.

80. Nonetheless, the Individual Defendants caused Dardanelle to refuse to permit any inspection of books and records for improper and unjustifiable reasons. Among others, these reasons included that Martha's demand did not make the evidentiary showing required to prevail at a trial on the purported merits of any potential breach of fiduciary duty claim she might later bring.

81. Martha thus filed the Section 220 Action on August 31, 2004. Almost immediately, the Individual Defendants attempted to insulate themselves from shareholder scrutiny or personal liability for their wrongdoing. Shortly after Martha filed the Section 220 Action, she received a notice from Perry and Dardanelle, dated September 3, 2004, stating that the Individual Defendants had amended Dardanelle's Articles without prior notice to eliminate the cumulative voting (the "Voting Amendment") that had always been a part of the Articles.

82. Before the Voting Amendment, shareholders like Martha and Dwight Jr. could cumulate their votes and potentially elect an independent director to Dardanelle's Board. The Voting Amendment abolished this right, ensuring that the Individual Directors' positions could not be challenged at any annual meeting. Without the right to cumulative voting, there is no possibility that any shareholder has the votes to elect an independent director to the Dardanelle Board over the votes controlled by Perry and Todd.

83. Soon after the Individual Defendants implemented the Voting Amendment, Martha received another notice, dated October 5, 2004, announcing yet another unilateral amendment to the Articles of Incorporation. This amendment expressly immunized the Individual Defendants from personal liability (the "Personal Liability Amendment") for their

wrongdoing, including the elimination of prospective personal liability of directors for breaches of fiduciary duty or other misconduct. The Personal Liability Amendment provides, in pertinent part:

A director of the corporation shall not be personally liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption for the liability of limitations there of is not permitted under the Delaware General Corporation Law as presently in effect or as the same may hereafter be amended.

Martha's demand for books and records had clearly articulated that such potential misconduct was precisely what Martha sought to investigate.

84. The Voting and Personal Liability Amendments serve only the personal interests of the Individual Defendants and provide no benefit whatsoever to Dardanelle or its shareholders. Moreover, the secret planning and approval, substance and timing of those amendments, without shareholder input or a vote at the annual meeting, demonstrates that the Individual Defendants were acting to further entrench, insulate and protect themselves against the consequences of their corporate wrongdoing.

85. The Individual Defendants also caused Dardanelle to spend well in excess of \$500,000 fighting tooth and nail to prevent effectively 50% of Dardanelle's shareholders from examining any corporate books and records. Upon information and belief, the amount Dardanelle spent defending the Section 220 Action was much more than \$500,000.

86. One of the centerpieces of the defense the Individual Defendants' forced Dardanelle to assert throughout the Section 220 Action was premised on improper and irrelevant arguments about the merits of any claim for breach of fiduciary duties Martha might later assert. From the outset, Dardanelle asserted in the pre-litigation correspondence from its counsel that

potential claims for breach of fiduciary duty or otherwise that Martha wanted to investigate would be subject to various defenses. The argument was not only entirely irrelevant and wrong, but evidenced that the Individual Defendants understood very well the facts underlying their corporate wrongdoing – as alleged more fully herein – and the resulting claims that Martha wanted to investigate. This pattern of improperly arguing the merits of the wrongdoing Martha sought to investigate continued throughout the Section 220 Action, including the trial and beyond. On appeal from a ruling in Martha’s favor by the Master in Chancery, the Individual Defendants went so far as to force Dardanelle to re-argue the denial of its motion to dismiss, despite that Dardanelle voluntarily had chosen to proceed to trial without pursuing exceptions to the Master’s proper decision to deny that motion.

87. The Individual Defendants forced Dardanelle to defend the Section 220 Action for nearly two years. The Individual Defendants did so despite Dardanelle’s concession in the litigation that producing the requested books and records would not be burdensome; that the requested books and records purportedly would prove the Individual Defendants’ repeated bald assertions that no wrongdoing had occurred; and, the fact that holders of 50% of Dardanelle’s common stock wanted the inspection to proceed. All the while, Dardanelle spent quite substantial sums to pay the legal fees and costs for a scorched-earth defense and increased substantially company operating losses.

88. When Martha finally prevailed in the Section 220 Action, Dardanelle produced a sum total of approximately 1100 pages of documents purporting to be the Dardanelle and Southwest books and records ordered to be produced. The production was a mockery. It consisted of such things as telephone bills, incomplete credit card statements, some random financial records, and assorted internal documents relating to the use of the company jet and

Maysville. That production evidenced quite clearly the waste of corporate assets that the Individual Defendants intentionally caused by forcing Dardanelle to defend the Section 220 Action as it did. Dardanelle's counsel admitted at oral argument on exceptions to the Master's report that Dardanelle had spent at least \$500,000 in defense of the Section 220 Action and, in reality, the defense costs were much larger. But even just using that figure, the Individual Defendants caused Dardanelle to spend on its defense almost \$500 *per page* of the documents ultimately produced.

89. The Individual Defendants' implementation of the Voting and Personal Liability Amendments and their wasteful defense of the Section 220 Action at no benefit to Dardanelle reflect their ongoing pattern and practice of operating Dardanelle and Southwest however they please, without regard to stockholders or the Individual Defendants' fiduciary duties. Those actions also reflect the Individual Defendants' ongoing pattern and practice of breaching their fiduciary duties and attempting to conceal their corporate wrongdoing from scrutiny or potential redress.

DEMAND IS NOT REQUIRED

90. Martha has not made a demand upon the Board of Dardanelle to bring the derivative claims in this Complaint because demand is not required. The futility of a demand is manifest in the Individual Defendants' conduct in causing Dardanelle to wrongfully refuse Martha access to corporate books and records that would permit her to investigate her credible belief that the Individual Defendants were engaged in wrongdoing. Through the defense of the Section 220 Action, the Individual Defendants have for years gone to great effort and expense to block Martha's investigation in order to escape Dardanelle's and Southwest's claims.

91. Demand is excused because none of Dardanelle's or Southwest's directors are disinterested or independent, and the misconduct alleged herein was the product of self-dealing and not valid business judgment.

92. Perry and Todd are not disinterested because each has received substantial personal financial benefits from the transactions and actions giving rise to this Complaint. All of the actions described herein were engineered, implemented and effected by the Individual Defendants to protect Perry's and Todd's lucrative and self-satisfying positions at Dardanelle and Southwest and/or to conceal the Individual Defendants' wrongdoing. Although a decision to sue would have benefited Dardanelle and Southwest, the Individual Defendants would have been materially and detrimentally impacted by it. For example, the relief sought herein would negatively impact Perry's and Todd's personal finances by depriving them of the lavish perquisites and compensation they awarded themselves in the Employment Agreements, and also would detrimentally affect all of the Individual Defendants by depriving them of the protection afforded to them by the Personal Liability Amendment and exposing them to personal liability for all of their corporate malfeasance alleged herein.

93. As for Mark, he is not independent. He is under the control of Perry and Todd. Mark is beholden to Perry and Todd for his positions as a director of Dardanelle and Southwest. Mark owns no equity interest in either company and his positions with the companies are entirely subject to the control of Perry and Todd, who hand-picked and appointed him to replace Martha as a Southwest director and who can determine unilaterally to remove him. Mark's personal and familial relationship with Perry and Todd prevents him from exercising objective and independent oversight over Dardanelle and Southwest, as does Mark's business relationship with and deference to Perry in connection with other companies owned by the extended Sutherland

family. Mark has never voted against, disagreed with, or even inquired about the material aspects of any action Perry and Todd sought to implement. Thus, Mark does not exercise independent discretion. He instead has rubber-stamped whatever corporate action Perry and Todd want to implement.

94. Demand is also futile because the Individual Defendants face a substantial risk of liability on the transactions challenged herein. The Individual Defendants received and approved improper personal benefits in these transactions that resulted from bad faith and therefore they are not entitled to indemnification by Dardanelle or Southwest or protection under any potentially exculpatory provisions of those companies' Articles. Moreover, each of the Individual Defendants face substantial risk of liability associated with the other claims alleged herein regardless of whether they personally received a direct pecuniary benefit, because of their breaches of fiduciary duties or other misconduct that permitted or authorized the malfeasance alleged herein.

95. For reasons similar to those set forth above, but applicable to Southwest, Martha has not made demand upon the Board of Southwest to bring the derivative claims in this Complaint because demand is not required. Since the Board of Southwest likewise is comprised of the Individual Defendants, demand is futile and thus excused for all of the reasons set forth above.

COUNT I
(Breach of Fiduciary Duty)

96. Martha repeats and realleges the allegations set forth in the preceding paragraphs above as if fully set forth herein.

97. As officers, directors, and/or controlling shareholders of Dardanelle, the Individual Defendants each owe fiduciary duties of loyalty, care, and good faith to Dardanelle and its shareholders.

98. In contravention of their fiduciary duties, Perry and Todd engaged in self-dealing or misuse of their corporate office for personal gain. This includes, but is not limited to, Perry's and Todd's historical use of corporate funds and assets for personal benefit and their conduct in secretly causing Dardanelle and Southwest to approve their respective Employment Agreements when they stood on both sides of those transactions, as well as taking the lucrative compensation and benefits provided for in those Employment Agreements. Mark likewise breached his fiduciary duties by knowingly allowing, and indeed consciously assisting Perry and Todd in the foregoing during the time that Mark was a director of Dardanelle.

99. Further, in contravention of their fiduciary duties, the Individual Defendants caused Dardanelle to spend over \$500,000 to defend the Section 220 Action. The Individual Defendants did so without any possible reasoned basis under the circumstances, or alternatively, in an extraordinary effort to conceal their own or each other's corporate malfeasance from scrutiny or possible redress in an action such as this one. In either circumstance, the Individual Defendants' actions were in breach of their fiduciary duties.

100. In contravention of their fiduciary duties, the Individual Defendants engaged in self-dealing when they caused Dardanelle to approve the Personal Liability Amendment when they stood on both sides of that transaction.

101. The Individual Defendants acted in bad faith. The Employment Agreements award Perry and Todd, among other things, lavish perquisites and unlimited personal use of corporate assets from which Dardanelle reaps no benefit. They have caused Dardanelle to waste

substantial sums in defending the Section 220 Action in order to conceal corporate malfeasance for which Martha seeks redress herein. The Personal Liability Amendment purports to deprive Dardanelle and its shareholders of a remedy against the Individual Defendants for virtually any form of corporate misconduct.

102. The Individual Defendants' conduct as alleged herein is so far beyond the bounds of reasonable judgment that it is inexplicable on any grounds except bad faith. In each of the above described instances, as alleged more fully above, the Individual Defendants acted in bad faith, disloyally, and to protect themselves from liability for acting in self-interested fashion and/or to preserve Perry's and Todd's control over Dardanelle and Southwest so that they could continue to use those companies not for proper corporate purposes, but, instead, to support and maintain lavish perquisites and the lifestyle they afforded.

103. The Individual Defendants' conduct was not approved by a majority of fully-informed, disinterested and independent directors, and it was not entirely fair to Dardanelle or its shareholders.

104. Dardanelle has been damaged by the Individual Defendants' misconduct in an amount to be proven at trial.

COUNT II
(Waste Against All Individual Defendants)

105. Martha repeats and realleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

106. The enormous legal fees and related costs the Individual Defendants forced Dardanelle to spend in defense of the Section 220 Action constitute exchanges of corporate

assets so one sided that no business person of ordinary sound judgment could conclude that Dardanelle has received adequate consideration.

107. Each and every one of the actions described herein served no corporate purpose, but rather was taken for the sole purpose of maintaining Perry's and Todd's lavish lifestyles by bestowing on them lucrative compensation and perquisites while improperly shielding them from any liability to Dardanelle, its shareholders, or Southwest. As such, each of these actions and transactions are bereft of consideration, an irrational squander of corporate assets and are, in effect, gifts to the Individual Defendants.

108. As a result of the Individual Defendants' waste of corporate assets, Dardanelle has been damaged in an amount to be proven at trial.

COUNT III
(Breach of Fiduciary Duty)

109. Martha repeats and realleges the allegations set forth in the preceding paragraphs above as if fully set forth herein.

110. As officers, directors, and/or controlling shareholders of Southwest, the Individual Defendants each owe fiduciary duties of loyalty, care, and good faith to the company and to Southwest and its shareholder, Dardanelle.

111. In contravention of their duty of loyalty, Perry and Todd engaged in self-dealing or misuse of their corporate office for personal gain. This includes, but is not limited to Perry's and Todd's historical use of corporate funds and assets for personal benefit and their conduct in secretly causing Southwest to approve the Employment Agreements when Perry stood on both sides of those transactions. Mark likewise breached his fiduciary duties by knowingly allowing,

and indeed consciously assisting Perry and Todd in the foregoing during the time that Mark was a director of Southwest.

112. The Individual Defendants acted in bad faith. The Employment Agreements award Perry and Todd lavish perquisites and unlimited personal use of corporate assets from which Southwest reaps no benefit. They have caused Dardanelle to waste substantial sums in defending the Section 220 Action in order to conceal the corporate malfeasance for which Martha seeks redress herein.

113. The Individual Defendants' conduct as alleged herein is so far beyond the bounds of reasonable judgment that it is inexplicable on any grounds except bad faith. In each of the above described instances, as alleged more fully above, the Individual Defendants acted in bad faith, disloyally, and to protect themselves from liability for acting in self-interested fashion and/or to preserve Perry's and Todd's control over Dardanelle and Southwest so that they could continue to use those companies not for proper corporate purposes, but, instead, to support and maintain lavish perquisites and the lifestyle they afforded.

114. The Individual Defendants' conduct was not approved by a majority of fully-informed, disinterested and independent directors, and it was not entirely fair to Southwest or its shareholders.

115. Southwest has been damaged by the Individual Defendants' misconduct in an amount to be proven at trial.

WHEREFORE, Martha respectfully requests that this Court:

1. determine that each of the Individual Defendants breached their fiduciary duties of loyalty, good faith, and care as alleged above;

2. determine that each of the Individual Defendants committed corporate waste as alleged above;
3. award appropriate damages against the Individual Defendants, jointly and severally, in an amount to be determined at trial;
4. award Plaintiff her costs and disbursements in this action, including reasonable attorneys' and experts' fees; and
5. grant any and all such other and further equitable or other relief as this Court may deem just and proper.

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