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15 **UNITED STATES DISTRICT COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**

18 Wilis Barrios, individually and as a  
19 representative of a class of all others  
20 similarly situated and on behalf of the  
21 AMPAM Parks Mechanical, Inc.  
22 Employee Stock Ownership Plan (the  
23 “AMPAM ESOP” or the “ESOP”),  
24 Plaintiff,

24 v.

25 AMPAM PARKS MECHANICAL, INC.,  
26 CHARLES E. PARKS III, JOHN D.  
27 PARKS, JAMES PARKS, JASON  
28 PARKS, THE AMPAM BOARD OF  
DIRECTORS, NEIL BROZEN, and

Case No. '23CV2357 JLS DEB

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 JOHN AND JANE DOES 1-20,  
2 Defendants.

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## I. INTRODUCTION

1  
2 1. Plaintiff Wilis Barrios brings this action pursuant to the Employee  
3 Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, seeking  
4 plan-wide relief on behalf of the AMPAM Parks Mechanical, Inc. Employee Stock  
5 Ownership Plan (the “AMPAM ESOP” or the “ESOP”) and class-wide relief on behalf  
6 of a class of similarly-situated ESOP participants and their beneficiaries as defined  
7 below.

8 2. AMPAM Parks Mechanical, Inc. (the “Company” or “AMPAM”) is a  
9 closely held company, employing approximately 1,000 individuals, that provides  
10 residential plumbing subcontractor services for multifamily residences.

11 3. Charles E. Parks III (“Buddy Parks”) and his brother(s) co-founded and  
12 owned AMPAM. Buddy Parks, John D. Parks, James Parks, and Jason Parks  
13 (collectively, “the Parks Brothers”), along with other AMPAM owners collectively  
14 liquidated their interest in AMPAM stock for \$247 million in 2019. The Parks Brothers  
15 and any other sellers of AMPAM stock are collectively referred to as the “Sellers” or  
16 “Seller Defendants.”

17 4. To accomplish the sale, the Parks Brothers (who together controlled  
18 AMPAM) created a retirement plan, the AMPAM ESOP, to purchase their AMPAM  
19 stock at an inflated price.

20 5. Plaintiff and other employee-participants (whose ESOP retirement  
21 accounts were used to purchase 100% of AMPAM stock from the Sellers) were not  
22 given an opportunity to negotiate or otherwise take part in the determination of the  
23 price that they paid for AMPAM stock. They only found out about the ESOP  
24 Transaction after the ESOP Transaction was completed and the \$247 million purchase  
25 price was approved, which left the ESOP deeply in debt and allowed the Sellers to cash  
26 out their interest in AMPAM.

27 6. In fact, rather than involving the employees whose retirement accounts  
28 would be used to buy AMPAM, the Parks Brothers hand-picked Neil Brozen (“Brozen”

1 or “Defendant Brozen”) as the Trustee of the ESOP. Brozen was supposed to be an  
2 independent third party acting with undivided loyalty to the ESOP and its participants.  
3 However, and as discussed *infra*, the Parks Brothers collectively controlled AMPAM  
4 and used the ESOP governance structure to retain the right to fire Brozen as the ESOP  
5 Trustee if Brozen did not carry out the wishes of the Parks Brothers and other Company  
6 insiders.

7 7. The Parks Brothers, who collectively controlled AMPAM, further  
8 cemented their control over Defendant Brozen by agreeing that AMPAM would  
9 indemnify Brozen for all ERISA fiduciary liability in connection with the ESOP  
10 Transaction. Specifically, Buddy Parks signed the Trust Agreement on behalf of  
11 AMPAM, whereby he agreed that:

12 [T]he Company shall indemnify the Trustee [Brozen] for any loss, cost,  
13 expense or other damage, including attorney’s fees, suffered by the  
14 Trustee and resulting from or incurred with respect to any legal  
15 proceedings related in any way to the performance of services by the  
Trustee pursuant to the Plan [ESOP.]

16 The indemnification payments are paid from the Company’s assets (after insurance is  
17 exhausted), which were owned by the ESOP from at least 2019 until 2023. This form  
18 of exculpation is illegal and void under ERISA. *See* ERISA § 410(a), 29 U.S.C.  
19 § 1110(a); *Johnson v. Couturier*, 572 F.3d 1067, 1080 (9th Cir. 2009); *Hurtado v.*  
20 *Rainbow Disposal Co.*, 2018 WL 3372752, at \*15-16 (C.D. Cal. July 9, 2018).

21 8. The Parks Brothers, Neil Brozen, and the other Defendants took several  
22 actions to cause the newly-created ESOP to buy AMPAM from the Sellers at an  
23 inflated price of \$247 million. The various steps and aspects of this sale are collectively  
24 referred to herein as the “ESOP Transaction” or “Transaction.”

25 9. Because the ESOP did not have sufficient money to purchase the  
26 AMPAM stock from the Sellers for \$247 million, Brozen executed loans whereby the  
27 ESOP borrowed approximately \$240 million to fund the purchase. In addition,  
28 AMPAM itself guaranteed the loans the ESOP took to finance the purchase of

1 AMPAM stock. Thus, if the ESOP could not make required loan payments, the  
2 Company was required to do so, which made the Company indebted for almost its  
3 entire value as a result of the ESOP Transaction that was orchestrated and completed  
4 by Defendants. These loans are reported in filings with the Department of Labor.

5 10. The imprudent and disloyal ESOP Transaction terms caused ESOP  
6 participants to suffer monetary losses in their ESOP retirement accounts.

7 11. There is no recognized market for private stock like AMPAM's, and the  
8 value of the stock is determined based on an appropriate valuation report or stock  
9 appraisal. The valuation documents related to AMPAM's stock are, and continue to  
10 be, controlled by the Seller Defendants.

11 12. Plaintiff and other employee-participants have never been given access to  
12 the valuation reports underlying the value of the AMPAM stock in their retirement  
13 accounts. Based on Defendants' duty to disclose all relevant information that bears  
14 upon their retirement investments in AMPAM, Plaintiff asked Defendants to provide  
15 the valuation reports. However, Defendants refused to do so.

16 13. Prior to the ESOP Transaction, AMPAM's co-founder, Buddy Parks, pre-  
17 negotiated that he would keep his Board seat and remain Chairman of the Board after  
18 the ESOP Transaction. This allowed him and the Parks Brothers to retain control over  
19 AMPAM's strategy, direction, and other fundamental business decisions. By pre-  
20 negotiating that he would keep control of AMPAM's Board, Buddy Parks retained the  
21 power to amend the Company's bylaws and the ESOP's governing documents to  
22 determine the Company's strategy and the direction of the business, to sell the  
23 Company in future mergers or corporate transactions, and to determine the amount and  
24 timing of dividends and stock distributions.

25 14. As a result of the pre-agreement that Buddy Parks would retain control  
26 over the Company's strategic direction and management, the fair market value of  
27 AMPAM stock should have reflected a steep discount for the lack of control over the  
28 Company. But it did not.

1           15. As a result, the \$247 million the ESOP paid was significantly more than  
2 the fair market value of AMPAM stock because Defendant Brozen and the stock  
3 valuation he relied on did not adequately take into account that Buddy Parks and the  
4 Parks Brothers kept control over AMPAM in many material respects, including the  
5 strategic decisions of the Company.

6           16. That the Parks Brothers offered to sell (and did sell) a non-controlling  
7 interest to the ESOP is confirmed by the fact that only a few years after the ESOP  
8 Transaction, the Parks Brothers made the strategic decision to re-sell AMPAM stock  
9 to a newly created shell corporation, Canyonlands Purchaser LLP, which was owned  
10 by Buddy Parks and Gemspring Capital Management, LLC (“Gemspring”), a private  
11 equity group.

12           17. Indeed, the press release announcing the sale of AMPAM back to Buddy  
13 Parks and Gemspring (through the shell corporation created in April of 2023) **does not**  
14 **even mention the ESOP** as the prior owner of AMPAM. According to the press  
15 release, “Co-founder Buddy Parks . . . will remain as Chairman and **maintain** a  
16 significant ownership stake in the Company . . . .” (emphasis added).<sup>1</sup> Thus, Buddy  
17 Parks publicly acknowledged that he never gave up his ownership of AMPAM in 2019  
18 and that he retained a significant ownership stake in AMPAM from 2019 to 2023, when  
19 it was supposedly 100% owned by the ESOP.

20           18. The valuation of AMPAM stock—upon which Brozen relied to justify the  
21 \$247 million purchase price by the ESOP and thereafter—did not include a substantial  
22 discount for lack of control. In other words, Brozen failed to adequately consider that  
23 the AMPAM stock offered to and ultimately purchased by the ESOP did not come with  
24 the elements of control typically transferred when 100% of stock is transferred. As a  
25 result, the ESOP substantially overpaid for AMPAM stock because Brozen failed to

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27 <sup>1</sup> Gemspring Capital Acquires AMPAM, PR Newswire (Oct. 4, 2023),  
28 <https://www.prnewswire.com/news-releases/gemspring-capital-acquires-ampam-301946541.html> (emphasis added).

1 obtain an adequate discount for the lack of control in the ultimate price the ESOP paid  
2 for AMPAM.

3 19. Buddy Parks and his brothers were able to sell AMPAM (along with other  
4 Sellers) for \$247 million dollars, yet retained control of AMPAM and a hidden  
5 ownership interest in AMPAM. The Parks Brothers, who collectively controlled  
6 AMPAM from 2019 on, used this control to orchestrate its sale back to Buddy Parks  
7 (and perhaps other Parks Brothers) through a shell corporation set up with a private  
8 equity firm in 2023: Canyonlands Purchaser, LLC.

9 20. In addition to the fact that the ESOP paid too much for AMPAM stock,  
10 the debt terms necessary to complete the purchase of the stock were neither prudent  
11 nor in the best interest of Plaintiff or other ESOP participants. According to  
12 Department of Labor filings, because the ESOP did not have anywhere close to the  
13 \$247 million the Sellers received for AMPAM stock, the ESOP had to borrow \$240.3  
14 million, or 97.3% of the purchase price. Of the total \$240 million in debt, the ESOP  
15 borrowed \$157.5 million from the Sellers themselves (which was guaranteed by the  
16 Company) and the remainder was financed through an external loan obtained by the  
17 Company. This left AMPAM responsible for all \$240 million in ESOP Transaction  
18 debt and required the Company to divert approximately \$10 million of its cash flow  
19 towards loan payments every year. As a result, the \$240 million in crippling debt would  
20 hamper the Company's ongoing operations and profitability. In short, the excessive  
21 level of debt necessary to complete the ESOP Transaction was not in the best interest  
22 of the ESOP participants.

23 21. Defendants together orchestrated and carried out the ESOP Transaction  
24 to serve the Sellers' interests while the ESOP participants' interests were harmed. The  
25 ESOP obtained little control over a company (AMPAM) whose operations were  
26 impaired by the enormous debt load. As a result, the long-term value of AMPAM stock  
27 was substantially in doubt.

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2 **III. PARTIES**

3 **A. Plaintiff Wilis Barrios**

4 29. Plaintiff Wilis Barrios is a former employee of AMPAM who worked at  
5 AMPAM for approximately three years. Mr. Barrios completed three years of Credited  
6 Service under the terms of the ESOP and was a participant in the ESOP as defined by  
7 ERISA § 3(7), 29 U.S.C. § 1002(7).

8 30. In October 2023, Plaintiff Barrios requested several documents from the  
9 AMPAM ESOP Plan Administrator (AMPAM) concerning his ESOP retirement  
10 account, including the Plan Document, any other instruments under which the ESOP  
11 is operated, valuation reports, and any other information used to determine the value  
12 of AMPAM shares allocated to his ESOP account.

13 31. AMPAM refused to provide Plaintiff Barrios with the valuation reports or  
14 any other information or documents that were used to determine the value of AMPAM  
15 shares allocated to his ESOP account.

16 **B. Defendant AMPAM Parks Mechanical, Inc.**

17 32. Defendant AMPAM Parks Mechanical, Inc. is a multifamily residential  
18 plumbing subcontractor that maintains operations and employs individuals  
19 (approximately 1,000) throughout California.

20 33. ERISA provides:

21 Every employee benefit plan shall be established and maintained pursuant  
22 to a written instrument. Such instrument shall provide for one or more  
23 named fiduciaries who jointly or severally shall have authority to control  
and manage the operation and administration of the plan.

24 ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1).

25 34. Here, the written instrument(s) according to which the ESOP was  
26 established and maintained (hereinafter referred to as the “ESOP Plan Document”)  
27 provide that the Company is the “Named Fiduciary” with authority to control and  
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1 manage the administration of the ESOP other than the responsibilities expressly  
2 delegated to the Trustee in the Plan Document.

3 35. The Trust Agreement states that the Company may terminate the Trustee  
4 with 30 days' written notice without cause.

5 36. Accordingly, AMPAM is an ERISA fiduciary within the meaning of  
6 ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because it had/has discretionary control  
7 over the ESOP and the ESOP assets and it exercised control over ESOP assets.

8 37. The ESOP Plan Document states that AMPAM has the power and duty to  
9 “review[] the performance of the Trustee with respect to the Trustee’s administrative  
10 duties, responsibilities, and obligations under the Plan and Trust Agreement.”

11 38. At all relevant times, AMPAM acted through its Executives, Board  
12 members, and the Sellers who owned and controlled AMPAM.

13 **C. The Sellers/Seller Defendants**

14 39. Defendant Charles E. Parks III (“Buddy”) is the co-founder of AMPAM  
15 and has run AMPAM with his brothers and other Board members since approximately  
16 the late 1990s. Before and after the ESOP Transaction, Buddy Parks has also served as  
17 the Chief Executive Officer (“CEO”) and Chairman of the Board of AMPAM and,  
18 along with his brothers, controlled AMPAM’s strategic decisions. According to a  
19 document AMPAM filed with the California Secretary of State and publicly available  
20 information, Buddy Parks remains the CEO and Chairman of the Board of AMPAM.

21 40. Prior to and after the ESOP Transaction, Buddy Parks was a fiduciary to  
22 the ESOP within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because  
23 he acted for AMPAM by, among other things, signing the ESOP Trust Agreement with  
24 Brozen, who was appointed by AMPAM to be the ESOP Trustee. As a result,  
25 Defendant Buddy Parks had/has discretionary control over the ESOP and indeed  
26 exercised/exercises control over the ESOP.

27 41. Defendant Buddy Parks was also a “party in interest” to the ESOP within  
28 the meaning of ERISA § 3(14)(A) and (H), 29 U.S.C. § 1002(14) (A) and (H) because

1 he was, at all relevant times, a fiduciary to the ESOP, the Chairman of the Board of  
2 Directors, an officer of AMPAM, and/or an owner (or beneficial owner) of more than  
3 10% of AMPAM stock at the time of the Transaction.

4 42. Defendant Buddy Parks, along with other Sellers, sold a non-controlling  
5 interest in AMPAM to the ESOP for over \$247 million dollars, which unjustly enriched  
6 him at the expense of ESOP participants.

7 43. Defendant John D. Parks, along with his brother Buddy Parks, co-founded  
8 AMPAM and, along with other Sellers, sold their interest in AMPAM to the ESOP for  
9 over \$247 million dollars, which unjustly enriched him at the expense of ESOP  
10 participants. He is currently the President of AMPAM and, along with his brothers,  
11 controlled AMPAM's strategic decisions.

12 44. Prior to and after the ESOP Transaction, John D. Parks was an ERISA  
13 fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because,  
14 as President, he has acted for AMPAM (along with his brothers) to select and appoint  
15 Brozen as the ESOP Trustee, among other things. As President of AMPAM, he had all  
16 the fiduciary powers and discretion given to AMPAM in the ESOP governing  
17 document; thus, Defendant John D. Parks had/has discretionary control over the ESOP  
18 and exercised/exercises control over the ESOP.

19 45. Defendant John D. Parks was a "party in interest" to the ESOP within the  
20 meaning of ERISA § 3(14)(A) and (H), 29 U.S.C. § 1002(14) (A) and (H) because he  
21 was an ESOP fiduciary, AMPAM's President, an officer of AMPAM, and/or an owner  
22 (or beneficial owner) of more than 10% of AMPAM at the time of the ESOP  
23 Transaction.

24 46. Defendant James Parks has been and continues to be Senior Executive of  
25 AMPAM and had/has knowledge of the Parks Brothers' management and control over  
26 AMPAM. Publicly available documents state that James Parks has run AMPAM along  
27 with other Parks Brothers. As such, he had/has fiduciary powers and discretion given  
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1 to AMPAM in the ESOP governing document, and thus Defendant James Parks  
2 had/has discretionary control over the ESOP.

3 47. His family founded AMPAM and, on information, and belief, he held  
4 AMPAM shares that were sold in the ESOP Transaction, which unjustly enriched him  
5 at the expense of ESOP participants.

6 48. Defendant James Parks was a “party in interest” to the ESOP within the  
7 meaning of ERISA § 3(14)(A) and (H), 29 U.S.C. § 1002(14) (A) and (H) because he  
8 was an ESOP fiduciary and, as an AMPAM Vice President, was and is an officer and/or  
9 an employee of AMPAM, and was such at the time of the ESOP Transaction.

10 49. Defendant Jason Parks has been and continues to be Senior Executive of  
11 AMPAM and had/has knowledge of the Parks Brothers’ management and control over  
12 AMPAM. Publicly available documents state that Jason Parks has run AMPAM along  
13 with other Parks Brothers. As such, he had fiduciary powers and discretion given to  
14 AMPAM in the ESOP governing document, and thus Defendant Jason Parks had/has  
15 discretionary control over the ESOP.

16 50. His family founded AMPAM and, on information and belief, he held  
17 AMPAM shares that were sold in the ESOP Transaction, which unjustly enriched him  
18 at the expense of ESOP participants.

19 51. Defendant Jason Parks was a “party in interest” to the ESOP within the  
20 meaning of ERISA § 3(14)(A) and (H), 29 U.S.C. § 1002(14) (A) and (H) because he  
21 was an ESOP fiduciary, was and is an AMPAM Vice President, and was thus an officer  
22 and/or an employee of AMPAM at the time of the ESOP Transaction.

23 52. Defendants John and Jane Does 1-10 are the other individuals, entities, or  
24 trusts who sold their AMPAM stock in the ESOP Transaction and received money or  
25 other proceeds directly or indirectly from the ESOP Transaction.

26 53. Defendants Charles E. Parks III (“Buddy”), John D. Parks, James Parks,  
27 Jason Parks, and John and Jane Does 1-10 are collectively referred to as the “Sellers”  
28

1 or “Seller Defendants” who sold their interest in AMPAM to the ESOP for \$247  
2 million in 2019.

3 **D. Trustee Defendant**

4 54. Defendant Neil Brozen is an individual residing in Minnesota. Defendant  
5 Brozen is President of Ventura Trust, a trust company doing business in Minnesota.

6 55. Defendant Brozen served as the Trustee of the ESOP and improperly  
7 approved the ESOP Transaction on behalf of the ESOP. As Trustee of the ESOP,  
8 Defendant Brozen was both a named fiduciary and functional fiduciary of the ESOP  
9 within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21) because he had  
10 discretionary authority or discretionary control respecting management of the ESOP,  
11 exercised authority and control respecting management or disposition of the ESOP’s  
12 assets, and/or had discretionary authority or discretionary responsibility in the  
13 administration of the ESOP.

14 56. Defendant Brozen has also been a “party in interest” at all relevant times  
15 because, *inter alia*, he is a fiduciary to the ESOP and provides services to the ESOP.  
16 ERISA § 3(14), 29 U.S.C. § 1002(14).

17 57. Defendant Brozen has been sued multiple times for violations of ERISA  
18 based on his actions as a trustee for ESOPs other than the AMPAM ESOP, including  
19 by the Secretary of Labor.

20 **E. The Board Defendants**

21 58. As noted above, Buddy Parks has been a member of the Board and  
22 Chairman of the Board since at least 2018.

23 59. Defendants John and Jane Does 11-20 are the other individuals who were  
24 members of the AMPAM Board from 2018 until September 2023.

25 60. The AMPAM Board of Directors, Buddy Parks, and John and Jane Does  
26 11-20 are collectively referred to as the “Board Defendants.”

27 61. According to the Plan Documents, the Board has the fiduciary power to  
28 appoint the ESOP Trustee.



1           69. The Trust Agreement states that, prior to July 15, 2019, AMPAM (then  
2 controlled by the Parks Brothers) appointed Neil Brozen as Trustee to the ESOP, which  
3 was a fiduciary act that required them to monitor Brozen and to furnish accurate and  
4 complete information concerning AMPAM in connection with the ESOP Transaction.

5           70. Defendant Brozen was duty bound to evaluate whether all terms of the  
6 ESOP Transaction (including the price paid for AMPAM stock) were adequately  
7 investigated, all relevant alternative options were considered, and the ESOP  
8 Transaction was in the best interest of ESOP participants.

9           71. Brozen and the Parks Brothers were duty bound to ensure that the ESOP  
10 did not pay more than fair market value for the AMPAM stock it purchased.

11           72. Yet the Parks Brothers did not select Brozen because they believed he  
12 would perform a thorough and rigorous evaluation of the sale price and other  
13 Transaction terms and prudently oversee the ESOP. To the contrary, they selected  
14 Brozen because they believed he would be easy to deal with and would approve the  
15 Transaction (or was likely to do so) on terms that were favorable to the Sellers rather  
16 than in the best interest of the ESOP and its participants. And that is exactly what  
17 happened.

18           73. For example, prior to the ESOP Transaction, Buddy Parks and Brozen  
19 pre-negotiated that Buddy Parks would keep his Board seat and remain Chairman of  
20 the Board after the ESOP Transaction. In fact, this agreement that Buddy Parks would  
21 keep his seat as Chairman of the Board was publicly known at least one month prior to  
22 the completion of the ESOP Transaction.

23           74. By pre-negotiating that Buddy Parks would keep control of AMPAM's  
24 Board, the Parks Brothers retained control over AMPAM's strategy, the amount and  
25 timing of dividends and stock distributions, and other fundamental business decisions.  
26 Buddy Parks and his brothers also retained substantial power to amend the Company's  
27 bylaws and the ESOP's governing documents.

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1           75. In fact, AMPAM Parks Mechanical, Inc.’s corporate filings with the  
2 California Secretary of State show that Buddy Parks remained the CEO of AMPAM  
3 for years after the ESOP Transaction. Specifically, AMPAM’s “Statement of  
4 Information” filings on November 16, 2021 and April 7, 2023 report Charles E. Parks  
5 III as the CEO of AMPAM.

6           76. In addition, Buddy Parks and the Parks Brothers kept control over  
7 AMPAM because they effectively controlled Defendant Brozen who was the ESOP  
8 Trustee because Brozen was beholden to the Parks Brothers. Indeed, Buddy Parks  
9 remained the Chairman of the Board after the ESOP Transaction occurred and could  
10 fire Brozen at his whim and pick a replacement ESOP Trustee that would honor the  
11 Parks Brothers’ wishes.

12           77. As noted above, Defendant Brozen approved a sale price of over \$247  
13 million for the Company’s stock. This amount greatly exceeded the fair market value  
14 of the Company at the time of the Transaction and was not a reasonable or good faith  
15 estimate of the amount that would be paid in an arm’s length transaction.

16           78. The purchase price of \$247 million and the Trustee’s evaluation and due  
17 diligence to justify that price suffered from a number of serious flaws that any prudent  
18 and diligent fiduciary, acting in the best interest of the ESOP and its participants,  
19 should have discovered.

20           79. *First*, the sale price failed to properly take account of the fact that the  
21 ESOP did not acquire full control over AMPAM.

22           80. As discussed above, the terms of the sale included a pre-agreement that  
23 Buddy Parks would retain his Board seat and his role as Chairman of the Board.  
24 Because this allowed Buddy Parks and his brothers to retain control over AMPAM’s  
25 strategic direction and management, the fair market value of AMPAM stock should  
26 have reflected a steep discount for the lack of control over the Company. But the actual  
27 purchase price did not.  
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1           81. In addition, the Trust Document specifically gives AMPAM—which  
2 was/is controlled by the Parks Brothers—unilateral power to remove Brozen as Trustee  
3 and gave the AMPAM Board—also controlled by Buddy Parks—the power to pick the  
4 replacement for Brozen. Thus, Brozen and any successor Trustee was not truly  
5 “independent.”

6           82. This lack of independence compromised not only the investigation of the  
7 Transaction, but also the ongoing management of AMPAM going forward. With  
8 limited exception, Plan participants did not have majority power to vote on shareholder  
9 matters. Instead, Defendant Brozen, who was hand-picked by the Park Brothers and  
10 who could be fired by them at will, held the majority of voting power.<sup>2</sup>

11           83. Further, as noted above, Defendant Buddy Parks continued to serve as  
12 Chairman of the Company’s Board after the Transaction.

13           84. Because the ESOP participants did not gain meaningful control over  
14 AMPAM as a result of the Transaction, the purchase price the ESOP paid should have  
15 been heavily discounted to reflect this lack of control. Court decisions have held that  
16 discounts for lack of control as high as 40% are appropriate.

17           85. Publicly available governmental filings state that the ongoing valuations  
18 of AMPAM stock did not include any discount for lack of control. As a result, the  
19 ESOP overpaid. Had even a minimal discount for lack of control (10%) been applied,  
20 the ESOP would have paid approximately \$25 million less than the ESOP actually did;  
21 and a 40% discount for lack of control would have resulted in the ESOP paying  
22 approximately \$100 million less than the ESOP actually did.<sup>3</sup>

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25 <sup>2</sup> While allocated shares should have come with a right to vote on major corporate  
26 transactions, those allocated shares were a minority interest for years after the ESOP  
27 Transaction. Thus even these shareholder voting rights were illusory.

28 <sup>3</sup> The reductions for lack of control illustrated here assume that the Company did not  
have a significant debt burden prior to the ESOP Transaction.

1           86. Here, Brozen did not adequately consider or investigate which elements  
2 of control were actually being transferred via the sale and did not ensure that an  
3 appropriate discount for lack of control was used in the valuation of AMPAM stock.

4           87. *Second*, based on publicly reported information, Buddy Parks retained a  
5 significant ownership interest (not just operational control) in AMPAM from 2019  
6 onwards even though the ESOP's reports filed with the government state that the ESOP  
7 owned a 100% interest in AMPAM.

8           88. This undisclosed and significant ownership interest that Buddy Parks  
9 retained for years after the ESOP Transaction indicates that the price the ESOP paid  
10 was more than fair market value.

11           89. *Third*, the \$247 million price was based on financial information provided  
12 by the Parks Brothers (who together ran and controlled AMPAM). Each of them had a  
13 personal interest in painting the rosiest picture possible of AMPAM's financial  
14 situation and, on information and belief, did so. As Trustee, Defendant Brozen had a  
15 responsibility to carefully scrutinize the financial projections and other information  
16 supplied by the Parks Brothers and other Company insiders, rather than simply taking  
17 them at face value. However, no evidence of such scrutinization of the valuation has  
18 been provided in response to Plaintiff Barrios's pre-litigation request for information  
19 relating to the Transaction.

20           90. *Fourth*, the Transaction saddled the ESOP with an enormous debt burden  
21 that was effectively underwritten by the Company, which sapped its cash flows and  
22 growth potential as an ongoing business enterprise.

23           91. More specifically, to finance the Transaction, the ESOP entered into a  
24 financing arrangement with the Sellers and with AMPAM on or around July 15, 2019.  
25 According to the Transaction terms, AMPAM contributed approximately \$6.64 million  
26 to the ESOP toward the purchase of AMPAM shares, directly depleting the Company's  
27 assets. Next, AMPAM loaned approximately \$82.83 million toward the purchase of  
28 AMPAM shares. Finally, the ESOP issued notes to the Sellers totaling approximately

1 \$157.54 million. Pursuant to the loan terms, the ESOP would make annual principal  
2 and interest payments over 40 years.

3 92. The terms of the Transaction further required AMPAM to make  
4 contributions in amounts sufficient for the ESOP to service the debt to the Sellers and  
5 repay the Sellers. This put a tremendous financial strain on the Company, as the loans  
6 required annual payments of principal and interest of approximately \$10 million per  
7 year. This severe drag on the Company's cash flows also was not adequately reflected  
8 in the Transaction sale price.

9 93. *Fifth*, the Company's business faced significant risks and headwinds at  
10 the time of the Transaction.

11 94. The ESOP Transaction occurred during a time of great uncertainty in the  
12 housing market, especially for multifamily homes built in California, the type of  
13 projects on which AMPAM works. In 2019, the California Assembly passed rent  
14 control for multifamily houses with the enactment of Assembly Bill 1482. The law  
15 applies to the majority of California's multifamily housing stock and caps annual rent  
16 increases at 5 percent plus the rate of inflation, or 10 percent, whichever is lower. The  
17 rent control law also requires a property owner to have "just cause" to evict a tenant.

18 95. Assembly Bill 1482 was being considered by the California legislature at  
19 the time of the ESOP Transaction, and was eventually signed into law.

20 96. Additionally, in 2019, housing starts in California experienced their first  
21 decline in 10 years.<sup>4</sup> That year, 11% fewer multifamily homes were built.<sup>5</sup> Indeed,  
22  
23  
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27 <sup>4</sup> *Preliminary 2019 Annual Permit Statistics Indicate Housing Shortage*, Constr. Indus.  
28 Rsch. Bd. (Feb. 10, 2020), <https://www.cirbreport.org/2019-housing-shortage>.

<sup>5</sup> *Id.*

1 2018 was a high-water mark for multifamily construction starts in California that was  
2 followed by a steady decline into at least 2021.<sup>6</sup>

3 97. One industry report in the summer of 2019 noted, “[i]n the last six months,  
4 Bay Area developers have pulled back on new development, and half of the panelists  
5 stated that they were not planning to start a new development in the next 12 months.”<sup>7</sup>  
6 Developers expressed a more negative outlook in the 2019 survey than in 2018 in 5 of  
7 the 6 geographic areas examined, with 3 of the 6 having an overall negative outlook.<sup>8</sup>

8 98. These headwinds facing the multifamily housing industry, on which the  
9 fortunes of AMPAM depended, also were not adequately reflected in the Transaction  
10 sale price.

11 99. Shortly after the Transaction, the Company’s stock held by the ESOP was  
12 reported to be valued at \$17,821,310, or approximately 7% of what the ESOP had paid  
13 for the Company. The ESOP’s 2019 Form 5500 reports a total loss of \$229.2 million  
14 in the value of AMPAM stock as a result of this new valuation.

15 100. The Company’s value continued to plummet the next year. The ESOP’s  
16 2020 Form 5500 reports a further loss of \$15.7 million in the value of AMPAM stock.  
17 As a result, the ESOP’s stock was valued at a mere \$2.1 million, less than 1% of what  
18 the Plan paid. This decrease in value occurred despite the fact that AMPAM paid  
19 millions of dollars against the Company and Seller notes. All things being equal, one  
20 would expect the value of the Company to have increased a proportionate amount.  
21 Instead, it fell significantly that year.

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23 <sup>6</sup> Hans Johnson et al., *California’s Housing Construction Picks Up Pace*, Pub. Pol’y  
24 Inst. of Cal. (June 17, 2021), <https://www.ppic.org/blog/californias-housing-construction-picks-up-pace>.

25 <sup>7</sup> *Commercial Real Estate Survey 12*, Allen Matkins & UCLA Anderson Forecast  
26 (Issue No. 25, Spring/Summer 2019),  
27 [https://connect.allenmatkins.com/hubfs/AMCRES\\_Spring-](https://connect.allenmatkins.com/hubfs/AMCRES_Spring-Summer_2019_FINAL.pdf)  
28 [Summer\\_2019\\_FINAL.pdf](https://connect.allenmatkins.com/hubfs/AMCRES_Spring-Summer_2019_FINAL.pdf).

<sup>8</sup> *Id.*

1           101. The ESOP’s 2021 Form 5500 reported a value of \$12.69 million, still  
2 significantly below the ESOP’s value in the year the ESOP Transaction closed, despite  
3 millions of dollars having been paid to the principal of the Seller and Company notes.

4           102. Because Brozen failed to engage in an adequate investigation and failed  
5 to insist on an adequate discount for the lack of control being sold, the ESOP overpaid  
6 by at least as much as \$25 million and potentially more than \$100 million.

7           103. As a general rule, ERISA prohibits transactions between a retirement plan  
8 (such as the ESOP here) and parties in interest affiliated with the sponsoring employer  
9 (such as all Defendants here). ERISA § 406(a), 29 U.S.C. § 1106(a).

10           104. All employer contributions to the ESOP, invested in employer stock, are  
11 part of employee compensation and comprise an important part of employee retirement  
12 savings.

13           105. Because—and only because—an ESOP contribution qualifies as  
14 employee compensation, an employer can deduct the total value of its ESOP  
15 contribution from its income tax liability as an ordinary business expense. 26 U.S.C.  
16 § 404; 26 C.F.R. § 1.404(a)–1(b) (2022).

17                           **V. PLAINTIFF SEEKS PLAN-WIDE RELIEF**

18           106. Plaintiff brings his claims on behalf of the Plan pursuant to ERISA  
19 § 502(a)(2), 29 U.S.C. § 1132(a)(2), and as a class action pursuant to Federal Rule of  
20 Civil Procedure 23 on behalf of the following Class:<sup>9</sup>

21           All participants in the AMPAM ESOP on or after December 28, 2017,  
22 and those participants’ beneficiaries, excluding Defendants and their  
23 immediate family members; any fiduciary of the Plan; the officers and  
24 directors of AMPAM or of any entity in which a Defendant has a  
25 controlling interest; and legal representatives, successors, and assigns of  
26 any such excluded persons.

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27 <sup>9</sup> Plaintiff reserves the right to revise the class definition and to propose other or  
28 additional classes in subsequent pleadings or in his motion for class certification, after  
discovery in this action.

1           107. **Numerosity.** The Class satisfies the numerosity requirement because it is  
2 composed of hundreds of persons. At the end of 2022, the year before it was terminated,  
3 the ESOP had approximately 797 participants. The number of Class members is  
4 sufficiently large that joinder of all its members is impracticable.

5           108. **Commonality.** This case presents numerous common questions of law  
6 and fact, including (among other things):

- 7           a. Whether the ESOP Transaction was a prohibited transaction under  
8 ERISA;
- 9           b. Whether the Sellers received more than adequate consideration in  
10 connection with the ESOP Transaction;
- 11           c. Whether Defendant Brozen was a fiduciary to the ESOP as the ESOP  
12 Trustee;
- 13           d. Whether Defendant Brozen engaged in a prudent investigation of the  
14 ESOP Transaction and acted in the best interests of the ESOP and its  
15 participants in approving the Transaction;
- 16           e. Whether AMPAM, operating through the Parks Brothers, imprudently  
17 appointed Brozen as Trustee, failed to monitor Brozen, and  
18 imprudently retained him as Trustee despite his fiduciary failures,  
19 without taking appropriate corrective action;
- 20           f. Whether the Parks Brothers and other Seller Defendants were involved  
21 in the preparation of the financial projections used in appraisals of  
22 AMPAM stock that formed the basis of the ESOP purchase price of  
23 \$247 million;
- 24           g. Whether the Parks Brothers and other Seller Defendants provided  
25 misleading or incomplete financial information in connection with the  
26 ESOP Transaction;
- 27           h. The amount of losses suffered by the ESOP as a result of the unlawful  
28 conduct alleged herein;
- i. The proper form of equitable and injunctive relief; and
- j. The extent to which any non-fiduciary Defendants are subject to  
equitable remedies and relief.

1           106. **Typicality.** Plaintiff's claims are typical of the claims of the Class because  
2 (among other things): (a) he was employed by AMPAM and participated in the ESOP;  
3 (b) Plaintiff was injured in the same manner as other Class members in connection with  
4 the ESOP Transaction and the inflated price that was paid for the Company; and (c) to  
5 the extent that Plaintiff seeks relief on behalf of the Plan pursuant to § 502(a)(2) of  
6 ERISA, 29 U.S.C. § 1132(a)(2), his claims are not only typical of, but the same as, a  
7 claim under § 502(a)(2) brought by any other Class member.

8           107. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the  
9 Class and is committed to the vigorous representation of the Class. Plaintiff's retained  
10 counsel, Cohen Milstein Sellers and Toll PLLC, are experienced in class action and  
11 ERISA litigation, and Plaintiff and his counsel have no interests antagonistic to or in  
12 conflict with the interests of the Class.

13           108. **Rule 23(b)(1)(A).** Class certification is appropriate pursuant to Federal  
14 Rule of Civil Procedure 23(b)(1)(A). Fiduciaries of ERISA-covered plans have a legal  
15 obligation to act consistently with respect to all similarly situated participants and to  
16 act in the best interests of plan participants. This action challenges whether Defendants  
17 acted consistently with their fiduciary duties or otherwise violated ERISA as to the  
18 ESOP as a whole. As a result, prosecution of separate actions by individual members  
19 would create the risk of inconsistent or varying adjudications that would establish  
20 incompatible standards of conduct for Defendants relating to the ESOP.

21           109. **Rule 23(b)(1)(B).** Class certification is also appropriate pursuant to  
22 Federal Rule of Civil Procedure 23(b)(1)(B). Administration of an ERISA-covered  
23 plan requires that all similarly situated participants be treated the same. Resolving  
24 whether Defendants fulfilled their fiduciary obligations to the ESOP and engaged in  
25 prohibited transactions with respect to the ESOP would, as a practical matter, be  
26 dispositive of the interests of the other participants in the ESOP and would substantially  
27 impair or impede their ability to protect their interests if they are not made parties to  
28 this litigation by being included in the Class. Further, the relief granted by the Court,

1 including any equitable relief, injunctive relief, or accounting of profits, may be  
2 dispositive of the interests of other class members.

3       110. **Rule 23(b)(2).** Additionally and alternatively, class certification is  
4 appropriate pursuant to Federal Rule of Civil Procedure 23(b)(2) because Defendants  
5 have acted or refused to act on grounds generally applicable to the Class, making  
6 appropriate declaratory and injunctive relief with respect to the Class as a whole. This  
7 action challenges whether Defendants acted consistently with their fiduciary duties or  
8 otherwise violated ERISA as to the ESOP as a whole. The members of the Class are  
9 entitled to declaratory and injunctive relief to remedy Defendants' fiduciary violations.

10       111. **Rule 23(b)(3).** Additionally and alternatively, class certification is  
11 appropriate pursuant to Federal Rule of Civil Procedure 23(b)(3) because questions of  
12 law and fact common to all Class members predominate over any questions affecting  
13 individual members of the Class and because a class action is superior to other available  
14 methods for the fair and efficient adjudication of this action. Common questions related  
15 to liability will necessarily predominate over any individual questions because  
16 Defendants' duties and obligations were uniform as to all ESOP participants and  
17 therefore all members of the Class, and whether Defendants breached those duties will  
18 center on their conduct rather than the conduct of individual class members. Common  
19 questions as to remedies will likewise predominate over any individual issues in light  
20 of the plan-wide claims asserted in the action and the nature of the relief sought.  
21 Further, a class action is superior to other available methods for resolving the  
22 controversy because the claims are brought on behalf of the ESOP, involve an ESOP  
23 Transaction impacting all Class members, and the issues in this litigation will be most  
24 efficiently resolved in a single proceeding rather than multiple proceedings. The losses  
25 suffered by individual Class members are small compared to the expense and burden  
26 of individual prosecution of this action. As such, Class members do not have an interest  
27 in individually prosecuting their claims, and Plaintiff is unaware of any similar action  
28 filed by another member of the Class. Proceeding on a class-wide basis in this forum



1 will be desirable, manageable, and obviate the need for unduly duplicative litigation  
2 which might result in inconsistent judgments.

3 112. The names and addresses of the Class members are available from the  
4 ESOP and/or the Company, and notice can be provided to all members of the Class to  
5 the extent required by Federal Rule 23.

## 6 VI. CAUSES OF ACTION

### 7 Count I

#### 8 **Prohibited Transaction in Violation of ERISA § 406(a), 29 U.S.C. § 1106(a)** 9 **(Against Neil Brozen, the Parks Brothers, and AMPAM)**

10 113. Plaintiff incorporates the preceding paragraphs as though set forth herein.

11 114. ERISA § 406(a)(1), 29 U.S.C. § 1106(a)(1) requires that a plan fiduciary  
12 “shall not cause the plan to engage in a transaction, if he knows or should know that  
13 such transaction constitutes a direct or indirect (A) sale or exchange, or leasing, of any  
14 property between the plan and a party in interest,” or a “(D) transfer to, or use by or for  
15 the benefit of a party in interest, of any assets of the plan.”

16 115. Each of the Defendants named in this Count was a fiduciary as discussed  
17 in Section III.B-D above.

18 116. The ESOP Transaction involved the sale of interest of several “parties in  
19 interest” as discussed in in Section III.B above.

20 117. As Trustee, Defendant Brozen approved the ESOP Transaction terms,  
21 including the price, in violation of ERISA § 406(a)(1)(A) and (D), 29 U.S.C.  
22 § 1106(a)(1)(A) and (D) because he failed to conduct a prudent investigation of the  
23 sale price and other material terms of the Transaction. He approved the Transaction for  
24 more than fair market value and failed to ensure that the ESOP paid no more than fair  
25 market value for the AMPAM stock that was sold by the Seller Defendants.  
26 Accordingly, Defendant Brozen is also liable for violation of the foregoing prohibited  
27 transaction provisions.

28 118. As set forth in Section IV above, the ESOP paid more than fair market  
value and there was not a prudent and loyal investigation into the sale price and other

1 material terms of the Transaction by Defendant Brozen on behalf of the ESOP.

2 119. In addition, the Parks Brothers (and in particular, Buddy Parks) retained  
3 control over AMPAM, its Board, and Brozen, and their actions are also “but for causes”  
4 of the ESOP Transaction given that they created the ESOP solely for the purpose of  
5 buying their AMPAM interest and that they hand-picked Brozen as Trustee despite the  
6 fact that he has been sued for violating ERISA as an ESOP trustee multiple times,  
7 including by the Secretary of Labor.

8 120. In addition, the Parks Brothers provided Brozen with unreasonably  
9 optimistic projections of future growth that resulted in the ESOP paying an inflated  
10 price; the Parks Brothers prenegotiated with Brozen that Buddy Parks would remain as  
11 Chairman of the Board, which caused the ESOP Transaction to receive a non-  
12 controlling interest in AMPAM, yet the \$247 million price the ESOP paid was not  
13 adequately discounted for that lack of control. In particular, Buddy Parks retained a  
14 hidden and substantial ownership interest in AMPAM that may not have even been  
15 disclosed to Brozen, given that the governmental filings for 2019, 2020, 2021, and  
16 2022 report AMPAM is 100% ESOP owned.

17 121. Further, each of the Parks Brothers received significant consideration in  
18 connection with the ESOP Transaction and was familiar with the terms of, and parties  
19 to, the Transaction. As such, each of them had actual or constructive knowledge that:  
20 (i) the Transaction constituted a direct or indirect sale of property between the ESOP  
21 and parties affiliated with AMPAM (ERISA “parties in interest”); (ii) the ESOP loans  
22 constituted a use of Plan assets by or for the benefit of themselves and other parties in  
23 interest; (iii) the ESOP Transaction price was more than fair market value because *inter*  
24 *alia*, the Parks Brothers were not relinquishing full control of AMPAM; (iv) at least  
25 Buddy Parks retained an ownership interest in AMPAM after it was supposed to be  
26 100% ESOP owned. Yet, in spite of such actual or constructive knowledge, the Parks  
27 Brothers took acts to consummate the ESOP Transaction and/or influenced Brozen to  
28 do so. The Parks Brothers are thus liable for violations of ERISA § 406(a)(1)(A) and

1 (D), 29 U.S.C. § 1106(a)(1)(A) and (D).

2 122. Defendants Brozen, the Parks Brothers, and AMPAM thus caused the  
3 ESOP to pay an inflated price and take on \$240 million in debt through the ESOP  
4 Transaction, which resulted in substantial losses to the ESOP and its participant  
5 accounts. They are thus each subject to appropriate relief under ERISA § 502(a)(2), 29  
6 U.S.C. § 1132(a)(2) and ERISA § 409, 29 U.S.C. § 1109 for these violations of ERISA.

7 123. In addition or alternatively, each of them is liable as co-fiduciaries as set  
8 forth in Count IV.

9 **Count II**  
10 **Prohibited Transaction in Violation of ERISA § 406(b), 29 U.S.C. § 1106(b)**  
11 **(Against Charles E. Parks III/Buddy Parks, John D. Parks, James Parks, and**  
12 **Jason Parks)**

13 124. Plaintiff incorporates the preceding paragraphs as though set forth herein.

14 125. Each of the Defendants named in this Count was a fiduciary as discussed  
15 in Section III.C above.

16 126. ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1) prohibits a fiduciary from  
17 “deal[ing] with the assets of the plan in his own interest or for his own account.”

18 127. As set forth in Sections III.C and IV above, the Parks Brothers sold their  
19 interest in AMPAM and dealt with ESOP assets in their own interest within the  
20 meaning of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

21 128. ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2) mandates that a plan fiduciary  
22 shall not “act in any transaction involving the plan on behalf of a party (or represent a  
23 party) whose interests are adverse to the interests of the plan or the interests of its  
24 participants.”

25 129. As set forth in Sections III.C and IV above, the Parks Brothers acted in  
26 their own interests and adverse to ESOP’s interests in connection with the ESOP  
27 Transaction by arranging to receive more than adequate consideration for their shares,  
28 in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

1 130. ERISA § 406(b)(3), 29 U.S.C. § 1106(b)(3) prohibits a plan fiduciary  
2 from “receiv[ing] any consideration for his own personal account from any party  
3 dealing with such plan in connection with a transaction involving the assets of the  
4 plan.”

5 131. As set forth in Sections III.C and IV above, the Parks Brothers  
6 orchestrated the ESOP Transaction and caused themselves to receive consideration  
7 (indeed, more than adequate consideration) for their own personal accounts in  
8 connection with the ESOP Transaction, in violation of ERISA § 406(b)(3), 29 U.S.C.  
9 § 1106(b)(3).

10 132. The Parks Brothers are therefore subject to appropriate relief under  
11 ERISA § 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) and (3) and ERISA § 409, 29  
12 U.S.C. § 1109 for these violations of ERISA.

13 **Count III**

14 **Breach of Fiduciary Duties Under ERISA § 404(a)(1)(A) and (B),**  
15 **29 U.S.C. § 1104(a)(1)(A) and (B)**

16 **(Against Neil Brozen, Charles E. Parks III/Buddy Parks, John D. Parks, James**  
17 **Parks, Jason Parks, the other Board Defendants, and AMPAM)**

18 133. Plaintiff incorporates the preceding paragraphs as though set forth herein.

19 134. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A) requires that a plan  
20 fiduciary act “for the exclusive purpose of providing benefits to participants and [the]  
21 beneficiaries [of the plan.]”

22 135. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B) requires that a plan  
23 fiduciary act “with the care, skill, prudence, and diligence under the circumstances then  
24 prevailing that a prudent [person] acting in a like capacity and familiar with such  
25 matters would use in the conduct of an enterprise of a like character and with like  
26 aims.”

27 136. In the context of a sale of the sponsoring company/employer to an ESOP,  
28 the duties of loyalty under ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A) and  
prudence under ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B) require a fiduciary

1 ESOP trustee to undertake a prudent and diligent investigation of the sale price and  
2 other transaction terms and all underlying financial projections and assumptions, in the  
3 exclusive interest of the ESOP and its participants without regard to the interests of  
4 company insiders who retained the trustee, to ensure that the ESOP and its participants  
5 pay no more than adequate consideration for the company's assets.

6 137. Each of the Defendants named in this Count was a fiduciary as discussed  
7 in Section III.B-E above.

8 138. Defendant Brozen failed to undertake a prudent and appropriate  
9 investigation of the terms of the ESOP Transaction and effectively gave a wink and a  
10 nod to the Parks Brothers who hired Defendant Brozen, instead of serving in a truly  
11 independent capacity for the exclusive benefit of the ESOP and its participants.

12 139. As alleged above, a prudent and loyal investigation of the relevant ESOP  
13 Transaction terms and underlying financial projections and assumptions in connection  
14 with the ESOP Transaction would have revealed that the price the ESOP paid was  
15 greater than the fair market value of the AMPAM stock at the time of the Transaction.

16 140. A prudent and loyal investigation by Defendant Brozen also would have  
17 revealed that the Transaction sale price did not adequately reflect the fact that the ESOP  
18 gained only limited control over the Company.

19 141. A prudent and loyal investigation by Defendant Brozen also would have  
20 revealed that the enormous debt burden taken on by the ESOP to complete the ESOP  
21 Transaction, and the ongoing responsibility of the Company to underwrite that debt,  
22 was inconsistent with the Transaction sale price and rendered the price inflated.

23 142. A prudent and loyal investigation by Defendant Brozen also would have  
24 critically examined the financial projections and other information provided by the  
25 Sellers. However, Defendant Brozen failed to do so and failed to take proper and  
26 necessary measures to "look under the hood."

27 143. By failing to act prudently and loyally in participants' best interests in  
28 connection with the ESOP Transaction and the ongoing management of the ESOP

1 (including the subsequent resale of the Company for less than it was originally  
2 purchased), Defendant Brozen breached his fiduciary duties under ERISA  
3 § 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B) and caused losses to the  
4 ESOP and the individual retirement accounts of the participants in the ESOP.

5 144. The Parks Brothers selected Brozen as Trustee not because they believed  
6 it was in the best interest of the ESOP and its participants, but because they believed  
7 he would be easy to deal with and would approve the Transaction (or was likely to do  
8 so) on terms that were favorable to the Sellers rather than in the best interest of the  
9 ESOP and its participants. In so doing, the Parks Brothers violated their duties of  
10 loyalty and prudence to ESOP participants.

11 145. By acting in their own self interest and ensuring that Buddy Parks  
12 remained Chairman of the Board and that John Parks retained control over AMPAM  
13 through his role as President, the Parks Brothers violated their duties of loyalty and  
14 prudence to ESOP participants.

15 146. By providing overly aggressive projections of growth to Defendant  
16 Brozen, the Parks Brothers violated their duty of undivided loyalty to participants  
17 which included the duty of complete candor and honesty. Indeed, when Plaintiff asked  
18 for the valuation reports for AMPAM stock, this information was refused by AMPAM,  
19 which was controlled by the Parks Brothers.

20 147. Any fiduciary with the power to appoint and/or remove another fiduciary  
21 has an obligation to monitor the appointed fiduciary to ensure that he/she is acting in  
22 compliance with the terms of the Plan and in accordance with ERISA. *See* 29 C.F.R.  
23 § 2509.75-8 (FR-17) (2022). If the appointed fiduciary has violated or continues to  
24 violate ERISA, the monitoring fiduciary must remove the appointed fiduciary and take  
25 any other remedial action necessary to address the ERISA violations.

26 148. The Trust Agreement states that AMPAM appointed Defendant Brozen,  
27 which means AMPAM had an obligation to monitor Brozen in connection with the  
28 ESOP Transaction.

1           149. Additionally, the Trust Agreement for the ESOP provides, “[u]pon  
2 resignation or removal of the Trustee, the Board of Directors shall appoint a successor  
3 trustee or trustees.” The Trust Agreement also states, “[t]he Company (through its  
4 Board of Directors) shall have the right at any time” to modify or terminate the Trust  
5 Agreement.

6           150. The Parks Brothers, AMPAM, and the other Board Defendants breached  
7 their fiduciary duty to monitor Defendant Brozen in compliance with ERISA  
8 § 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B) and other applicable ERISA  
9 regulations. Among other things, the Parks Brothers, AMPAM, and the other Board  
10 Defendants:

- 11           a. failed to monitor and evaluate the performance of Defendant  
12 Brozen as Trustee, or have a system in place for doing so, to ensure  
13 that Defendant Brozen conducted a sufficiently rigorous review of  
14 the ESOP Transaction in compliance with ERISA;
- 15           b. knew and failed to correct the fact that Defendant Brozen was  
16 acting based on unrealistic and unreliable financial projections for  
17 AMPAM’s future revenues, cash flows, and earnings;
- 18           c. knew and failed to correct the fact that the Transaction sale price  
19 approved by Defendant Brozen was inflated and exceeded the fair  
20 market value of the Company;
- 21           d. failed to further investigate Defendant Brozen’s appropriateness  
22 and competence as Trustee based on problems associated with his  
23 work in connection with other transactions (*see supra* ¶ 57);
- 24           e. failed to remove Defendant Brozen when they knew that his  
25 performance was inadequate for the reasons described herein and  
26 elsewhere in this Complaint; and
- 27           f. failed to take other appropriate remedial measures to address  
28 Defendant Brozen’s fiduciary failures as Trustee and the improper  
approval of the ESOP Transaction (and subsequent resale  
transaction).

1 151. Had the Parks Brothers, AMPAM, and the other Board Defendants  
2 properly monitored Brozen, the ESOP would not have overpaid (or at the very least  
3 would have overpaid less).

4 152. Defendant Brozen, the Parks Brothers, AMPAM, and the other Board  
5 Defendants caused substantial lossess to the ESOP and thus are subject to appropriate  
6 relief under ERISA § 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) and (3) and ERISA  
7 § 409, 29 U.S.C. § 1109 for these fiduciary breaches in violation of ERISA.

8 **Count IV**  
9 **Co-Fiduciary Liability Under ERISA § 405(a)(1) and (a)(3), 29 U.S.C.**  
10 **§ 1105(a)(1) and (a)(3)**  
11 **(Against Charles E. Parks III/Buddy Parks, John D. Parks, James Parks, Jason**  
12 **Parks, AMPAM, and the other Board Defendants)**

13 153. Plaintiff incorporates the preceding paragraphs as though set forth herein.

14 154. Each of the Defendants named in this Count was a fiduciary as discussed  
15 in Section III.B-E above.

16 155. ERISA § 405(a)(1), 29 U.S.C. § 1105(a)(1) provides that a fiduciary  
17 “with respect to a plan shall be liable for a breach of fiduciary responsibility of another  
18 fiduciary with respect to the same plan . . . if he participates knowingly in, or  
19 knowingly undertakes to conceal, an act or omission of such other fiduciary.”

20 156. Each of the Defendants named in this Count was part of the highest-level  
21 management at AMPAM and were involved in and directed the preparation of the  
22 financial projections underlying the stock appraisal AMPAM relied upon in  
23 determining (i) the purchase price the ESOP paid for the Company; and (ii) the  
24 subsequent valuations of AMPAM stock at year-end 2019, 2020, 2021, and 2022.

25 157. Given their intimate knowledge of AMPAM’s business, their unique  
26 access to Company financial information (and involvement in the preparation of such  
27 information), and their appointment of Defendant Brozen, the Defendants named in  
28 this Count knew that the price the ESOP paid for AMPAM stock was inflated and



1 exceeded fair market value and knew that Defendant Brozen failed to prudently and  
2 appropriately carry out his duties as Trustee in approving the ESOP Transaction.

3 158. Nonetheless, they knowingly participated in the fiduciary violations of  
4 Defendant Brozen and concealed them from the ESOP's participants and others by  
5 allowing Defendant Brozen to continue to serve as Trustee and allowing the ESOP  
6 Transaction to go forward without disclosing, addressing, or remedying those fiduciary  
7 violations.

8 159. Under ERISA § 405(a)(1), 29 U.S.C. § 1105(a)(1), each of the  
9 Defendants named in this Count are liable as co-fiduciaries for Defendant Brozen's  
10 fiduciary violations.

11 160. Had they not violated their co-fiduciary duties, the ESOP would not have  
12 suffered the losses alleged herein. They are therefore subject to appropriate relief under  
13 ERISA § 409, 29 U.S.C. § 1109 and ERISA § 502(a)(2) and (3), 29 U.S.C.  
14 § 1132(a)(2) and (3) based on their co-fiduciary liability.

15 **Count V**

16 **Equitable Relief Under ERISA § 502(a)(3), 29 U.S.C § 1132(a)(3)**  
17 **(Against Seller Defendants)**

18 161. Plaintiff incorporates the preceding paragraphs as though set forth herein.

19 162. Under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), a court may award  
20 "other appropriate equitable relief" to redress "any act or practice" that violates ERISA.  
21 A defendant may be held liable under this section regardless of whether it is a fiduciary.

22 163. A non-fiduciary transferee of ill-gotten assets of the Plan is subject to  
23 equitable restitution of those assets and disgorgement of any profits thereon if the non-  
24 fiduciary had actual or constructive knowledge of the circumstances that rendered the  
25 transaction or payment unlawful.

26 164. The Sellers knowingly participated in and profited from the fiduciary  
27 breaches and prohibited transactions alleged herein with full knowledge that their stake  
28 in the Company was being unlawfully acquired for greater than fair market value.

1           165. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), the Court should  
2 order restitution of the consideration Sellers received as a result of the ESOP  
3 Transaction and disgorgement of any profits thereon, regardless of whether or not the  
4 Sellers were fiduciaries to the ESOP. As discussed above, the consideration that the  
5 Sellers received impermissibly exceeded the fair market value of their shares.  
6 Moreover, the Sellers had actual or constructive knowledge that they were receiving  
7 greater than fair market consideration based on, *inter alia*, (i) their personal familiarity  
8 with the value of their own equity interests; (ii) their access to the Company’s books  
9 and records; (iii) their inside knowledge of confidential business and financial  
10 information pertaining to AMPAM; (iv) their status as officers or directors of the  
11 Company, to the extent they held those roles; and (v) their close personal and/or family  
12 relationships to other company insiders.

13           166. The Plan Document contemplates that some or all of the Sellers would  
14 invest the proceeds of the ESOP Transaction in “qualified replacement property”  
15 pursuant to Section 1042 of the Internal Revenue Code in order to avoid capital gains  
16 tax on the sale of their AMPAM stock to the ESOP. Under I.R.C. Section 1042, the  
17 gains on the sale of the stock to the ESOP are taxed when the qualified replacement  
18 property is sold, and capital gains taxes can be entirely eliminated if the qualified  
19 replacement property is held by the Sellers until death. Thus, on information and belief,  
20 any Sellers who invested the proceeds in qualified replacement property continue to  
21 hold such property to avoid the adverse tax consequences.

22           167. Each Seller who sought deferral of capital gains pursuant to I.R.C. Section  
23 1042 was required to sign a Statement of Purchase that identified and declare the  
24 specific securities that represented the qualified replacement property that was  
25 purchased to avoid taxes on the receipt of proceeds from the ESOP Transaction. The  
26 Statement of Purchase for each Seller who elected an I.R.C. Section 1042 deferral  
27 would be filed with his or her tax return.  
28

1 168. Thus, all consideration to the Sellers in connection with the ESOP  
2 Transaction and all profits thereon are in the current possession of the Sellers and are  
3 traceable to its current location.

4 169. The Sellers cannot retain this consideration to the extent it exceeded the  
5 fair market value of their shares.

6 **Count VI**  
7 **Illegal Agreement to Exculpate Fiduciary Liability in violation of**  
8 **ERISA § 410(a), 29 U.S.C. § 1110(a)**  
9 **(Against Defendants Brozen, Charles E. Parks III/Buddy Parks and AMPAM)**

10 170. Plaintiff incorporates the preceding paragraphs as though set forth herein.

11 171. ERISA § 410(a), 29 U.S.C. § 1110(a) provides in relevant part (with  
12 exceptions not applicable here) that “any provision in an agreement or instrument  
13 which purports to relieve a fiduciary from responsibility or liability for any  
14 responsibility, obligation, or duty under this part [ERISA Part IV] shall be void as  
15 against public policy.”

16 172. AMPAM adopted and/or approved terms of the ESOP Plan Document  
17 that state that the Company will indemnify any officer and director of AMPAM and all  
18 of its affiliates for “any loss, cost, expense, or other damage, including reasonable  
19 attorneys’ fees, suffered by such Indemnitee resulting from or incurred with respect to  
20 any legal proceedings related in any way to the performance of services by the  
21 Indemnitee.”

22 173. Buddy Parks and AMPAM adopted and/or approved the Trust Agreement  
23 with Defendant Brozen, which states that AMPAM will indemnify Defendant Brozen  
24 for “any loss, cost, expense or other damage, including attorney’s fees, suffered by the  
25 Trustee and resulting from or incurred with respect to any legal proceedings related in  
26 any way to the performance of services by the Trustee.”

27 174. The indemnification and defense provisions in the ESOP Plan Document  
28 and the Trust Agreement violate ERISA § 410(a), 29 U.S.C. § 1110(a) to the extent  
that they purport to relieve Defendant Brozen and the Board Defendants of

1 responsibility or liability for violations of ERISA, including the ERISA violations  
2 alleged herein.

3 175. As such, these provisions must be declared void or inapplicable to the  
4 claims alleged herein.

5 **VII. PRAYER FOR RELIEF**

6 Plaintiff, on behalf of himself, the ESOP, and the Class, prays that judgment be  
7 entered against Defendants on each Count and that the Court grant the following relief:

- 8 A. Declare that Defendants have violated ERISA as alleged herein;
- 9 B. Enjoin Defendants from engaging in further such violations of ERISA;
- 10 C. Order Defendants to restore all losses resulting from their ERISA  
11 violations;
- 12 D. Order the Seller Defendants to disgorge all profits in connection with the  
13 ESOP Transaction;
- 14 E. Order other appropriate equitable relief, including but not limited to  
15 reforming or rescinding the Transaction, a surcharge against Defendants,  
16 an accounting for profits, and a constructive trust and/or equitable lien on  
17 any funds wrongfully held by any of the Defendants;
- 18 F. Enjoin the Defendants from dissipating any of the proceeds they received  
19 from the ESOP Transaction held in their actual or constructive possession  
20 until the ESOP participants' rights can be adjudicated;
- 21 G. Enjoin the Defendants from transferring or disposing of any of the  
22 proceeds they received from the ESOP Transaction to any person or entity,  
23 which would prejudice, frustrate, or impair the ESOP participants' ability  
24 to recover the same;
- 25 H. Void the indemnification and defense provisions challenged in Count VI;
- 26 I. Require Defendants to pay attorneys' fees and costs pursuant to ERISA  
27 § 502(g), 29 U.S.C. § 1132(g) and/or order payment of fees and expenses  
28 to Plaintiff's counsel on the basis of the common benefit or common fund  
doctrine out of any money recovered for the Class;
- J. Award pre-judgment interest and post-judgment interest; and

1 K. Award such other and further relief that the Court determines is appropriate  
2 pursuant to ERISA § 502(a)(2) and/or (a)(3), 29 U.S.C. § 1132(a)(2)  
3 and/or (a)(3), or pursuant to Rule 54(c) of the Federal Rules of Civil  
4 Procedure, or that is equitable and just.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands trial by jury on all issues so triable, pursuant to Rule  
7 38 of the Federal Rules of Civil Procedure.

8 DATED: December 28, 2023

Respectfully Submitted,

9 By: s/Eleanor Frisch

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