

FILED
08-19-2021
CIRCUIT COURT
DANE COUNTY, WI
2021CV002011
Honorable Frank D.
Remington
Branch 8

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

DANE COUNTY

KARIN EICHHOFF
1615 CYPRESS TRAIL
MIDDLETON, WI 53562

and

STEVEN SPEER
1513 NW IVY STREET
CAMAS, WA 98607

and

RODERICK RUNYAN
1610 BARKER AVE.
LAWRENCE, KS 66044

Plaintiffs,

vs.

Case No. _____
Case Type: **35001**

NEW GLARUS BREWING COMPANY
2400 STATE HWY 69
NEW GLARUS, WI 53574

and

DEBORAH A. CAREY
3452 CRESTWOOD DRIVE
MADISON, WI 53705

Defendants.

SUMMONS

THE STATE OF WISCONSIN:

To each party named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached hereto, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in § 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is 215 S. Hamilton Street, Room 1000, Madison, Wisconsin, 53703, and to Plaintiffs' attorneys, whose address is 1424 N. High Point Road, Ste. 202, P.O. Box 628005, Middleton, Wisconsin, 53562-8005. You may have an attorney help or represent you. If you require the assistance of auxiliary aids or services because of a disability, call (608) 266-4678 (TDD 266-9138) and ask for the Court ADA Coordinator.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 19th day of August, 2021.

PALMERSHEIM DETTMANN, S.C.

Electronically filed by Kevin J. Palmersheim

Kevin J. Palmersheim

Wisconsin State Bar #1020726

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Defendants.

COMPLAINT

NOW COME the Plaintiffs, Karin Eichhoff, Steven Speer, and Roderick Runyan by their attorneys Palmersheim Dettmann, S.C., by Kevin J. Palmersheim and Cathleen A. Dettmann, and as and for a claim against Defendants herein allege as follows:

PRELIMINARY STATEMENT

1. The Plaintiffs were among the original investors in New Glarus Brewing Company (hereinafter “New Glarus Brewing” or the “Brewery”), and now pursue this action for shareholder oppression under Wis. Stat. § 180.1430(2)(b).
2. Plaintiffs invested in New Glarus Brewing because of a strong belief in the concept, and with the reasonable expectation that their investments could pay off in the long term with a successful brewery operation and distribution of profits to the shareholders. Unfortunately, although the Brewery has become extremely successful over time, the Defendants have thwarted the reasonable expectations of sharing in the profits and have instead operated the Brewery for the benefit of Deborah (“Deb”) Carey and her husband, Daniel (“Dan”) Carey.
3. Dan Carey is the brewmaster of the Brewery, and Deb Carey is the president and CEO, the sole director, and the majority voting shareholder of the Brewery.
4. Wisconsin law, based on § 180.1430(2)(b), protects minority shareholders from burdensome, harsh and wrongful conduct by directors and controlling shareholders, and from oppressive actions that threaten reasonable expectations underlying the shareholders’ investments. The Plaintiffs seek that protection in this case.
5. The concept of New Glarus Brewing started in Fort Collins, Colorado, where Plaintiffs Steven Speer, Dierk Eichhoff (Plaintiff Karin Eichhoff’s deceased husband) and Deb Carey and Dan Carey resided. Speer was a neighbor of the Careys, and Dierk Eichhoff was Speer’s friend. Dan Carey was successfully developing beer recipes and Speer thought the timing of the craft brewing market, combined with Dan Carey’s skills, could be grown into a financially successful business. Speer convinced his friend Dierk to invest.

6. Speer spent much of a summer working with the Careys on a detailed business plan for the new proposed brewery that became New Glarus Brewing.
7. Dierk's family owned property outside of New Glarus, Wisconsin. Dierk recommended that the group investigate the New Glarus area as a possible location for the brewery given its old world European charm suitable for Dan's beer styles, and a community that would be supportive of the new business, combined with the advantages of the close proximity to the larger Madison metropolitan area. Speer, Dierk and the Careys were all roughly in their 20s and early 30s at the time. Speer invested \$25,000, most of which he had recently inherited from his deceased father. The \$25,000 represented virtually his entire savings. Dierk invested \$12,500, although he purchased more shares over time when other initial investors started dropping out. At the time, Dierk's investment was substantial -- he was 26, and \$12,500 was a large percentage of his \$50,000 salary.
8. Speer and Dierk invested because they believed the business could make money and had the potential for rapid growth. Deb Carey and Dan Carey did conduct a significant amount of preliminary research and compiled data, and approached Speer regarding the concept. Speer had a background of MBA courses in financial accounting, and edited and helped author the business plans and other support for the initial startup of the Brewery. Dierk was an early reviewer of the Brewery business plan.
9. Speer was initially the only other officer besides Deb Carey and was identified as Vice President and Secretary of the Company in the Private Placement Memorandum. Speer was never a paid employee of the Brewery.
10. Plaintiff Rod Runyan, meanwhile, was also an initial investor. He was part of a group of investors in Lawrence, Kansas, who had already invested in a brewpub there and achieved

financial success and a return on their investment. In the first five years of his investment in the Kansas brewpub, Rod's return on his investment had averaged approximately 100% per year in distributed profits.

11. Rod and other investors in the Kansas brewpub became aware of the proposed New Glarus Brewing and agreed to invest.
12. Plaintiffs perceived this investment was a sound one, with the potential for big returns. In fact, it was considered by Plaintiffs as a “swing for the fences” type of investment, whereby there would be a large amount of risk that much of the money invested could be lost, but that was offset by the real potential for a large payoff.
13. Plaintiffs’ investments in the Brewery were not donations. Plaintiffs expected to be treated fairly, and they expected an opportunity to share financially in the Brewery’s success.
14. Initially, Defendants did deal fairly with the shareholders. They reinvested profits into the business, grew the business, practiced sound corporate governance, and increased shareholder value.
15. Increasingly over the past 28 years Deb Carey has thwarted any reasonable expectations of the other shareholders and instead treated the Brewery as her sole property to do with what she desires.
16. Defendants have bullied Plaintiffs and other minority shareholders, made material misrepresentations intended to induce action to the Plaintiffs’ detriment, withheld key information regarding the value of shares and actions of the Defendants, engaged in manipulation so as to consolidate and increase Deb Carey’s control of the business, and threatened the Plaintiffs if they did not bow to Defendants’ wishes. Some of the measures Defendants have taken include the following:

- Allowed Deb Carey to exercise autocratic control of the Brewery through her position as the sole director, CEO, and majority voting shareholder. Deb Carey has operated the Brewery for her own self interest and engaged in self dealing, including using Brewery resources to establish a distillery that was designed to be owned by the Brewery, but instead was ultimately owned by Deb and Dan Carey, and using Brewery resources to set up a nonprofit family foundation with Deb Carey's intent that the Brewery help facilitate the Family Foundation obtaining shares from other shareholders and continuing to consolidate control of the Brewery with Deb Carey, her family, and her Family Foundation.
- Imposed a shareholder agreement on Plaintiffs, but failed to disclose until June of 2021 that Deb Carey herself was not bound by the shareholder agreement, including the stock transfer restrictions therein.
- Allowed Deb Carey's family to acquire shares in 2020 without being required to sign the Shareholder Agreement.
- Allowed Brewery's Employee Stock Ownership Plan ("ESOP") to acquire shares without signing Shareholder Agreement, and without notifying the parties to the Shareholder Agreement or obtaining their consent.
- Repeatedly failed to follow the bylaws regarding issues such as notice of shareholder meetings, agendas, and voting on issues, and refusing to allow minority shareholders to vote on corporate issues.
- Refused to disclose financial information and valuation information to the minority shareholders, even after shareholder requests.
- Refused to disclose outside offers Deb Carey has received for the Brewery and her Brewery stock.
- Made implied threats that Brewery has no obligation to pay tax distributions, suggesting that shareholders could be stuck paying taxes on money they don't receive.
- Pushed the minority shareholders to sell their voting shares to the Brewery at values set by the Defendants, without Defendants providing full information to such shareholders regarding the fair value of the shares.
- Compiled \$100 million in retained earnings and \$40 million in cash, and repeatedly refused to distribute any of those profits and reserves beyond the tax distributions that are specified in the Shareholder Agreement.
- Repeatedly told the minority shareholders that they will not receive any distribution of profits beyond tax distributions, that Deb Carey has no intention of selling the Brewery to permit the minority shareholders to receive the benefits of such a sale, and that no one outside the Brewery would ever be interested in buying their minority shares.
- Told the minority shareholders that it is the Brewery's intent to donate 5-10% of its profits to Deb Carey's nonprofit Family Foundation.

- Allowed Deb Carey to unilaterally change the Brewery bylaws in 2020, without notice or a minority shareholder vote, to establish a new mission of the Brewery to operate for the benefit of employees and the public, as opposed to any benefit for the shareholders, and with an aim that the Brewery would never be sold to anyone outside the local community in a manner that would allow the minority shareholders to benefit financially.
- Proposed a new shareholder agreement to the minority shareholders in 2021, misrepresented the effect of the new shareholder agreement and the purposes thereof, and pushed the minority shareholders to sign the new agreement which would impose drastic caps on the price that shareholders could receive for their shares even if the shareholders received a higher third-party offer; would remove the corporation's obligation to act in good faith to make distributions to cover the minority shareholders' tax obligations on the S-corporation's annual net income; and would permit shares to be gifted exclusively to Deb Carey's family foundation and to no other nonprofit charity or non-family member.
- Threatened the minority shareholders that if they did not vote in favor of adopting the new shareholder agreement, that Deb Carey and her family would have no obligation to the minority shareholders, and that she would instruct her daughter that upon Deb Carey's death, her daughter was to sell Deb Carey's shares to the highest third-party bidder to the exclusion of the minority shareholders.

PARTIES

17. Plaintiff Karin Eichhoff is a Wisconsin citizen residing at 1615 Cypress Trail, Middleton, WI 53562. From 1993 to his death in 2015, Dierk Eichhoff was a shareholder in New Glarus Brewing Company. Karin Eichhoff was Dierk's spouse and has held the shares since his death.
18. Plaintiff Steven Speer is a Washington citizen residing at 1513 NW Ivy Street, Camas, WA 98607. Since 1993, Mr. Speer has held stock in Defendant New Glarus Brewing Company.
19. Plaintiff Roderick W. Runyan is a Kansas citizen residing at 1610 Barker Avenue, Lawrence, KS 66044. Since 1993, Mr. Runyan has held stock in Defendant New Glarus Brewing Company.
20. Defendant New Glarus Brewing Company is registered as a Wisconsin corporation pursuant to Ch. 180 of the Wisconsin Statutes. New Glarus Brewing's principal office is located at 2400 State Highway 69, New Glarus, Wisconsin 53574. The Chief Operating Officer and

General Counsel of the Brewery is Drew Cochrane, who reports directly to Deb Carey and, upon information and belief, oversees much of the legal work for not only the Brewery but also Deb Carey's distillery and charitable foundation. Cochrane is also the trustee of the Brewery's Employee Stock Ownership Plan ("ESOP").

21. Upon information and belief, Defendant Deborah Carey is a Wisconsin citizen residing at 3452 Crestwood Drive, Madison, WI 53705. Defendant Carey is the CEO and President, sole Director, and controlling voting shareholder of New Glarus Brewing.

JURISDICTION AND VENUE

22. This Court has personal jurisdiction over New Glarus Brewing because New Glarus Brewing maintains its principal place of business in the State of Wisconsin, operating out of its headquarters located in New Glarus, Wisconsin.
23. New Glarus Brewing does substantial business throughout the state of Wisconsin, including in Dane County. New Glarus Brewing distributes and sells beer in Dane County.
24. New Glarus Brewing employs people who reside in Dane County, including Defendant Deb Carey and COO Drew Cochrane.
25. In addition to Plaintiff Karin Eichhoff residing in Dane County, and choosing to file suit in Dane County, Plaintiffs Steven Speer and Rod Runyan have similarly chosen Dane County as the appropriate venue.
26. This dispute is a commercial dispute involving the internal governance of the corporation and the applicability of Chapter 180, in addition to being a dispute involving in excess of \$250,000, and therefore is an appropriate dispute for the Commercial Courts.

FACTUAL BACKGROUND

27. Plaintiffs hereby incorporate Paragraphs 1-26 of this Complaint, the same as if said paragraphs were repeated herein.
28. New Glarus Brewing was formed in 1993 with Defendant Deb Carey as the controlling shareholder and her husband, Dan Carey, as the chief brewmaster.
29. A number of early investors assisted in the initial formation and expansion of New Glarus Brewing. These investors include Dierk Eichhoff, Steven Speer and Roderick Runyan, each of whom became shareholders in 1993.
30. New Glarus Brewing was started as a small craft brewery, and throughout its history has focused largely on sales within the state of Wisconsin.
31. Several factors were vital in establishing the Brewery, helping it survive and expand, and ultimately thrive as a leading craft brewery in the United States. These factors include the talents of the brewmaster (Dan Carey), the skills of New Glarus Brewing's employees including Defendant Deb Carey, the investment of capital by the Plaintiffs and other shareholders, and the individual efforts of the Plaintiffs and Dierk Eichhoff.
32. From the formation of New Glarus Brewing, Defendant Deb Carey has always maintained a controlling interest in the corporation. There are two forms of stock, one form being voting shares and the other form being non-voting shares. At all times from formation to the present, Deb Carey has maintained control over a majority of the voting shares of stock for New Glarus Brewing.
33. New Glarus Brewing's operative Articles of Incorporation provide the following:
 - a. There are two classes of New Glarus Brewing common stock: Class A Voting common shares ("Class A Shares") and Class B Non-Voting common shares ("Non-

Voting Shares”). Each Class A share entitles the shareholder to one vote upon each matter submitted to a vote at any meeting of shareholders.

- b. New Glarus Brewing is authorized to issue 65,000 total shares of New Glarus Brewing stock: 45,000 Class A shares and 20,000 Class B Shares. Currently, there are a total of 48,707.5 shares issued and outstanding.
34. Defendant Carey owns the majority (50.48%, 18,500 shares) of New Glarus Brewing’s Class A voting shares, making her New Glarus Brewing’s controlling shareholder. These shares owned by Defendant Carey comprise 37.98% of all shares. A trust for one of Deb Carey’s daughters, The Katherine E. May 2020 Irrevocable Trust, owns 1,500 shares, which are all voting shares. This represents 3.08% of total shares, and 4.09% of the voting shares.
35. Plaintiff Steven Speer owns 1,875 shares of New Glarus Brewing stock, 625 Class A voting shares and 1,250 Class B non-voting shares. Speer owns 3.85% of all shares and 1.71% of voting shares.
36. Plaintiff Roderick Runyan owns 445 shares of New Glarus Brewing stock, 170 Class A voting shares and 275 Class B non-voting shares. Runyan owns 0.91% of all shares and 0.46% of voting shares.
37. The Brewery’s ESOP owns 9,743 shares, all Class A voting shares, representing 20% of all shares and 26.6% of voting shares.
38. Defendant New Glarus Brewing has approximately 25 shareholders. Plaintiffs Speer and Eichhoff are the two largest shareholders bound by the Shareholder Agreement and the largest two shareholders after Deb Carey and the ESOP.
39. As a group, the minority shareholders bound by the Shareholder Agreement own 18,964 total shares (38.9% of total shares), of which 6,902 are voting shares (18.8% of voting shares). The

minority shareholders bound by the Shareholder Agreement own a higher percentage of the Brewery than Deb Carey (37.98%), but due to the Defendants causing the Brewery to purchase the minority shareholders' voting shares over the years Deb Carey owns a majority of the outstanding voting shares.

40. Plaintiff Karin Eichhoff owns 3,750 shares of New Glarus Brewing stock, 1,250 Class A voting shares and 2,500 Class B non-voting shares. Eichhoff owns 7.7% of all shares and 3.41% of voting shares.

Deb Carey operates the company with no regard for established corporate rules and instead exercises complete autocratic control with no personal accountability.

41. Defendants have not followed the Articles of Incorporation, Bylaws, and applicable statutes for purposes of providing notices or agendas for shareholder meetings.
42. When Defendants identify issues for vote at the shareholder meetings, the Plaintiffs and other minority shareholders are often not provided an opportunity to vote because Defendants assert there is no point since Deb Carey has voting control.
43. No formal Board of Directors meetings are held because Deb Carey is the sole director and she is able to approve matters without holding a meeting. Defendants permitted Deb Carey to take action on matters without a meeting and approve them unilaterally even when she had a conflict of interest within the meaning of Wis. Stat. § 180.0831.
44. Upon information and belief, the Brewery has made loans to Deb Carey and/or Dan Carey, and the Brewery has not submitted those loans to the disinterested shareholders for a vote consistent with Wis. Stat. § 180.0832.
45. Deb Carey has stated at shareholder meetings that her desire is to have as much control as possible with as many options as possible for herself.

46. Defendants also proposed a vote at the 2021 shareholder meeting to amend the articles of incorporation and other internal corporate documents to increase the number of authorized shares, and authorize a stock split, with no rational explanation for why either move is necessary or who would be potentially receiving newly issued shares. When a shareholder asked at the 2021 shareholder meeting if the shareholder could buy any newly authorized shares, the Brewery's response was that it would depend on Deb Carey.
47. The Brewery has regularly failed to provide financial and other Brewery information to Plaintiffs, in spite of repeated requests. For example, Defendants have failed to provide the complete ESOP stock valuations for the last several years until Plaintiffs' legal counsel sent a letter to the Brewery this year after receipt of a proposed new Shareholder Agreement.
48. Plaintiffs have been forced to make significant financial decisions concerning stock redemption with the Brewery's price being premised on the ESOP valuations, without being allowed to review these valuation reports and the Brewery's financial information contained therein, and despite Plaintiffs having repeatedly requesting this information both verbally and in writing.
49. Since 2015, when the Brewery redeems the minority shareholders' shares of stock for this artificially low ESOP valuation price, the effect has been to increase the overall value of Deb Carey's controlling shares.
50. Before the ESOP existed, Defendants commenced having a valuation done for the Brewery in 2009 or 2010, but Deb Carey halted the valuation and was vague about the reasons for doing so. She then made an offer to all shareholders to have their shares redeemed by the Brewery for \$250/share, which she knew was significantly below the fair value for such shares.

51. On or about August 12, 1993, the Brewery and the shareholders entered into the Shareholder Agreement. A true and correct copy of the Shareholder Agreement is attached hereto as Exhibit A.
52. The Shareholder Agreement contains the following pertinent terms:
- a. Right of First Refusal. If a shareholder wishes to sell shares to a third party, New Glarus Brewing has the option to prevent the sale and purchase those shares itself by matching the price offered by the third party.
 - b. Tax Distributions. New Glarus Brewing will use its best efforts to make sufficient distributions to cover the shareholders' "pass-through" tax obligations incurred due to the shareholder's interest in New Glarus Brewing.
 - c. Gifts. A shareholder may "mak[e] a gift of all or a portion of his Shares, whether during his lifetime or by the terms of his will."
 - d. Collateral. There are no restrictions on a shareholder's ability to pledge their shares as collateral for personal loans.
53. The Shareholder Agreement also states that the "Corporation agrees to require all future shareholders ...to execute this Agreement." However, Plaintiffs discovered at the June 16, 2021 shareholder meeting that Deb Carey has not personally ever been party to the Shareholder Agreement and owns her shares completely unrestricted. Moreover, when some shares were transferred in approximately 2020 to Deb Carey's daughter, Katherine (and a trust set up for Katherine's benefit), those shares were also unrestricted and not subject to any Shareholder Agreement. Furthermore, the ESOP was issued shares without being a party to the Shareholder Agreement.

54. It was Plaintiffs' understanding, based on the language in the Shareholder Agreement and the professed intent of the agreement, that all shareholders were required to be parties to the Shareholder Agreement.
55. It was further the understanding of Plaintiffs that all future shareholders would be required to be bound by the Shareholder Agreement.
56. It is now Plaintiffs' understanding that Defendant Deb Carey has never been a party to a Shareholder Agreement with New Glarus Brewing and has no restrictions on her shares that have been imposed on other shareholders.
57. Defendants have required all shareholders other than Deb Carey, her family or family trusts, her Family Foundation, and the ESOP, to be parties to the Shareholder Agreement with stock transfer restrictions.
58. Defendants have never disclosed to Plaintiffs the shareholder agreement that the ESOP and the Brewery are parties to, if any.
59. In approximately 2020, well after the 1993 Shareholder Agreement, Defendant Carey transferred shares to her daughter, Katherine May.
60. Upon information and belief, Katherine and/or Deb Carey have also set up a trust in which shares of New Glarus Brewing are owned, for the benefit of Katherine, called the Katherine E. May 2020 Irrevocable Trust.
61. Neither Katherine May nor the Katherine E. May 2020 Irrevocable Trust are bound by the Shareholder Agreement.

**Deb Carey has engaged in self-dealing, using corporate funds and assets
for the sole benefit of Carey and her family.**

62. The Brewery planned to start an independent distillery as a related business, and the Brewery incurred costs and expenses in developing those plans, acquiring assets, registering for federal

trademarks, and other tasks. Upon information and belief, the Brewery paid for Dan Carey to go to a 7-10 day distillery training program, during which time Dan Carey continued to be paid his salary by the Brewery.

63. Without consulting the other shareholders, Deb Carey converted the distillery to a business owned exclusively by her and her husband, and upon information and belief they use assets owned by the Brewery under a self-negotiated lease arrangement to run their distillery.
64. Deb Carey has caused the Brewery to use its staff and other resources to pursue her own personal interests, including her estate planning and forming a charitable Family Foundation. She is likewise pushing other shareholders to donate their shares to this charitable foundation, and requesting that the Shareholder Agreement be modified so that only her charitable foundation, and no other charity or entity, can obtain shares of the Brewery from other shareholders without her express approval as the Brewery's CEO and sole director.
65. Deb Carey stated that she has no intent to ever distribute any of the Brewery's profits to the shareholders (except for tax distributions). As a result, she has caused the Brewery to retain earnings of over \$100 million, and over \$40 million in cash and cash equivalents, with virtually no debt. The amount of cash and cash equivalents is several times larger than the largest debt ever held by the Brewery, including during its biggest expansion phases, and was more than was needed to build the Brewery's new hilltop location.
66. Although Deb Carey has a direct personal interest in issues like the distillery and her charitable foundation, she continues to act as the sole director to approve transactions involving those entities without obtaining independent shareholder approval or even notifying the shareholders in advance.

67. Defendant New Glarus Brewing has consistently generated large profits. In 2020, purportedly a down year due to COVID, its net income was \$14,322,959; in 2019, its net income was \$20,814,553; and in 2018, its net income was \$20,229,762. The sales figures shared with shareholders at the 2021 shareholder meeting suggest that the 2021 performance should be roughly equal to 2019.
68. Defendant New Glarus Brewing, after paying off all Brewery debt, currently has approximately \$40 million in cash and cash equivalents, much of which has accrued in the last 5 years.
69. New Glarus Brewing is an “S Corporation,” meaning that the corporation itself is not taxed; and instead, New Glarus Brewing’s income, gain, or loss is passed through to its shareholders, who report this income, gain, or loss on their individual income tax returns.
70. Defendant New Glarus Brewing has historically only made distributions to its shareholders intended to be sufficient to cover the shareholders’ respective “pass-through” tax obligations.
71. The Brewery has made distributions in the past that have exceeded the minimum required to cover shareholder taxes, but in subsequent years the Brewery has reduced distributions by a similar amount of the prior year’s “excess” distributions.
72. After federal tax cuts were passed in 2017 that included tax relief for S-Corp businesses, the Brewery reduced the percentage of company earnings distributed to shareholders in approximate proportion to those tax cuts in spite of increased earnings and profitability.
73. Defendants have represented to Plaintiffs and other shareholders that an agreement with the Brewery’s bank does not permit the Brewery to make distributions beyond tax distributions. However, the bank has previously told both the Brewery and one or more of the Plaintiffs that it has and would continue to waive such restrictions to allow distributions, especially due to

the strong financial position of the Brewery. In fact, the Brewery's 2003-2008 and 2015-2018 financial reports disclose the bank's waivers.

74. Although this was the reason historically offered by Defendants for not increasing distributions beyond tax obligations, they still were not increased even after all debt was paid off.
75. Deb and Dan Carey have been paid bonuses by the Brewery. These bonus decisions have been made by Deb Carey, and the Plaintiffs and other minority shareholders have not been told the amount of the bonuses or how the bonuses were determined.
76. Deb Carey receives an added benefit of employment in that her share ownership and employment entitles her to a reduction in her tax liability under the Affordable Care Act, which is not available to other non-employed shareholders. Because she is employed by the Brewery, Deb is able to retain over 8% of the distributions made to shareholders that other similarly situated shareholders must pay in taxes.
77. In addition, Deb Carey has employed her daughter, Katherine, at the Brewery as the Brewery's staff architect, giving Katherine a salary and benefits of employment. She has promised to employ her daughter in the future. Meanwhile, no other shareholders' children are employed by the Brewery and one of the Plaintiffs' children was denied employment despite his college degree and experience being specific to brewing beer.
78. In addition to salary and bonuses that Deb Carey has granted to herself and her husband, the 2008 financial statements indicated that she authorized a \$170,000 loan to herself. The loan was paid back, but was made soon before the shareholders were told that because taxable income was negative that there would be no distributions until December 2009 or early 2010.

79. Defendants have had the Brewery make a series of land purchases in the last five years with no stated purpose, using Brewery cash, and with no current construction plans. Upon information and belief, the purchases have been made to further Deb Carey's personal interests and are intended to use up more Brewery cash that could otherwise be paid as distributions to shareholders.

Formation of the Brewery Employee Stock Ownership Plan.

80. Deb Carey decided to set up a Brewery Employee Stock Ownership Plan ("ESOP"), which was formed effective January 1, 2015.

81. The ESOP acquired shares for the benefit of employees, subject to certain contractual rights and obligations and consistent with federal laws applicable to ESOPs.

82. Upon information and belief, Deb Carey believed the ESOP was a way that she could assure long-term operation of the Brewery as a locally-owned brewery, that would be operated for the benefit of employees and the public and not necessarily for the benefit of the minority shareholders.

83. Upon information and belief, another purpose of the ESOP was to provide Deb Carey and her family with an exit plan to sell their shares, either during her life or upon her death, and to do so without selling the entire Brewery for the benefit of all shareholders.

84. Upon information and belief, Deb Carey was aware that another brewery, New Belgium Brewery in Fort Collins, Colorado, had previously established a similar ESOP and had or was becoming fully employee-owned.

85. The issue of forming the ESOP was never presented to the shareholders for a vote. Instead, Deb Carey unilaterally decided that the Brewery would form an ESOP and the shareholders were informed at an annual shareholder meeting after it had been decided.

86. Deb Carey initially named herself as the trustee for the ESOP. At some point Defendants changed the ESOP trustee to Drew Cochrane, the Brewery's COO and General Counsel.
87. Plaintiffs became aware in June 2021 that the ESOP shareholders were not parties to the Plaintiffs' Shareholder Agreement, when Plaintiffs inquired why the ESOP trustee would support the proposed new shareholder agreement.
88. Although the Brewery ESOP is not party to the Shareholder Agreement, there is a separate shareholder agreement between the Brewery and the ESOP that imposes restrictions on shares and the ability to transfer shares.
89. Deb Carey's shares are not bound by the ESOP shareholder agreement.
90. Deb Carey became aware that the New Belgium Brewery ESOP voted to sell the brewery to a large, non-local brewery, and the ESOP shareholders personally profited from the substantial market sales price in late 2019.
91. Defendants have informed Plaintiffs that Deb Carey does not want to see the New Glarus Brewery's ESOP shareholders or the Plaintiffs and other minority shareholders benefit from a sale of the Brewery to an outside buyer like the New Belgium Brewery shareholders benefited.
92. Upon information and belief, the Defendants have increased their efforts and strategizing since the sale of the New Belgium Brewery to make sure the Plaintiffs and the other minority shareholders do not benefit from a sale of the Brewery or the sale of their personal shares except to a limited price per share that Deb Carey personally believes is acceptable for the Plaintiffs or other minority shareholders to receive.
93. Defendants have further attempted to shift vast amounts of potential market value from the minority shareholders to Deb Carey's shares, and perhaps to the ESOP's shares.

Defendants tell minority shareholders they are starting a distillery, invest and develop distillery, and then after the fact inform shareholders that distillery is owned by Careys.

94. Deb Carey, as president, CEO, and sole director of the Brewery, unilaterally directed the Brewery to pursue an opportunity to form a distillery.
95. Defendants and the Brewery staff conducted extensive research and planning for the distillery, including drafting a business plan, registering trademarks, and acquiring assets.
96. In or about 2016, Defendant Carey began using New Glarus Brewing's retained earnings and cash on hand to construct a distillery on New Glarus Brewing property.
97. The distillery was ultimately named the "Sugar River Distillery."
98. The shareholders were told at an annual meeting that the Brewery was working on the formation of a distillery.
99. Despite the use of New Glarus Brewing's substantial assets to launch the distillery, New Glarus Brewing has no ownership interest in the distillery. Instead, the distillery is owned solely by Defendant Carey and her family.
100. Defendants did not inform the Plaintiffs or other shareholders in advance that the Brewery was no longer a part of the distillery ownership, and instead Deb Carey unilaterally decided to co-opt the distillery and its substantial current and future business value solely for the benefit of herself and her family.
101. In fact, Defendants represented to the shareholders that the Brewery could not legally own the distillery, but never provided information to support that statement or discussed with the shareholders what other options were available.
102. Plaintiffs and the other shareholders were never given an option to invest personally in the distillery, nor was there a vote to empower the Brewery to invest or divest its assets for the sole personal benefit of Deb Carey and Dan Carey.

103. Upon information and belief, Defendant Carey used New Glarus Brewing profits to purchase additional real property. Upon information and belief, Defendant Carey either has or intends to use this real property purchased with New Glarus Brewing profits to expand the distillery.
104. Upon information and belief, Defendant Carey continues to use New Glarus Brewing profits to purchase equipment intended for use in the distillery.
105. Upon information and belief, the Brewery was never repaid by Deb Carey for all of the work conducted by Brewery staff for the trademarks and other aspects of forming the distillery that was conducted before Deb and Dan Carey took over ownership for themselves at the Brewery's expense.
106. At least one federally registered trademark for "Sugar River Distillery" remains in the name of New Glarus Brewing Company.
107. Deb Carey and Dan Carey formed Sugar River Distillery, Inc. as a Wisconsin corporation with themselves as sole shareholders. The registered address and principal address for this corporation is the Brewery address.
108. Sugar River Distillery, Inc. has filed for four federal trademarks for "New Glarus Beer Schnapps," and one for "Final Reckoning." All registrations use the Brewery's address, and were filed by the same lawyer who files trademarks on behalf of the Brewery.
109. Upon information and belief, some or all of the trademark lawyer's legal fees for filing the trademarks for the benefit of Sugar River Distillery were paid by the Brewery.
110. Upon information and belief, the Carey's distillery operates using the Brewery's assets and has never fully paid the Brewery for the benefit of that use nor for the Brewery's cost to acquire those assets in the first place.

111. Upon information and belief, Brewery staff is continuing to perform services for the Careys' distillery without the Brewery being reimbursed by Deb Carey for the value of that time and effort.

112. Moreover, even though Deb Carey and Dan Carey receive a salary from the Brewery, they devote substantial time to their wholly-owned distillery, essentially at the Brewery's expense.

113. Upon information and belief, other Brewery employees are being paid by the Brewery while performing work for the distillery.

Deb Carey unilaterally decides that Brewery will be operated for the benefit of the public, and establishes her own nonprofit Family Foundation with intent to funnel Brewery shares (including minority shareholder shares) to the Foundation.

114. At an October 2020, shareholder meeting, the shareholders were informed that Deb Carey was voting for a change in the preamble to the Brewery's bylaws to read that the Brewery intends to remain independent and locally owned. Although amendments to bylaws require a majority vote, and notice in advance of a special meeting with the issues that will be voted on at the shareholder meeting, the shareholders were told that there was no point in allowing other shareholders to vote because Deb Carey had voting control of the Brewery.

115. In 2021, Deb Carey set up a nonprofit family foundation called "Only in Wisconsin Giving, Inc." ("Family Foundation"). The principal office of the Family Foundation is the Brewery.

116. The Family Foundation has 3 board seats, with one being the Brewery's COO and General Counsel, Drew Cochrane, and the other 2 chosen by Deb Carey's family. Upon information and belief, Drew Cochrane has been performing work to form and strategize for the Family Foundation while being paid by the Brewery.

117. Defendants have told Plaintiffs that they intend for the Family Foundation to ultimately be the marketing arm of the Brewery, and Defendants have suggested that the intent is for the Brewery and Deb Carey's Family Foundation to cooperate on Brewery operations.
118. The Brewery has filed for at least 10 federally registered trademarks using the "Only In Wisconsin" name, further reflecting Deb Carey's intent to set up the foundation for her own personal benefit and link it to the Brewery.
119. The Family Foundation and the intent to operate the Brewery for the benefit of the public are the wishes of Deb Carey, and not the Plaintiffs or other minority shareholders, and Deb Carey and the Brewery are jointly pushing for her personal wishes to reach fruition.
120. Deb Carey could donate all of her shares to her Family Foundation for the benefit of whatever public or charitable purpose she desires, but she does not want to give up her control of the Brewery and instead wants to use the Family Foundation to acquire other minority shareholders' shares to retain her control of the Brewery.
121. Deb Carey stated at the June 2021 shareholder meeting that another reason she does not want to donate all of her shares to her Family Foundation is because she's not willing to give up her money.
122. Deb Carey has told the Plaintiffs that she intends to spend the Brewery's money to acquire additional lands and develop outdoor park space for the public that she knows will lower the value of Brewery stock, and the reason given is that is what Deb Carey wants to do.
123. Defendants' intent is for the ultimate ownership and control of the Brewery to be retained by Deb Carey and her family, and Defendants are acting in a manner to serve those purposes to the detriment of the Plaintiffs.

124. Defendants have stated their intent to have the Brewery donate 5-10% of its annual net income to Deb Carey's Family Foundation, and perhaps increase those donations in the future. In doing so, Defendants are forcing all shareholders, including the Plaintiffs, to donate their pro rata share of the Brewery's income that is or will be transferred to the Family Foundation.
125. In fact, because the Brewery is an S-corporation, the donations Defendants make from the Brewery will be reported for tax purposes as donations made by the individual shareholders, and the Plaintiffs and other shareholders will have to report the full amount of their share of Brewery income and then itemize on the shareholder's personal tax returns their respective shares of the charitable contributions. Depending on the shareholder's tax situation, the Brewery's donation could not only amount to a gift from the Plaintiffs, but also complicate their tax situation.

Deb Carey repeatedly takes actions to reduce the value of the Plaintiffs' shares while enriching herself and entrenching her hold on corporate power.

126. Defendants have either failed to provide complete and accurate information to the valuation firm that provides the annual ESOP valuations, or have improperly influenced the valuation, in order to artificially depress the valuation. Defendants use these decreased valuations to buy back the shares at a reduced value. Deb Carey has told Plaintiffs that she has received outside offers for ten percent of her Brewery shares for \$100 million, and yet the most recent ESOP valuation concludes the entire Brewery is valued at between \$92.8 and \$113 million, depending on minority and/or marketability discounts.
127. Deb Carey has acknowledged to Plaintiffs this past year that she has received offers for her shares that substantially exceed the per share ESOP valuations, but Defendants refuse to share that offer information with other shareholders and, upon information and belief, do not fully disclose that offer information to the valuation firm.

128. When the Brewery has redeemed some of the minority shareholder shares, Defendants have further reduced the price paid below the ESOP valuation by arguing that minority discounts should apply.
129. Defendants have agreed to buy minority shareholders' shares only if the minority shareholders first sell all of their voting shares, thereby increasing Deb Carey's voting control.
130. Defendants concede that they have been trying to have the Brewery buy back voting shares from minority shareholders in order to consolidate control with Deb Carey.
131. When the Brewery purchased some of the Plaintiffs' voting shares in 2019, they assigned the 40 voting shares sold by Plaintiff Runyan to the ESOP, consistent with the Defendants' pretext that the reason they were only buying voting shares was because the ESOP needed voting shares. However, the Brewery directly purchased Eichhoff's 1,250 voting shares and Speer's 625 voting shares, and did not assign those to the ESOP. Upon information and belief, the reason for this purchase structure was to retain Deb Carey's slight majority control of the issued and outstanding voting shares and that assigning Eichhoff and Speer's voting shares to the ESOP could lead to Deb Carey owning less than 50% of the outstanding voting shares.
132. The Brewery stated at the June 2021 shareholder meeting, and Deb Carey did not dispute the statement, that "getting rid of people who have voting shares and a say in the company is great."
133. Defendants assert that the value of the Brewery has declined since 2016, despite the fact that the Brewery has been steadily increasing production and sales (other than the COVID year), has paid off all its debt, has had annual net income of between \$15-20 million, has accumulated retained earnings in excess of \$100 million, and has been steadily increasing stockpiles of cash that now totals over \$40 million.

134. Defendants attempted to further their efforts to entrench control of the Brewery with Deb Carey and her family, and to shift the market value of the shares from the Plaintiffs and other minority shareholders to Deb Carey, by proposing a new shareholder agreement for the Plaintiffs and other minority shareholders that would strongly benefit Deb Carey personally.

Deb Carey's new proposed Shareholder Agreement and response to Plaintiffs' legitimate concerns illustrates her total disregard for the prudent rules of business governance and her intent to exercise total control at the expense of the remaining shareholders.

135. Defendant Carey's shares are not subject to the terms of the Shareholders Agreement, or any similar agreement.

136. On May 26, 2021, New Glarus Brewing sent a letter (the "May 26 Letter") to its shareholders. The May 26 letter purports to give notice of an "annual" shareholders meeting on June 16, 2021. However, according to New Glarus Brewing's Bylaws, the annual shareholders' meeting must take place at 10:00 a.m. on the second Wednesday of April, or some other time within 30 days of that date.

137. A true and correct copy of the May 26, 2021 letter is attached hereto as Exhibit B. The May 26 Letter proposes that at the purported annual shareholders' meeting, the shareholders adopt an amended shareholder agreement.

138. An amendment to the Shareholder Agreement requires a unanimous vote of the shareholders.

139. The May 26 Letter states that the amended shareholder agreement would give shareholders "additional ... rights and benefits" and would "clarify some common situations." In reality, the Amended Shareholder Agreement would impose more restrictions on shares and impose a lower stock price for the purchase of Plaintiffs' shares under several circumstances.

140. A true and correct copy of the proposed new shareholder agreement is attached as Exhibit C.

The proposed new shareholder agreement made the following changes to the Shareholder Agreement:

- a. Right of First Refusal. Under the original Shareholder Agreement, if a shareholder wishes to sell shares to a third party, New Glarus Brewing has the option to prevent the sale and purchase those shares itself by matching the price offered by the third party. Under the Amended Shareholder Agreement, New Glarus Brewing no longer needs to match the offered price to prevent a shareholder from selling to a third party. If a shareholder wishes to sell shares to a third party, New Glarus Brewing need only pay the shareholder an annually fixed internal price that could be substantially lower than the third party offer.
- b. Purchasing Only Voting Shares. The existing Shareholder Agreement requires the Brewery to exercise its right of first refusal as to either all or none of the selling shareholder's shares. Defendants' proposed Amended Shareholder Agreement would allow the Brewery to buy some, but not all, of a shareholder's shares, permitting Defendants to redeem only the voting shares and further consolidate Deb Carey's voting control without having to pay anything for the non-voting shares.
- c. Tax Distributions. Under the original Shareholder Agreement, New Glarus Brewing agreed to use its best efforts to make sufficient distributions to cover the shareholders' respective tax obligations. Under the Amended Shareholder Agreement, this language has been removed, and New Glarus Brewing would have no obligation to act in good faith to make distributions sufficient to cover the shareholders' tax obligations.

- d. Gifts. Under the original Shareholder Agreement, shareholders have the unrestricted right to donate their shares to charity or anyone else as long as it did not violate the S-corporation ownership rules. Under the Amended Shareholder Agreement, shareholders may only donate their shares to one specific organization, Only In Wisconsin Giving, Inc., which was established by Defendants for the benefit of Deb Carey and her charitable wishes.
- e. Whereas clause emphasizing preserving local ownership. The original Shareholder Agreement did not include an introductory “whereas” clause. The Amended Shareholder Agreement, meanwhile, includes a 4th whereas clause that states that the all parties agree that it is in their mutual interests “to preserve local ownership of the Brewery.”

141. The May 26 Letter also proposes two amendments to New Glarus Brewing’s Articles of Incorporation: (1) an amendment to authorize 7,500 new Class A shares and 7,500 Class B shares, thereby increasing the total number of shares New Glarus Brewing may issue from 65,000 to 80,000; and (2) an amendment to convert each share of New Glarus Brewing’s stock to 100 shares.

142. The May 26 Letter gives no reasoned explanation for why these amendments to the Articles are necessary. Considering that New Glarus Brewing has \$40 million in available liquid assets, there is no legitimate business reason for New Glarus Brewing to raise additional capital by selling additional shares.

143. Defendants stated at the June 16, 2021 shareholder meeting that Deb Carey could pass the amendments to the Articles of Incorporation even if the minority shareholders disagree with the changes, because she has majority voting control.

144. After Plaintiffs objected to the proposed Amended Shareholder Agreement, identifying Defendants' misrepresentations and the disadvantages of the amendment to other shareholders, Defendants prepared a second version of a proposed new shareholder agreement with some modifications that they did not distribute until after the June 16, 2021 shareholder meeting. Defendants also provided a third proposed version to Plaintiff Speer after the June 16, 2021 shareholder meeting. However, Defendants never provided the third version of a proposed new shareholder agreement to Plaintiffs Eichhoff or Runyan, and upon information and belief they never provided a third version to any other minority shareholder.
145. Defendants' second and third version of the proposed new shareholder agreement added back in the tax distributions. The second and third versions also added back the provision that an exercised right of first refusal required the Brewery to buy both the voting and non-voting shares being offered for sale by the minority shareholder. However, rather than addressing many of Plaintiffs' other concerns, the second and third proposed Amended Shareholder Agreement added additional harsh and oppressive terms.
146. Defendants' third proposed Amended Shareholder Agreement would allow the Brewery to redeem shares under the First Right of Refusal for the lower of the ESOP valuation or the third party offer, whereas the first proposed amended agreement imposed the ESOP price. This would mean that in the event that Plaintiffs were able to obtain a third-party offer greater than the Brewery's internal valuation, Plaintiffs' sale to the Brewery would be capped at the internal valuation. But if Plaintiffs were only able to secure a third party offer at a price lower than the internal valuation, the Brewery would be able to reduce the purchase price paid to Plaintiffs from the internally-set price to the amount of the lower outside offer.

147. Defendants' third proposed Amended Shareholder Agreement also added the right of shareholders to donate shares to any qualified 501(c)(3) charitable organization. However, Defendants added in an oversight provision so that a shareholder could still not donate to any non-family member, or charitable organization other than Deb Carey's Family Foundation, without first obtaining Deb Carey's permission as the sole director and majority holder of voting shares.
148. Even without a proposed Amended Shareholder Agreement in effect, when Defendants have redeemed the Plaintiffs' and other minority shareholders' shares in the past, they require the Plaintiffs and other minority shareholders to first sell back to the Brewery their voting shares before any non-voting shares are redeemed. The purpose of this requirement is to continue to consolidate and maintain Deb Carey's control of the voting shares.
149. The Brewery stated at the 2021 shareholder meeting that one of the reasons the number of additional shares to be authorized was set that way was so that Deb Carey and the ESOP maintain control of the company and the other minority shareholders are diluted.
150. Upon information and belief, Defendants' true reasons for the proposed Amended Shareholders Agreement is to dilute the shareholders' ownership interest, increase the per share value of shares owned by Deb Carey and her daughter, and to further the squeeze-out effort aimed at the Plaintiffs and other minority shareholders. Carey's insistence on a pre-negotiated redemption right at the low ESOP valuation price regardless of market price for minority-owned shares shifts hundreds of millions of dollars of potential market value from the minority-owned shares subject to the Shareholder Agreement to those controlling shares held by Defendants that are not subject to the Shareholder Agreement or the redemption price cap.

151. Defendants unilaterally adopted a new preamble to the bylaws in October 2020 emphasizing the Brewery's focus on being locally owned, which further reveals Defendants' intent to exclude non-local minority shareholders such as Plaintiffs Speer and Runyan who were part of the shareholder group responsible for the capital to start and grow the Brewery.
152. At the June 16, 2021 Shareholder's Meeting, shareholders were told that the purpose of restricting donations to Defendant Carey's Family Foundation, combined with other proposed changes, was to reduce Defendant Carey's personal estate tax liabilities in the event that Deb died.
153. Defendants suggested that Deb Carey's estate taxes upon her death would be approximately \$40-\$80 million, which would mean that Deb Carey's shares were worth an amount that would correspond to the entire Brewery being valued in excess of \$300 million (if her estate taxes were \$40 million) up to roughly \$700 million (if her estate taxes were \$80 million). However, the non-discounted fair market value of the Brewery according to the 12/31/2020 ESOP valuation is represented by Defendants to be only about \$113 million. Defendants' statements regarding Deb Carey's potential estate taxes indicate an acknowledgment that the value of the Brewery is significantly more than Defendants are representing to Plaintiffs and which Defendants have used as a starting point to buy Plaintiffs' shares.
154. Because Deb Carey is not part of the Shareholder Agreement, no amendment would have any impact on Deb Carey's shares or her estate taxes and the reasons for the donation restrictions are merely a pretext to push through amendments to the Shareholder Agreement favorable to Deb Carey.
155. Around the time that Plaintiffs objected to the new proposed shareholder agreement, in advance of the 2021 shareholder meeting, the Brewery did make a relatively minor increase

in a quarterly distribution to shareholders. The distribution increase amounted to less than 0.5% of anticipated annual earnings, and upon information and belief the purpose and timing of the distribution was to induce the shareholders to agree to Defendants' proposed new shareholder agreement.

156. Deb Carey further stated at the 2021 shareholder meeting that if the Plaintiffs and other minority shareholders did not approve the new proposed shareholder agreement and agree to a cap on the price of their stock, that Deb Carey would tell her daughter that upon Deb Carey's death her shares should be sold to the highest outside bidder with the exclusion of Plaintiffs and other minority shareholders being able to sell their shares.

**CLAIM ONE:
SECURITIES FRAUD**

157. Plaintiffs hereby incorporate Paragraphs 1-156 of this Complaint, the same as if said paragraphs were repeated herein.

158. In 2019, the Brewery purchased/redeemed 1,250 of its voting shares from Plaintiff Eichhoff, 625 voting shares from Plaintiff Speer, and 40 voting shares from Plaintiff Runyan.

159. Plaintiffs' shares in the Brewery were securities as defined by Wis. Stat. Sec. 551.102(28).

160. Prior to purchasing Plaintiffs' shares, Defendants made misrepresentations of fact to Plaintiffs, and also failed to disclose facts that amounted to misrepresentation by omission.

161. Defendants knowingly, or by failure to exercise reasonable care, made untrue statements of material fact to the Plaintiffs about the fair value of Plaintiffs' shares being a discount of the most recent ESOP valuation, when Defendants had facts such as the Brewery's detailed financial reports and other information available to them to establish that the Brewery shares were worth significantly more than a discounted price from the per share ESOP valuation.

162. Defendants knowingly, or by failure to exercise reasonable care, made untrue statements of material fact to the Plaintiffs about the fair value of Plaintiffs' shares being a discount of the most recent ESOP valuation, when Defendants had facts available to them about potential outside offers to purchase the Brewery, and potential offers for Deb Carey's Brewery shares including offers for a minority interest, that were significantly greater than a discounted price from the per share ESOP valuation that they represented to Plaintiffs was a fair value.
163. Defendants knowingly, or by failure to exercise reasonable care, omitted to state material facts to the Plaintiffs concerning the Brewery's detailed financial documents, the Brewery's last several annual detailed valuation reports conducted for the ESOP valuation, and the potential outside offers to purchase the Brewery, and potential offers to purchase Deb Carey's Brewery shares including offers for a minority interest.
164. Plaintiffs did not know the detailed financial information of the Brewery, did not have the ESOP valuation reports after 2013, and did not have any information concerning potential outside offers to purchase the Brewery or some of all of Deb Carey's shares.
165. In reliance on Defendants' statements and omissions, Plaintiffs sold their Brewery shares to the Brewery for less than the value they would have if they had not received the statements made and had received the additional information and statements omitted.
166. As a result of Defendants' statements and omissions, Plaintiffs were induced to sell their Brewery shares to the Brewery at a value less than they would have if they had received true statements of material fact.
167. Defendants' untrue statements and omissions are in violation of Wis. Stat. § 551.501(2).
168. Plaintiffs have suffered considerable monetary loss as a result of Defendants' untrue statements and omissions.

**CLAIM TWO:
BREACH OF FIDUCIARY DUTY BY DEB CAREY - CONSTRUCTIVE DIVIDEND**

169. Plaintiffs hereby incorporate by reference Paragraphs 1-168 of this Complaint, the same as if said paragraphs were repeated herein.
170. As President and sole Director of New Glarus Brewing, as well as being the controlling voting shareholder, Defendant Carey owed and continues to owe a fiduciary duty of loyalty, good faith, and fair dealing to New Glarus Brewing's shareholders.
171. By using New Glarus Brewing profits and resources to fund her own personal interests, including her distillery project and Family Foundation, Defendant Carey in essence paid herself a dividend from New Glarus Brewing's profits.
172. Defendant Carey did not make similar dividend distributions to any other shareholders. No dividends have been paid to other shareholders, and other shareholders have only received distributions sufficient to offset their "pass-through" tax liabilities.
173. Defendant Carey's actions were motivated by a desire to increase her share of New Glarus Brewing's profits to the detriment of the other shareholders, including Plaintiffs.
174. By paying herself dividends from New Glarus Brewing's profits while making no similar dividend payments to other shareholders, Defendant Carey used her position of trust to further her own private interests at the expense of the other shareholders, including Plaintiffs, thereby breaching her fiduciary duty to New Glarus Brewing's shareholders.
175. Plaintiffs are entitled to payment of a constructive dividend, equal to the value of all assets acquired by the Brewery for the use and benefit of the distillery owned by Deb Carey, and the value of all other benefits she has received that Plaintiffs have not received including Brewery resources used for the purposes of Deb Carey's distillery and Family Foundation.

**CLAIM 3:
RELIEF PURSUANT TO WIS. STAT. § 180.1430(2) FOR
MINORITY SHAREHOLDER OPPRESSION**

176. Plaintiffs hereby incorporate Paragraphs 1-175 of this Complaint, the same as if said paragraphs were repeated herein.
177. Plaintiffs are minority shareholders in the Brewery.
178. Defendant Carey, as President and CEO, sole Director, and majority voting shareholder of New Glarus Brewing, is in control of New Glarus Brewing.
179. Defendants have acted and will continue to act in a manner that acts to oppress the Plaintiffs, including frustrating Plaintiffs' reasonable expectations regarding receiving value from their investment, by Defendants engaging in burdensome, harsh, and wrongful conduct as set forth in this Complaint.
180. Defendants have refused to pay dividends to shareholders beyond distributions to cover taxes associated with the substantial income generated by the Brewery. New Glarus Brewing's net income has historically been between \$15,000,000 and \$20,000,000 per year, and no distributions other than tax distributions have been made even though New Glarus Brewing has retained earnings over \$100 million and is holding approximately \$40,000,000 in cash and cash equivalents.
181. Defendants have withheld material information from the Plaintiffs, and misrepresented facts to the Plaintiffs regarding the Brewery and Defendants' intent with respect to Brewery matters.
182. Defendant Carey has engaged in self-dealing and utilized her control of the Brewery to her personal advantage and for her personal interests.

183. Defendants have manipulated the ESOP, to the advantage of Defendant Carey and for her personal interests.
184. Defendants have set up a distillery, used Brewery assets and resources for the benefit of the distillery, and then without advance notice allowed Defendant Carey and her family to obtain full ownership of the distillery.
185. Defendants have conceded that they have been trying to buy back voting shares to consolidate control of the Brewery with Deb Carey and her family.
186. Defendants are using harsh, burdensome and oppressive tactics to acquire only the minority shareholders' voting shares.
187. Defendants have told Plaintiffs that they have no intention of having the Brewery pay distributions to shareholders other than distributions to cover their S-corporation taxes on Brewery income.
188. Defendants have told Plaintiffs that they have no intention of selling the Brewery in a manner that would result in value to the Plaintiffs or the rest of the minority shareholders, while at the same time preserving as many options as possible for Deb Carey or her family to benefit from the true market value of the shares.
189. Defendants have stated, or agreed with the statement, that "getting rid of people who have voting shares and a say in the company is great."
190. Although Plaintiffs and other minority shareholders are subject to the Shareholder Agreement, including the stock transfer restrictions contained therein, neither Deb Carey nor her daughter are subject to the agreement.
191. Defendant Carey has proposed oppressive changes to New Glarus Brewing's Articles of Incorporation and Shareholders Agreement. Specifically:

- a. Defendant Carey has proposed amending the New Glarus Brewing's Articles of Incorporation to authorize sale of an additional 15,000 shares, despite New Glarus Brewing already having more than sufficient capital. This amendment would permit Defendant Carey's intent to dilute the value of the present shareholders' shares.
- b. Defendant Carey has proposed amending the Shareholders Agreement's right of first refusal to allow New Glarus Brewing to prevent sale of shares to third parties by paying the shareholder an annually fixed price, rather than by matching the third party's offer. This amendment would permit Defendant Carey to prevent minority shareholders from obtaining market value for their shares, and to effectively increase the per share value of Deb Carey's controlling shares.
- c. Defendant Carey initially proposed removing the language in New Glarus Brewing's Shareholders Agreement requiring New Glarus Brewing to distribute payments to shareholders sufficient to permit shareholders to meet their "pass-through" tax obligations. This amendment would devalue minority shareholder's shares and make it a financial burden to hold minority shares in New Glarus Brewing.
- d. Defendant Carey has proposed restricting shareholders' freedom to donate their shares by allowing them to donate their shares only to one specific organization, Only In Wisconsin Giving, Inc., which was established by Defendant Carey. The purpose of this restriction is represented by Defendants to aid in Defendant Carey's personal estate tax planning and consolidate control of the Brewery with Defendant Carey and her family.

- e. The proposed new shareholder agreement would also allow Deb Carey, as the CEO and sole director and controlling voting shareholder, to have the Corporation buy shares at any price she agrees to.
 - f. The proposed new Shareholder Agreement also removes the minority shareholders' rights to use the stock as collateral for a loan.
192. The proposed amendments to the Shareholder Agreement are particularly oppressive to minority shareholders because Defendant Carey's shares are not subject to the Shareholder Agreement; therefore, the proposed amendments would not apply to her. Defendant Carey, unlike other shareholders, is free to sell her shares to whomever she chooses at whatever price she can negotiate.
193. Defendants have suggested that the new proposed Shareholder Agreement could conceivably be in existence for 100 years, revealing Defendants' intent that the minority shareholders remain indefinitely locked into an investment that will continue to be controlled by the desires of Deb Carey now and after her death, without the ability to profit from the investment beyond a level agreed to by Defendants or Deb Carey's heirs.
194. Deb Carey has threatened that if Plaintiffs and other minority shareholders do not agree to the price limitations as set forth in the proposed new Shareholder Agreement, that she will instruct her daughter to "get as much money as she possibly can for a controlling interest in the Brewery," that Deb Carey "will not feel guilty about it," and that her heirs have no commitment to taking care of the Plaintiffs or other minority shareholders in any way.
195. Deb Carey and her heirs also maintain the ability to sell the entire Brewery or only their shares, and to the extent Defendants are successful at redeeming minority shareholders' shares at below market value then Deb Carey receives a substantial financial benefit for those lower

value purchases when she or her family sells the Brewery or her Brewery shares. This substantial financial benefit potentially amounts to hundreds of millions of dollars.

196. Defendants have formed Deb Carey's Family Foundation as a part of her plan and intent to operate the Brewery for the good of all the public, and not for the benefit of the minority shareholders.

197. The foregoing present actions and planned future actions show that Defendants have acted, are acting and will continue to act in a manner that is oppressive to Plaintiffs as minority shareholders.

198. As a direct result of Defendants' wrongful conduct, Plaintiffs are stuck as minority shareholders in a corporation where, despite owning a substantial portion of the outstanding shares, they have no say in the Brewery's operation and no opportunity to realize a fair return on their investment.

199. Due to oppression of minority shareholders, this Court may, pursuant to Wis. Stat. § 180.1430(2) grant judicial dissolution of New Glarus Brewing or such other equitable relief as it deems appropriate.

WHEREFORE, Plaintiffs seeks judgment against Defendants as follows:

- A. The remedies available under Wis. Stat. §§ 180.1430(2)(b) and 180.1432 and the Court's equitable powers, including, but not limited to, a judicial order requiring that Defendants acquire Plaintiffs' shares at fair value;
- B. As a further exercise of the Court's equitable powers, ordering Defendants to pay Plaintiffs' attorney fees incurred in order to achieve the equitable relief sought in this Complaint;

- C. As a further exercise of the Court's equitable powers, order the removal of Deb Carey as a director and/or the appointment of independent directors for the Brewery;
- D. As a further exercise of the Court's equitable powers, order that all non-voting shares of the corporation be re-classified as voting shares;
- E. Judgment against Defendant Carey for breach of fiduciary duty, against the Brewery for aiding and abetting her breach of fiduciary duty, and an order that Deb Carey and/or the Brewery provide the value of the constructive dividends she has received with corresponding dividends being paid to Plaintiffs and other shareholders;
- F. Judgment against the Defendants for damages sustained by Plaintiffs as a result of Defendants' securities fraud pursuant to Wis. Stat. § 551.509(2);
- G. Damages, including but not limited to all actual compensatory and consequential damages;
- H. Awarding Plaintiffs' reasonable attorney fees and costs to the extent otherwise permitted by law, including, but not limited to, Wis. Stat. § 551.509; and
- I. Granting such other and further relief in Plaintiffs' favor as this Court deems just and equitable under the circumstances.

Dated this 19th day of August, 2021.

PALMERSHEIM DETTMANN, S.C.

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