

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

J. R. SIMPLOT COMPANY, individually
and derivatively,

Plaintiff,

v.

WASHINGTON POTATO COMPANY;
OREGON POTATO COMPANY;
FRANK TIEGS; and DOES 1
THROUGH 10,

Defendants.

No.

VERIFIED COMPLAINT

JURY TRIAL DEMANDED

I. INTRODUCTION

1. Plaintiff is a non-controlling owner of two multi-million dollar food processing and distributing businesses that are co-owned and controlled by Defendants. These businesses make over \$400,000,000 in annual sales. Plaintiff has recently learned of multiple and critical breaches of fiduciary and other duties by Defendants, which pose an immediate and existential threat to the businesses and their 2,000 or more employees. Plaintiff brings this action initially to preserve the businesses through a receivership and possibly other relief until a full trial on the merits. Plaintiff also seeks enforcement of its

1 contractual, statutory, and other rights to inspect corporate records, damages, and other
2 relief.

3 2. Plaintiff, J. R. Simplot Company, a Nevada corporation (“Simplot” or
4 “Plaintiff”), brings this action, in part, derivatively on behalf of nominal parties Pasco
5 Processing, LLC, a Washington limited liability company (“Pasco”) and Gem State
6 Processing, LLC, a Washington limited liability company (“Gem State”), against
7 Defendants, Washington Potato Company, a Washington corporation (“WPC”), Oregon
8 Potato Company, a Washington corporation (“OPC”), Frank Tiegs, an individual citizen of
9 Washington (“Tiegs”) and Does 1-10 (collectively, “Defendants”). Simplot also brings this
10 action directly against Defendants based on Simplot’s status as a member of Pasco and
11 Gem State.

12 3. Simplot is also a customer of Pasco, Gem State, and National Frozen Foods
13 Corporation (“NFF”), a wholly-owned indirect subsidiary of Pasco.

14 4. Tiegs is the principal of WPC and OPC, which in turn are the managers of
15 Pasco and Gem State.

16 5. Simplot and WPC each own 50% of Pasco. Pasco is in the business of
17 processing and distributing vegetables and other food products. Pasco wholly owns other
18 food-related businesses, the most significant of which is NFF. NFF has operated a
19 vegetable processing business since 1912. Pasco acquired NFF in February of 2013.
20 (Pasco’s subsidiaries, including NFF, together with Pasco, are sometimes collectively
21 referenced herein as “Pasco” or the “Pasco Group.”) Pasco is a manager-managed limited
22 liability company and WPC is the sole manager of Pasco. Tiegs is the principal of WPC
23 and also an officer of Pasco. Tiegs recently appointed himself as the functional chief
24 executive officer of NFF.

25 6. Simplot and OPC each own 50% of Gem State. Gem State produces
26 dehydrated potato products. Gem State is a manager-managed limited liability company

1 that is managed solely by OPC. Tiegs is the principal of OPC. Tiegs owns and operates a
2 number of farming operations and other food-related companies, and is a significant
3 supplier of produce and other food products to the Pasco Group and Gem State.

4 7. WPC, OPC, and Tiegs, through gross negligence, recklessness, and
5 intentional misconduct, including self-dealing, have mismanaged Pasco and Gem State to
6 the point where these companies are failing financially and otherwise. Tiegs has stated on
7 more than one occasion, and as recently as late November 2016, that NFF will be out of
8 money and bankrupt within a year.

9 8. In addition, Defendants have caused significant supply chain disruptions,
10 poor employee morale, poor employee retention, and the enhanced concern for serious
11 quality, worker safety, and food safety issues. Simplot is only recently learning the
12 magnitude of Defendants' safety and quality issues, both in the context of Defendants'
13 management of Pasco and Gem State, as well as in Defendants' other ventures.

14 9. Defendants have also caused the Pasco Group to violate loan covenants. In
15 short, Defendants are swiftly leading the Pasco Group and Gem State towards a complete
16 collapse.

17 10. Defendants' conduct, if continued, will also have significant consequences
18 on the communities in which the Pasco Group (including NFF) and Gem State operate.
19 Pasco, NFF, and Gem State employ up to 2,150 people (depending on the season) in
20 Washington, Idaho, and Oregon. Failure of these companies will cause widespread
21 unemployment and harm to these communities. And, unfortunately, Defendants'
22 misconduct immediately and existentially threatens the welfare of the companies'
23 employees and supplier relationships. On November 29, 2016, Simplot learned that NFF
24 overdrew its checking account by \$3,100,000 and was in danger of not meeting its payroll
25 obligations, a basic function of any business operation. Further, NFF recently issued
26 checks to growers with the fear that they might be returned for insufficient funds, thereby

1 threatening the companies' supply of raw materials. A company that cannot meet the
2 fundamental functions of paying employees and purchasing raw materials is unsustainable
3 and cannot survive without intervention.

4 11. Simplot's current capital account balance at Pasco and Gem State is about
5 \$46,000,000, and therefore these companies represent a large investment by Simplot.
6 Simplot has had increasing concerns about the operations and financial stability of the
7 Pasco Group and Gem State for several months, and has expressed those concerns to
8 Defendants. Defendants' responses have been evasive, incomplete, or simply non-
9 responsive to the concerns expressed. Concerned with the health of Pasco and Gem State,
10 and with Defendants' actions, Simplot has attempted to exercise its legal right to inspect
11 company records. Defendants have obstructed Simplot's records demands in clear violation
12 of Pasco and Gem State operating agreements and Washington law. Moreover, what
13 documents and information Defendants have produced is alarming in terms of the
14 companies' financial health and the safety of their operations, confirming Simplot's
15 suspicions that immediate intervention is necessary to mitigate the imminent threat of harm
16 that Defendants pose to the companies, their employees, and the general public.

17 12. Also, Defendants have directed NFF employees not to communicate or share
18 information with Simplot. Therefore, Defendants have not only concealed information
19 from Simplot; they have actively limited Simplot's access to such information.

20 13. Consequently, Simplot brings direct and derivative actions against WPC and
21 OPC for breach of the Pasco and Gem State operating agreements, for WPC's and OPC's
22 failure to comply with Simplot's rights to inspect Pasco and Gem State corporate records,
23 and for all Defendants' breaches of fiduciary duties.

24 14. Simplot is also a customer of the Pasco Group and has been harmed separate
25 and apart from Pasco in its capacity as a customer. Indeed, one of Simplot's primary
26 motivations in forming Pasco with Tiegs, and agreeing to Pasco's acquisition of NFF, was

1 to develop, through the Pasco Group, a strong supplier for Simplot. Unfortunately, due to
2 WPC's and Tiegs's misconduct, Pasco has not been a reliable supplier to Simplot (and to
3 other customers as well).

4 15. Simplot seeks the immediate appointment of a third-party receiver to operate
5 the Pasco Group and Gem State. Otherwise, it is highly likely that the Pasco Group and
6 Gem State will soon fail.

7 **II. PARTIES, JURISDICTION, AND VENUE**

8 16. Simplot is a Nevada corporation with its principal place of business in Idaho.

9 17. WPC is a Washington corporation with its principal place of business in
10 Washington.

11 18. OPC is a Washington corporation with its principal place of business in
12 Washington.

13 19. Tiegs is a citizen of Washington. Tiegs is the principal of WPC and OPC,
14 and an officer of Pasco. Tiegs also recently appointed himself as the functional chief
15 executive officer of NFF.

16 20. Pasco and Gem State are manager-managed limited liability companies
17 formed under the laws of Washington. Pasco is owned in equal parts by Simplot and WPC,
18 and is managed by WPC. Gem State is owned in equal parts by Simplot and OPC, and is
19 managed by OPC.

20 21. However, the citizenship of Pasco and Gem State is irrelevant to the subject
21 matter jurisdictional analysis as these limited liability companies are only nominal parties
22 for the sake of Simplot's derivative claims described below. The citizenship of Pasco and
23 Gem State is further irrelevant to the subject matter jurisdictional analysis because Pasco's
24 and Gem State's managers, WPC and OPC, are antagonistic to Simplot.

25 22. This Court has subject matter jurisdiction over this case pursuant to 28
26 U.S.C. § 1332 as Simplot is a citizen of Nevada and Idaho for diversity jurisdiction

1 purposes, while Defendants are all citizens of Washington for diversity jurisdiction
2 purposes. Therefore, no Plaintiff is a citizen of the same state as any Defendant. The
3 amount in controversy exceeds \$75,000, exclusive of costs and interest.

4 23. This Court has personal jurisdiction over Defendants because Defendants are
5 all citizens of Washington. Further, Defendants conduct business in Washington and much
6 of Defendants' misconduct alleged herein was perpetrated in Washington.

7 24. Venue before this Court is proper pursuant to 28 U.S.C. § 1391(b)(2)
8 because a substantial part of the events giving rise to Simplot's claims occurred in this
9 District, including, but not limited to, significant events involving Pasco's indirect
10 subsidiary, NFF, which is based in Seattle, Washington. Also, other events alleged herein
11 occurred in or around Seattle. Approximately 2,150 employees perform services for Pasco
12 and Gem State during the peak season, with almost 1,500 of those working for NFF.

13 III. SUBSTANTIVE ALLEGATIONS

14 A. Pasco

15 25. Pasco is in the business of processing and distributing frozen vegetables,
16 potatoes, fruit, and other food products. Simplot formed Pasco on March 19, 2008, and,
17 pursuant to a Membership Interest Purchase Agreement dated April 30, 2008, WPC became
18 a fifty percent (50%) member of Pasco.

19 26. Pasco acquired NFF in February of 2013. NFF has operated a vegetable
20 processing business since 1912.

21 27. Currently in effect for Pasco is its Amended and Restated Limited Liability
22 Company Operating Agreement dated February 15, 2013 ("Pasco OA"). A true and correct
23 copy of the Pasco OA is attached and incorporated as Exhibit A.

24 28. WPC is Pasco's manager, and has all the powers allocated to the Pasco
25 manager pursuant to Article 5 of the Pasco OA. WPC is responsible for Pasco's day-to-day
26 business operations, and has control and discretion over its operations. Further, WPC is

1 paid \$240,000 annually by Pasco as its manager pursuant to Section 5.3 of the Pasco OA.
2 Under Washington law, managers of manager-managed limited liability companies owe
3 fiduciary duties to the company and its members, independently and separately from the
4 operating agreement, if any exists. Therefore, WPC's fiduciary duties to Pasco and Simplot
5 arise not from the Pasco OA, but instead by operation of law independently of the Pasco
6 OA.

7 29. WPC's obligations as Pasco's manager, besides operating and managing
8 Pasco, include maintaining Pasco's books and records pursuant to Article 7 of the Pasco
9 OA, providing monthly and quarterly financial reports to Simplot pursuant to Sections 7.4
10 and 8.2 of the Pasco OA, and other obligations.

11 30. Tiegs is the President of Pasco, and therefore owes Simplot fiduciary duties
12 as a Pasco officer. Similar to WPC, his fiduciary duties to Simplot and Pasco arise
13 independently of the Pasco OA.

14 31. WPC is further charged with managing Pasco's operations pursuant to the
15 February 15, 2013 Amended and Restated Management Services Agreement ("Pasco
16 MSA") between WPC and Pasco. A true and correct copy of the Pasco MSA is attached
17 and incorporated as Exhibit B. WPC is designated as Pasco's "sole and exclusive operator"
18 pursuant to the Pasco MSA. WPC receives a monthly management fee of \$20,000 (or
19 \$240,000 annually) pursuant to the Pasco MSA, in addition to the \$240,000 paid to WPC
20 annually in its capacity as Pasco's Manager pursuant to the Pasco OA.

21 **B. Gem State**

22 32. Gem State is in the business of producing dehydrated potato products.

23 33. OPC, as manager of Gem State, pursuant to the Gem State Operating
24 Agreement dated April 4, 2011 ("Gem State OA"), has duties similar to those imposed on
25 WPC as Pasco's manager. *See* Article 5 and Sections 7.3, 7.4, and 8.2 of Gem State OA, a
26 true and correct copy of which is attached and incorporated as Exhibit C.

1 34. OPC is paid \$260,000 annually by Gem State as its manager pursuant to
2 Section 5.3 of the Gem State OA.

3 35. Under Washington law, managers of manager-managed limited liability
4 companies owe fiduciary duties to the company and its members, independently and
5 separately from the operating agreement, if any exists. Therefore, OPC's fiduciary duties to
6 Gem State and Simplot arise not from the Gem State OA, but instead by operation of law
7 independently of the Gem State OA.

8 **C. Pasco's and Gem State's Poor Financial Performance**

9 36. Pasco's and Gem State's fiscal years end on the Saturday that is closest to
10 August 31 of each year. The consolidated annual earnings of the Pasco Group have fallen
11 more than 60% from fiscal year 2014 through fiscal year 2016.

12 37. Gem State's annual earnings have plummeted from a \$9,042,000 profit in
13 fiscal year 2013 to an annual loss of over \$5,000,000 in fiscal year 2016.

14 38. In fact, the Pasco Group's performance is so poor that on October 24, 2016,
15 WPC and Tiegs advised Simplot that WPC and Simplot need to make additional capital
16 contributions of \$3,000,000 to \$6,000,000 to Pasco on an urgent basis. A true and correct
17 copy of an email from WPC's and Tiegs's agent requesting additional capital contributions
18 is attached and incorporated as Exhibit D.

19 39. Approximately one month later, on or about November 21, 2016, WPC
20 transmitted to Simplot a projection of Pasco's cash position as of December 30, 2016. This
21 report projected that Pasco will suffer a cash deficit of approximately \$14,000,000 as of
22 December 30, 2016. WPC also reported to Simplot around that time that Pasco will reach
23 its line-of-credit limit of \$50,000,000 by that date. In fact, Simplot has recently learned that
24 Pasco has already reached that \$50,000,000 line-of-credit limit.

25 40. Upon information and belief, Tiegs has told NFF management as recently as
26 September 2016 and late November 2016 that NFF will likely be bankrupt within one year.

1 Especially startling is a November 28, 2016, email from Janelle McClory, WPC's
2 functional chief financial officer ("McClory"), warning NFF financial personnel not to pay
3 any suppliers "until we have the funding available to cover them." A true and correct copy
4 of this email is attached hereto and incorporated as Group Exhibit E.

5 41. Indeed, as of November 28, 2016, McClory admitted in another email, also
6 included in Group Exhibit E, that NFF overdrew its operating account to the amount of
7 \$9,489,737.90 for checks that NFF issued on November 25.

8 **D. Defaults Under Existing Financing Documents**

9 42. Northwest Farm Credit Services, PCA (the "Lender") has made a term loan
10 of \$141,000,000 (the "Term Loan") and a revolving credit facility in the amount of
11 \$50,000,000 (the "Credit Facility," together with the Term Loan, the "Financing") available
12 to the Pasco Group. As of the end of the most recent fiscal year, September 3, 2016, the
13 outstanding principal balance of the Financing was approximately \$137,466,000. Pasco
14 and each of its subsidiaries are jointly and severally liable for the Financing either as a
15 borrower or guarantor.

16 43. Under the terms and conditions of the Financing, the Lender requires the
17 Pasco Group, on a consolidated basis, to maintain a minimum debt to cash flow (leverage)
18 ratio, tested quarterly and currently set at 6.0 to 1.0 (the "Leverage Ratio"), and a minimum
19 debt service coverage ratio, tested annually and currently set at 0.8 to 1.0 (the "Coverage
20 Ratio," together with the Leverage Ratio, the "Financial Covenants").

21 44. For the first, third, and fourth quarters of fiscal year 2016, the Pasco Group
22 was in default of the Leverage Ratio, and as of the fiscal year ended September 3, 2016, the
23 Pasco Group was in default of the Coverage Ratio. A true and correct copy of the Pasco
24 Group's Compliance Certificate for the fiscal year ended September 3, 2016, executed by
25 Tiegs as President of Pasco, is attached and incorporated as Exhibit F ("September 2016
26

1 Compliance Certificate”). Tiegs acknowledged the Pasco Group defaults of the Financial
2 Covenants in the September 2016 Compliance Certificate issued to the Lender.

3 45. In the second quarter of 2016, the Pasco Group barely achieved the required
4 minimum Leverage Ratio and had it been properly tested, the Coverage Ratio would not
5 have been met. Overall, Pasco has been in violation of the Financial Covenants for the last
6 twelve months.

7 46. On October 6, 2016, without notice to, or prior consultation with, Simplot,
8 Tiegs met with the Lender to discuss the existing defaults of the Financial Covenants. On
9 October 24, 2016, purportedly to satisfy the Lender, Tiegs made the request for additional
10 capital contributions of \$3,000,000 to \$6,000,000 referenced above.

11 **E. Defendants’ Self-Dealing**

12 47. Defendants own or control affiliates that are in the business of growing
13 and/or processing produce and include, upon information and belief, and without limitation,
14 the following companies: Allied Potato, Inc.; Atlantic Produce, Inc.; Baker Produce South,
15 Inc.; Baker Produce, Inc.; Dickinson Frozen Foods; Frank Tiegs, LLC; Freeze Pack, LLC;
16 Green Ridge Farms LLC; Greenridge Farming, Inc.; Pasco Farming, Inc.; Spud Bud III,
17 LLC; and, Tradewinds Export, LLC (collectively with Defendants, the “Tiegs Affiliates”).

18 48. Many of the Tiegs Affiliates are vendors to the Pasco Group and Gem State.
19 For example, the Tiegs Affiliates supply a substantial volume of the raw products
20 purchased by the Pasco Group on an annual basis. The Pasco Group does so at the ultimate
21 direction of Tiegs, in his capacity as president of Pasco’s manager, WPC, and as an officer
22 and the self-designated functional chief executive officer of NFF.

23 49. Tiegs Affiliates are also buyers of the Pasco Group’s crops. Tiegs has
24 manipulated this dual relationship to his personal advantage, through the Tiegs Affiliates,
25 and to Simplot’s detriment. Tiegs and WPC have directed transactions between the Tiegs
26 Affiliates and the members of the Pasco Group or Gem State that have been structured to

1 benefit the Tiegs Affiliates at the expense of the Pasco Group and Gem State, including, but
2 not limited to, the following ways:

- 3
- 4 A. By directing Pasco and NFF to purchase crops from the Tiegs Affiliates
5 when the Pasco Group did not need to purchase such crops to fulfill
6 customer orders. As a result, the Pasco Group has purchased crops that far
7 exceed its reasonable requirements. Relatedly, Tiegs has directed NFF, over
8 the strong recommendations of subordinate NFF management, to purchase
9 inventory far greater than NFF's requirements, leading NFF to currently
10 have excess inventory of approximately \$36,000,000. Indeed from fiscal
11 year end 2013 to fiscal year end 2015, inventory balances maintained by
12 NFF increased 39%, while annual sales increased only 7% over the same
13 period. By August 2016, inventory levels at NFF were 62% of annual sales,
14 while prior to August 2013, NFF maintained inventory levels averaging 45%
15 of annual sales. Even worse, inventory balances maintained by Pasco
16 increased 118% from fiscal year end 2013 to fiscal year end 2016, while
17 sales increased only 24% over the same period.
- 18 B. By directing Gem State and companies of the Pasco Group to purchase
19 crops, often above market cost, from the Tiegs Affiliates which Gem State
20 and members of the Pasco Group would never purchase were it not for
21 Tiegs's self-dealing, because of the substandard and inferior quality of the
22 Tiegs Affiliates' crops. One glaring example of this form of self-dealing
23 occurred in June 2016 when Tiegs forced Gem State to purchase unsellable
24 rotten potatoes after they were rejected by a customer of a Tiegs Affiliate to
25 avoid incurring a loss to the Tiegs Affiliate on the rotten potatoes.
- 26 C. By directing the Pasco Group to sell its products at minimal profit, at cost,
or, at times at a significant loss, to certain third-party customers of the Pasco
Group who are also customers of the Tiegs Affiliates (the "Shared
Customers") so that the Tiegs Affiliates can sell their product to the Shared
Customers at a greater profit to the Tiegs Affiliates, or for other improper
reasons. In many instances, the Pasco Group was doing highly profitable
business with certain Shared Customers prior to this misconduct by Tiegs
and WPC. In other words, Tiegs has required the Pasco Group, to the Pasco
Group's detriment, to sell products at a loss in order to better the Tiegs
Affiliates' relationships with the same customers by allowing the Tiegs
Affiliates to sell product to those same customers at a profit. Tiegs also has
required the Pasco Group to agree to detrimental payment terms in order to
further the Tiegs Affiliates' separate customer relationships, even allowing
one such Shared Customer payment terms from the Pasco Group of 300
days, many times what is customary and prudent. The impact to the Pasco
Group is not only the loss of profit margin, but sometimes the cost of the
Pasco Group having to purchase replacement inventory from other suppliers,

1 so that the Pasco Group can meet the demands of customers other than the
2 Shared Customers. A graphic illustration of the harm caused to the Pasco
3 Group by this particular form of Defendants' self-dealing is attached hereto
4 and incorporated as Exhibit G, where an example of this type of self-dealing
5 cost NFF approximately \$4,400,000.

6 D. By directing the Pasco Group to sell product to Tiegs Affiliates, or Shared
7 Customers for the benefit of Tiegs Affiliates, well below cost or below
8 market.

9 E. By taking Pasco Group product without paying for the same, as "samples."

10 50. The Financing also prohibits (i) transfers, sales, disposals or purchases of
11 assets between any member of the Pasco Group and any affiliate of any member of the
12 Pasco Group that are not at arm's length, and (ii) any other arrangement or other transaction
13 directly or indirectly with or for the benefit of any affiliate (the "Affiliate Covenant").

14 Defendants' self-dealing puts the Pasco Group in serious danger of violating the Affiliate
15 Covenant. The terms Defendants have afforded to the Tiegs Affiliates for the supply of raw
16 products, or for the purchase of finished products, are outside normal business terms and
17 not in compliance with the Affiliate Covenant.

18 **F. Defendants' Dangerous Mishandling of Safety Issues**

19 51. Prior to Tiegs's tenure, NFF did not have a food safety recall in its 104 years
20 of existence. During the past two (2) years, however, under Tiegs's management, NFF has
21 suffered two product recalls.

22 52. Simplot is recently learning that Defendants and Tiegs have allowed a host
23 of safety issues over the past few years. Simplot's discovery of issues within the Pasco
24 Group has been hampered by Defendants' lack of transparency and obstruction of Simplot's
25 efforts to learn the same.

26 53. On November 24, 2014, the Washington Department of Labor & Industries
27 ("WDL&I") found that WPC violated worker safety laws and generally accepted good
28 engineering practices by failing to identify and label the ammonia refrigeration system at its

1 Pasco, Washington plant. A true and correct copy of WDL&I's violation notice is attached
2 hereto and incorporated as Exhibit H.

3 54. On or about December 29, 2014, the U.S. Occupational Safety and Health
4 Administration ("OSHA") cited and fined Pasco, for employee safety issues, as Simplot just
5 recently discovered. Tiegs did not notify Simplot of these problems when they occurred.
6 True and correct copies of OSHA documents relating to these two incidents are attached
7 hereto and incorporated as Exhibit I.

8 55. On March 23, 2015, the WDL&I found that WPC violated worker safety
9 laws, exposing employees to entanglement hazards that could result in lacerations, partial
10 disability, or permanent disability. A true and correct copy of WDL&I's violation notice is
11 attached hereto and incorporated as Exhibit J. On May 24, 2016, WDL&I cited WPC and
12 OPC for a litany of worker safety violations, many of which were categorized as "repeat
13 serious" or "serious." WDL&I further labeled WPC and OPC as a "severe" violator and
14 issued a \$213,000 fine. A true and correct copy of WDL&I's May 24, 2016, report is
15 attached hereto and incorporated as Exhibit K. Many of the violations found by the
16 WDL&I on May 24, 2016 were repeated, or not cured, from what WDL&I found on or
17 about March 23, 2015.

18 56. Further, under Tiegs, there have been other significant incidents not
19 involving a recall such as an incident in the Summer of 2015, where glass was found in a
20 pea crop supplied by a Tiegs Affiliate (prior to production by NFF). After being notified of
21 the glass by NFF, Tiegs required NFF to receive the contaminated pea crop for production.
22 Fortunately, NFF staff prevented these products from being sold at market. Tiegs failed to
23 disclose this incident to Simplot, which was later revealed to Simplot by an NFF employee.
24 To make matters worse, because Tiegs failed to follow the proper "shutdown protocol" and
25 instead tried to salvage the tainted pea crop, the related insurance recovery was dramatically
26 reduced. Further, the insurer, upon information and belief, discovered that the Tiegs

1 Affiliate growing the peas was falsely certifying the peas as organic, without the proper
2 certification to make such a claim.

3 57. On October 29, 2015, WDL&I cited WPC yet again for “repeat serious” and
4 “serious” violations because WPC “did not ensure that energy control procedures were used
5 to protect employees from moving parts.” A true and correct copy of WDL&I’s October
6 29, 2015, report is attached hereto and incorporated as Exhibit L. WDL&I noted that a
7 WPC employee was “subjected to injury which resulted in the partial amputation of the
8 finger.” WDL&I cited WPC again on April 12, 2016, and May 24, 2016 (Exhibit K), for
9 failing to correct these issues, and other worker safety violations. A true and correct copy
10 of WDL&I’s April 12, 2016 report is attached hereto and incorporated as Exhibit M.

11 58. On or about December 1, 2015, in yet another incident, OSHA cited
12 Dickinson Frozen Foods (“DF”), another Tiegs Affiliate located in Sugar City, Idaho, for
13 a serious release of anhydrous ammonia. A true and correct copy of OSHA’s press release
14 related to this incident is attached hereto and incorporated as Exhibit N. DFF is not an
15 affiliate of Pasco, and Simplot has no ownership interest, direct or indirect, in DFF, but this
16 incident further evidences Defendants’ widespread disregard for safety laws and standards.
17 OSHA’s press release related to this incident stated in part as follows:

18 *The U.S. Department of Labor's Occupational Safety and Health Administration*
19 *found an Idaho frozen food manufacturer failed to safeguard employees and was*
20 *unprepared to respond to a potentially lethal release of 1,300 lbs. of anhydrous*
21 *ammonia on Dec. 1, 2015. While no one died or suffered injury in the December*
22 *incident, other major ammonia releases at Dickinson Frozen Foods, Inc. have*
hospitalized employees at the Sugar City facility in the past. In its review of the
latest incident, federal investigators found the company lacked adequate emergency
response program and training, and failed to equip employees with protective
clothing and respirators.

23 *OSHA investigators issued 19 serious and two willful citations following the*
24 *hazardous release. The agency has fined Dickinson a total of \$273,000. A recent*
25 *OSHA investigation after the incident uncovered dozens of hazards related to*
emergency response, respiratory protection and process safety management of
hazardous materials violations.

26 *"It's a miracle no Dickinson Frozen Foods employees were killed or hurt last year,"*
said David Kearns, OSHA area director in Boise. "We're confident that workers at

1 *the facility will be much better protected by tightened safety procedures the*
2 *company has agreed to institute should another release occur."*

3 *Anhydrous ammonia is a colorless gas with a distinctively pungent odor that is*
4 *widely used in agricultural and industrial refrigeration systems. The ammonia*
5 *vapor severely irritates and can easily damage the eyes and respiratory tract.*
6 *Mixtures with certain other chemicals can produce violent reactions and explosions.*

7 *OSHA found numerous violations during its inspection, including:*

8 *□ The facility failed to maintain a "process safety management plan" that spells out*
9 *a framework for any use, storage, handling or movement of highly*
10 *hazardous chemicals.*

11 *□ Employees exposed to liquid ammonia without chemical protective clothing.*

12 *□ Employees entered a potentially life-threatening atmosphere without self-*
13 *contained breathing apparatus.*

14 *□ Employees were not medically evaluated or fit tested to wear respirators.*

15 *□ Employees untrained on the facility's emergency response plan when they were*
16 *hired and when they changed positions.*

17 *□ Employees responded to an emergency without proper emergency response*
18 *training.*

19 *□ The employer did not evaluate respiratory hazards during the ammonia leak*
20 *response.*

21
22 59. Additionally, in December 2015, Gem State consented to fines issued by the
23 U.S. Environmental Protection Agency ("USEPA") related to Gem State's unlawful
24 discharge of wastewater at its Heyburn, Idaho plant. A true and correct copy of Gem State's
25 Consent Agreements with the USEPA is attached hereto and incorporated as Exhibit O.

26 60. On or about April 6, 2016, OPC voluntarily recalled individually quick
frozen and fresh onion products manufactured from March 8, 2016, through April 8, 2016.

61. On or about May 25, 2016, OSHA cited and fined DFF again for willful
violations of employee safety laws. A true and correct copy of related OSHA
documentation is attached hereto and incorporated as Exhibit P.

62. On or about May 31, 2016, OSHA cited and fined DFF again for willful
violations of employee safety laws, including but not limited to, those found by OSHA
through its investigation of the December 2015 incident referenced above (Exhibit N).

63. Additionally, on June 13, 2016, NSF International Food Safety LLC
("NSF") audited DFF's Sugar City, Idaho facility and cited DFF for a major violation of the

1 FSSC 22000 Food Safety Management System (“FSSC 22000”), another safety and quality
2 certification program in the food industry, after observing DFF’s repeated failure to provide
3 hot water in its plant’s restrooms. Although Simplot, Gem State and Pasco do not have any
4 direct or indirect ownership interest in DFF or this facility, this incident further evidences
5 Defendants’ poor food safety practices. A true and correct copy of NSF’s June 13, 2016
6 audit report is attached hereto and incorporated as Exhibit Q.

7 64. In addition to the above referenced major violation of the FSSC 22000, NSF,
8 AIB International and SGS S.A., have cited WPC, OPC, and DFF for three other major
9 violations and a combined 134 minor violations of the BRC Global Standards and FSSC
10 22000 over the past few years.

11 65. In another incident, also in June 2016 and alleged above, Tiegs instructed
12 Gem State to purchase a bin of raw white potatoes from a Tiegs Affiliate, after a customer
13 of that Tiegs Affiliate rejected the same potatoes, for processing despite knowing that the
14 bin actually contained unacceptable and rotten red potatoes, leaving them unacceptable for
15 processing.

16 66. In yet another incident, the U.S. Food and Drug Administration (“USFDA”)
17 issued a Warning Letter to OPC on July 15, 2016 (“OPC Warning Letter”). A true and
18 correct copy of the OPC Warning Letter is attached and incorporated as Exhibit R. As
19 noted in the OPC Warning Letter, the USFDA found the presence of Listeria
20 monocytogenes, a human pathogen, at an OPC facility known as Freeze Pack, during a
21 March 2016 inspection, and noted OPC’s “significant deviations” from good manufacturing
22 practices. Although Simplot, Gem State, and Pasco do not have any direct or indirect
23 ownership interest in this facility, this is further evidence of Defendants’ poor food safety
24 practices. In the OPC Warning Letter, the USFDA noted a number of alarming issues at
25 OPC’s facility. Besides levying heavy fines, the USFDA ordered a Class I recall of certain
26

1 food products. The USFDA classifies a recall as “Class I” when, in the agency’s opinion,
2 the adulterated product poses a risk of serious harm or death to consumers.

3 67. On August 17, 2016, the Washington State Department of Agriculture
4 (“WSDA”) cited Pasco for multiple violations. Simplot did not learn of this incident until
5 weeks later, when a Pasco-related employee disclosed this incident to Simplot without
6 Tiegs’s knowledge. Prior to that time, Tiegs never notified Simplot of the inspection or the
7 resulting violations. A true and correct copy of related WSDA documentation is attached
8 hereto and incorporated as Exhibit S.

9 68. Again in September 2016, OPC consented to fines issued by the USEPA
10 related to OPC’s alleged mishandling of anhydrous ammonia. A true and correct copy of
11 OPC’s Consent Agreements with the USEPA is attached hereto and incorporated as Exhibit
12 T.

13 69. In October 2016, yet another example of Tiegs’s disregard for food safety
14 issues occurred. At Tiegs’s direction, a large amount of green peppers grown by a Tiegs
15 Affiliate were purchased for processing by Pasco. At that time, Pasco was already severely
16 delayed in meeting its obligations to supply its customers due to chronic underperformance
17 by Pasco. As a result, Pasco was unable to process the green peppers properly due to its
18 production issues caused by Tiegs’s gross mismanagement. Tiegs then directed that
19 partially processed strip cut green peppers be shipped to a specific NFF facility for
20 processing via totes, despite the fact that NFF does not normally process green peppers at
21 that facility. The green peppers sat unrefrigerated for approximately seventy-two hours,
22 suffered severe breakdown, and became moldy. An NFF employee refused to process the
23 green peppers because of the mold, at which time Tiegs directed the totes of green peppers
24 to be transported back to Pasco’s facility for processing, instead of disposing of the severely
25 degraded green peppers. A concerned employee of NFF (and not Defendants) disclosed
26 this incident to Simplot, again contrary to Tiegs’s directive to conceal such information

1 from Simplot. A true and correct copy of photographs of the subject green peppers is
2 attached hereto and incorporated as Exhibit U.

3 70. Additionally, Pasco has suffered multiple instances of “foreign material
4 incidents” under WPC’s and Tiegs’s control. Such incidents occur when foreign materials,
5 including, but not limited to, nuts and bolts from machinery, are found in food products
6 being processed. Simplot has found and complained that the product purchased from Pasco
7 accounts for a disproportionate number of foreign materials complaints when compared to
8 other suppliers. An example of a recent foreign materials incident at Pasco, dated
9 November 23, 2016, is documented in a Simplot foreign materials report regarding product
10 that Simplot purchased from Pasco, a true and correct copy of which is attached hereto and
11 incorporated as Exhibit V.

12 71. Additionally, the USFDA conducted an unannounced inspection at DFF on
13 October 24, 2016. Following the inspection, Tiegs directed Tiegs Affiliates, the Pasco
14 Group, and possibly Gem State personnel to completely shut down their respective facilities
15 and commence sanitation activities when faced with a USFDA inspection in the future. The
16 purpose of this directive was to obstruct the USFDA’s ability to discover food safety issues,
17 and to preemptively sanitize the facilities to conceal food safety issues from the USFDA.
18 Normally, food production facilities do not completely shut down in the face of a mere
19 inspection. Indeed, an October 24, 2016, NFF email, directed by Tiegs, is attached hereto
20 and incorporated as Exhibit W and stated as follows:

21 *Good morning all,*

22 *The FDA showed up at our Sugar City facility this morning to perform their first*
23 *FSMA inspection. So far they are only reviewing paperwork but I thought this*
would be a good time to remind everyone of some quick items to note should your
inspection happen soon.

- 24 1. *Upon arrival of the inspectors you should DISCREETLY shut down operations*
25 *and begin sanitation. Please do not announce anything over the*
radios/intercoms. Send someone into the plant to tell people in person to shut down
26 *lines and begin sanitation.*
2. *Ask for credentials and show the inspectors to the conference room.*

3. *Find out why they are there and what they would like to see.*
4. *Notify [sic] Frank Tiegs and myself via phone or email*

72. Tiegs's shutdown directive not only improperly obstructs the USFDA's inspection process, it also hinders Pasco's and NFF's food production operations. This is further evidence of Defendants' complete disregard for food safety standards.

73. Relatedly, Tiegs and WPC have not made necessary capital expenditures at NFF facilities, some relating to maintenance that has been requested by NFF customers, increasing quality and food safety risks.

74. Similarly, at Tiegs's direction, the Pasco Group has not engaged in regular and industry-standard maintenance schedules as to the Pasco Group's facilities and machinery.

G. Other Significant Mismanagement by Defendants

75. There are other examples of Defendants' mismanagement of Pasco and Gem State, besides those referenced above. For example, on November 14, 2016, WPC informed Simplot that the U.S. Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC") filed an administrative complaint ("OSC Complaint") against WPC and Pasco for discrimination against non-U.S. citizens by requesting that they produce specific documents to establish employment eligibility because of their citizenship status in violation of federal law. A true and correct copy of the OSC Complaint is attached hereto and incorporated as Exhibit X. Basically, the OSC is alleging that WPC is violating federal law by treating non-U.S. citizens of certain nationalities different from others.

76. The OSC Complaint alleges that the OSC notified WPC in writing of its investigation on December 3, 2014. Yet WPC did not notify Simplot of the investigation, or related OSC actions, until November 14, 2016, almost two years later. The OSC Complaint seeks a cease and desist order, maximum civil penalties, relief requiring WPC and Pasco to hire and back pay those whom have been the targets of the alleged discrimination, and other relief.

1 77. The OSC Complaint has tarnished Simplot's reputation in the marketplace
2 due to Simplot's association with Pasco (and therefore WPC, its manager), and the OSC has
3 issued a press release publicizing its Complaint. A true and correct copy of the OSC press
4 release is attached hereto and incorporated as Exhibit Y. Simplot values its relationship
5 with its legal, non-U.S. citizen employees outside of Pasco and Gem State, and damage to
6 Simplot's reputation in this respect can be significant.

7 **H. Defendants' Lack of Transparency and Failure to Inform Simplot**

8 78. Defendants' misconduct summarized above has occurred under a veil of
9 obstruction, where Defendants have sought to keep information relating to the Pasco Group
10 and Gem State from Simplot. As alleged, WPC did not notify Simplot of the above OSC
11 investigation until almost two years after its commencement. By way of further example,
12 Tiegs has directed NFF management to keep information from Simplot, including, but not
13 limited to, incidents involving food safety (*e.g.*, the pea crop incident). Additionally, Pasco
14 restated its annual financial statements for fiscal year 2015 without advising Simplot. Also,
15 Tiegs failed to disclose the September 2016 resignation of NFF's President. Simplot only
16 learned of the situation from the President himself after he provided notice to Tiegs.

17 79. Pursuant to Section 5.1(a) of the Pasco OA, WPC is obligated "to provide
18 and maintain proper books and records of account which fully present the Company's
19 financial condition." Pursuant to Section 7.3 of the Pasco OA, WPC is obligated to "keep,
20 or cause to be kept, records and books of account in which each transaction of the Company
21 will be entered fully and accurately," and to ensure that such records are available for
22 Simplot's inspection.

23 80. OPC has similar record-keeping obligations to Simplot pursuant to the Gem
24 State OA.

25 81. On September 30, 2016, Simplot sent two separate demands for company
26 records, one for Pasco and one for Gem State, pursuant to those entities' operating

1 agreements and RCW 25.15.136 (“Simplot Records Demands”). True and correct copies of
2 the Simplot Records Demands are attached and incorporated as Group Exhibit Z.

3 82. Previously, Simplot forewarned Defendants that it would be issuing the
4 Simplot Records Demands, and in response, on September 30, 2016, Tiegs promised
5 Simplot that “[w]e [defendants] will supply your law firm what they request.” A true and
6 correct copy of Tiegs’s September 30, 2016, email is attached and incorporated as Group
7 Exhibit AA.

8 83. On October 25, 2016, the Parties conferred by telephone to discuss the
9 logistics of Defendants’ compliance with the Simplot Records Demands. Ultimately,
10 however, Defendants failed and refused to meaningfully comply with the Simplot Records
11 Demands as of the filing of this lawsuit.

12 84. Defendants’ obstruction continues to this day, and Defendants continue to
13 conceal basic financial, accounting, payroll, and sales information from Simplot. For
14 example, Simplot has identified multiple seven-figure transfers of funds to and from a
15 particular account by its account number. On November 30, 2016, upon Simplot’s demand,
16 WPC finally disclosed that this account was a WPC account, but refused to provide Simplot
17 with the underlying bank statements for this WPC account, raising serious red flags. True
18 and correct copies of Simplot’s and Defendants’ November 28 and 30, 2016,
19 correspondence are attached as Group Exhibit AB. In his November 30, 2016, letter,
20 WPC’s counsel states as to this questioned account: “Account number *****805 is a
21 Washington Potato Company account used for payroll reimbursements. Account statements
22 for these accounts will not be made available to Simplot.” Defendants’ denial of access to
23 this payroll account prevents Simplot from determining, among other information, why
24 fixed labor costs have increased (as they have), and, whether employees of the Tiegs
25 Affiliates have been improperly added to the Pasco payroll (which is administered by
26 WPC).

1 85. Additionally, WPC, despite its contractual and statutory obligations, refuses
2 to provide Simplot with full access to the Pasco Group's Microsoft Navision system, which
3 manages the Pasco Group's accounting, contract management, and other important
4 operational functions. *See* November 30, 2016, letter included in Exhibit AB.
5 Consequently, Defendants have denied Simplot basic accounting information. Overall,
6 Defendants failed and refused to produce numerous records demanded by Simplot as of
7 November 30, 2016, as evidenced in the letter of Defendants' counsel as of that date and
8 included in Exhibit AB.

9 86. Simplot has attempted to gain information through the Simplot Records
10 Demands for the following purposes:

- 11 (1) to determine the extent and value of Simplot's interest in Pasco and
12 Gem State.
- 13 (2) to ascertain the full extent of Pasco and Gem State's financial
14 practices.
- 15 (3) to otherwise properly account for the companies' financial and
16 operational matters, including, but not limited to, inventory control.
- 17 (4) to ascertain the companies' management practices.
- 18 (5) to determine whether the companies' funds are being properly
19 expended, and whether the companies' assets are being properly managed.
- 20 (6) to determine whether the companies are adequately complying with
21 relevant laws, industry standards, and regulations.

22 87. Additionally, upon information and belief, Tiegs has directed NFF
23 employees to restrict entry into NFF's facilities without Tiegs's prior notification, despite
24 the fact that Simplot has every right to appear at any NFF facility when it desires to do so,
25 just as Defendants have that right.

26 88. Accordingly, Defendants have concealed the reasons for the multiple
financial, operational, and managerial problems that Defendants have caused Pasco and
Gem State, while refusing to meaningfully and genuinely comply with the Simplot Records

1 Demands, which would shed further light on such problems. Indeed, Simplot is genuinely
2 concerned that its knowledge of the issues at Pasco and Gem State is only a small
3 percentage of the actual overall problems at these companies.

4 **I. Impact on Simplot as a Pasco Group Customer**

5 89. As set forth above, Simplot has relied on the companies of the Pasco Group
6 as major suppliers. Pasco and NFF, however, due to the various issues caused by WPC and
7 Tiegs as alleged herein, have been unable to provide quality product to Simplot on a timely
8 basis.

9 90. Simplot has been damaged as a result, aside and apart from its status as a
10 Pasco or Gem State member, because Simplot has been forced to locate a replacement
11 supplier for the product it purchases from Pasco and NFF, causing attendant transition
12 delays, hindrances, and costs. Simplot has also suffered damages related to the disruption
13 of its supply chain.

14 **J. Defendants' Mistreatment of Key Personnel**

15 91. Tiegs is increasingly abusive towards key Pasco, NFF, and Gem State
16 executives and other personnel. Tiegs has publicly insulted, demeaned, falsely blamed, and
17 otherwise treated employees inappropriately. This conduct has demoralized and
18 destabilized these companies' executives and work force.

19 92. Indeed, key NFF personnel, including its former President Richard Grader,
20 have resigned from NFF due to Tiegs's mistreatment and mismanagement. This has further
21 damaged Pasco and NFF, and additionally threatens their continued existence.

22 93. Further, besides inventory issues alleged previously herein, Tiegs has
23 blatantly ignored and overridden the inventory control suggestions of NFF management.
24 For example, NFF, annually each Spring, analyzes the number of acres it requires to grow
25 crops to satisfy projected demand. NFF management has in many cases recommended that
26 NFF curtail acreage pursuant to this process. Tiegs, however, has not only overridden this

1 recommendation, he has done so to the point that NFF, upon information and belief, carried
2 \$36,000,000 in excess inventory as of November 2016.

3 **K. Impact of Defendants' Misconduct**

4 94. Defendants' misconduct constitutes breaches of the Pasco and Gem State
5 operating agreements, as well as breaches of the fiduciary duties owed by Defendants to
6 Simplot, Pasco, and Gem State.

7 95. As a result of Defendants' misconduct, Pasco and Gem State have suffered
8 losses estimated to be in the millions of dollars, which are continually accruing. Further,
9 the Pasco Group is in default of the Financial Covenants under the Financing, and
10 consequently the Lender has the right to demand immediate payment in full, to cancel the
11 Credit Facility, and to exercise its right to liquidate the assets of the Pasco Group that are
12 included as collateral for the Financing. Also, Pasco and Gem State are experiencing food
13 and worker safety issues. NFF has experienced management turnover, and significantly
14 more is threatened, and the approximate 2,150 employees who perform services for the
15 Pasco Group and Gem State face an uncertain future in their jobs, which should be at a safe
16 workplace. (The employees who perform services for the Pasco Group are employed by
17 WPC.)

18 96. Additionally, Simplot has suffered direct harm, separate and apart from its
19 membership in Pasco and Gem State. Simplot estimates its losses are currently in the
20 millions of dollars, which are continually accruing.

21 97. Further, Defendants have concealed their misconduct from Simplot. Tieg
22 has instilled a culture at Pasco and NFF, through express directives and implication, that
23 Pasco Group personnel are to keep material information from Simplot.

24 **IV. CLAIMS FOR RELIEF: DIRECT CLAIMS**

25 98. Simplot brings direct claims arising out of Defendants' misconduct, in
26 addition to derivative claims. Also, pursuant to Washington common law, a direct recovery

1 to limited liability company members is permitted on derivative claims to avoid rewarding
2 members like WPC and OPC for their misconduct. In these situations, where members
3 have engaged in wrongdoing, courts of equity will look beyond the form of the limited
4 liability company and award recovery to the individual members who did not act
5 wrongfully.

6 99. Additionally, some of Defendants' misconduct has disproportionately
7 impacted Simplot differently than the impact to the Pasco Group and Gem State.

8 100. Further, Simplot has suffered damages in its capacity as a Pasco Group
9 customer, as alleged herein.

10 **COUNT I**

11 **BREACH OF PASCO OA**

12 **(Against WPC)**

13 101. Simplot realleges and incorporates the foregoing paragraphs of this
14 Complaint as if fully set forth herein.

15 102. WPC has breached the Pasco OA in one or more of the following ways:

- 16 A. by failing to adequately manage the day-to-day business and ordinary
17 affairs of Pasco in violation of Section 5.1.
- 18 B. by failing to maintain and provide all required Pasco books and
19 records in violation of Sections 5.1(a) and 7.3.

20 103. Simplot has complied with all material terms of the Pasco OA within
21 Simplot's power and control, which is a valid and binding agreement supported by offer,
22 acceptance, and consideration.

23 104. Simplot has incurred damages as a direct and proximate result of WPC's
24 breach of the Pasco OA, separate and apart from Pasco itself.

25 **COUNT II**

26 **BREACH OF GEM STATE OA**

(Against OPC)

1 112. Simplot is entitled to an order of mandamus or other relief against OPC
2 pursuant to RCW 25.15.136, requiring OPC to fully comply with Simplot's Records
3 Demand to OPC as to Gem State's books and records.

4 **COUNT V**

5 **BREACH OF FIDUCIARY DUTY**

6 **(Against WPC and Tiegs)**

7 113. Simplot realleges and incorporates the foregoing paragraphs of this
8 Complaint as if fully set forth herein.

9 114. WPC, as Pasco's manager, is a fiduciary to Simplot, as a Pasco member. As
10 such, WPC owes Simplot the highest duties of due care and loyalty.

11 115. Tiegs is an officer of Pasco, and therefore also owes fiduciary duties to
12 Simplot.

13 116. WPC has breached its fiduciary duties to Simplot in one or more of the
14 following ways:

- 15 A. by failing to use due care in managing Pasco.
16 B. by engaging in self-dealing transactions with the Tiegs Affiliates to
17 Simplot's detriment and otherwise violating the duty of loyalty.
18 C. by concealing material facts, including corporate information from
19 Simplot.
20 D. by acting in a grossly negligent, reckless and/or willful fashion in
managing and operating Pasco, NFF, and other related entities.

21 117. Tiegs has breached his fiduciary duties to Simplot in one or more of the
22 following ways:

- 23 A. by engaging in self-dealing transactions with the Tiegs Affiliates to
24 Simplot's detriment.
25 B. by concealing material facts, including corporate information from
26 Simplot.

1 C. by acting in a grossly negligent, reckless and/or willful fashion in
2 managing and operating Pasco, NFF, and other related entities.

3 118. Simplot has incurred damages as a direct and proximate result of WPC's and
4 Tiegs's breaches of fiduciary duties, separate and apart from Pasco itself.

5 119. Simplot is entitled to punitive damages against WPC and Tiegs as their
6 breaches of fiduciary duties were willful, calculated, and motivated by greed, and were
7 without regard to public health and safety.

8 **COUNT VI**

9 **BREACH OF FIDUCIARY DUTY**

10 **(Against OPC)**

11 120. Simplot realleges and incorporates the foregoing paragraphs of this
12 Complaint as if fully set forth herein.

13 121. OPC, as Gem State's manager, is a fiduciary to Simplot, as a Gem State
14 member. As such, OPC owes Simplot the highest duties of due care and loyalty.

15 122. OPC has breached its fiduciary duties to Simplot in one or more of the
16 following ways:

- 17 A. by failing to use due care in managing Gem State.
- 18 B. by engaging in self-dealing transactions with the Tiegs Affiliates to
19 Simplot's detriment and otherwise violating the duty of loyalty.
- 20 C. by concealing material facts, including corporate information from
21 Simplot.
- 22 D. by acting in a grossly negligent, reckless and/or willful fashion in
23 managing and operating Gem State.

24 123. Simplot has incurred damages as a direct and proximate result of OPC's
25 breaches of fiduciary duties, separate and apart from Gem State itself.

26

COUNT VIII

BREACH OF PASCO OA

(Against WPC)

130. Simplot realleges and incorporates the foregoing paragraphs of this Complaint as if fully set forth herein.

131. WPC has breached the Pasco OA in one or more of the following ways:

- A. by failing to adequately manage the day-to-day business and ordinary affairs of Pasco in violation of Section 5.1.
- B. by failing to maintain and provide all required Pasco books and records in violation of Sections 5.1(a) and 7.3.

132. Pasco has incurred damages as a direct and proximate result of WPC's breach of the Pasco OA.

COUNT IX

BREACH OF GEM STATE OA

(Against OPC)

133. Simplot realleges and incorporates the foregoing paragraphs of this Complaint as if fully set forth herein.

134. OPC has breached the Gem State OA in one or more of the following ways:

- A. by failing to adequately manage the day-to-day business and ordinary affairs of Gem State in violation of Section 5.1.
- B. by failing to maintain and provide all required Gem State books and records in violation of Section 7.3.

135. Gem State has incurred damages as a direct and proximate result of OPC's breach of the Gem State OA.

COUNT X

BREACH OF FIDUCIARY DUTY

(Against WPC and Tiegs)

1
2
3
4 136. Simplot realleges and incorporates the foregoing paragraphs of this
5 Complaint as if fully set forth herein.

6 137. WPC, as Pasco's manager, is a fiduciary to Pasco. As such, WPC owes
7 Pasco the highest duties of due care and loyalty.

8 138. Tiegs is an officer of Pasco, and therefore also owes fiduciary duties to
9 Pasco.

10 139. WPC has breached its fiduciary duties to Pasco in one or more of the
11 following ways:

- 12 A. by failing to use due care in managing Pasco.
13 B. by engaging in self-dealing transactions with the Tiegs Affiliates to
14 Pasco's detriment and otherwise violating the duty of loyalty.
15 C. by concealing material facts.
16 D. by acting in a grossly negligent, reckless and/or willful fashion in
17 managing and operating Pasco, NFF, and other related entities.

18 140. Tiegs has breached his fiduciary duties to Pasco in one or more of the
19 following ways:

- 20 A. by engaging in self-dealing transactions with the Tiegs Affiliates to
21 Pasco's detriment.
22 B. by concealing material facts.
23 C. by acting in a grossly negligent, reckless and/or willful fashion in
24 managing and operating Pasco, NFF, and other related entities.

25 141. Pasco has suffered damages as a direct and proximate result of WPC's and
26 Tiegs's breaches of fiduciary duties.

1 142. To the extent permitted by law, Pasco is entitled to punitive damages against
2 WPC and Tiegs as their breaches of fiduciary duties were willful, calculated, and motivated
3 by greed, and were without regard to public health and safety.

4 **COUNT XI**

5 **BREACH OF FIDUCIARY DUTY**

6 **(Against OPC and Tiegs)**

7 143. Simplot realleges and incorporates the foregoing paragraphs of this
8 Complaint as if fully set forth herein.

9 144. OPC, as Gem State's manager, is a fiduciary to Gem State. As such, OPC
10 owes Gem State the highest duties of due care and loyalty.

11 145. OPC has breached its fiduciary duties to Gem State in one or more of the
12 following ways:

- 13 A. by failing to use due care in managing Gem State.
14 B. by engaging in self-dealing transactions with the Tiegs Affiliates to
15 Gem State's detriment and otherwise violating the duty of loyalty.
16 C. by concealing material facts.
17 D. by acting in a grossly negligent, reckless and/or willful fashion in
18 managing and operating Gem State.

19 146. Gem State has suffered damages as a direct and proximate result of OPC's
20 breaches of fiduciary duties.

21 147. Gem State is entitled to punitive damages against OPC as its breaches of
22 fiduciary duties were willful, calculated, and motivated by greed, and were without regard
23 to public health and safety.
24
25
26

1 **COUNT XII**

2 **UNJUST ENRICHMENT**

3 **(Against Defendants)**

4 148. Simplot realleges and incorporates the foregoing paragraphs of this
5 Complaint as if fully set forth herein.

6 149. As a result of the foregoing, the Tiegs Affiliates, and therefore Tiegs, and
7 including WPC and OPC, have been unjustly enriched, and Defendants should not be
8 permitted in equity and good conscience to retain the benefits of such unjust enrichment.

9 **COUNT XIII**

10 **BREACH OF PASCO MSA**

11 **(Against WPC)**

12 150. Simplot realleges and incorporates the foregoing paragraphs of this
13 Complaint as if fully set forth herein.

14 151. WPC has breached the Pasco MSA by failing to adequately manage and
15 operate Pasco in violation of Section 1.1 of the Pasco MSA.

16 152. Pasco has incurred damages as a direct and proximate result of WPC's
17 breach of the Pasco MSA.

18 **COUNT XIV**

19 **APPOINTMENT OF RECEIVER FOR PASCO AND GEM STATE**

20 153. Simplot realleges and incorporates the foregoing paragraphs of this
21 Complaint as if fully set forth herein.

22 154. As a result of the foregoing, Simplot has probable rights and interests in the
23 assets and operations of Pasco and Gem State. Those probable rights and interests are in
24 the possession or control of Defendants, and the assets or their revenue-producing potential
25 is in danger of being lost, materially injured and/or impaired.

26

1 155. Consequently, pursuant to Federal Rule of Civil Procedure 66
2 and Local Rule 66, a receiver should be appointed for the Pasco Group and Gem State.
3 Such appointment is reasonably necessary to secure ample justice to the parties and prevent
4 further deterioration to the businesses of the Pasco Group and Gem State. Pleading in the
5 alternative, other remedies are either unavailable or inadequate.

6 **VI. PRAYERS FOR RELIEF**

7 WHEREFORE, Plaintiff requests the following relief:

- 8 1. An order entering judgment in favor of Plaintiff and declaring that each
9 Defendant breached its contractual and fiduciary duties to Plaintiff, Pasco, and Gem State;
- 10 2. An order entering judgment in Plaintiff's favor for compensatory damages in
11 an amount to be proven at trial, but in excess of \$75,000 exclusive of costs and interest,
12 plus punitive damages;
- 13 3. Injunctive relief barring further breaches by Defendants, to preserve the
14 *status quo*, enjoining Defendants from claiming indemnification rights from Pasco or Gem
15 State, or any other injunctive relief necessary under the circumstances;
- 16 4. An order declaring as follows: that Defendants must fully comply with the
17 Simplot Records Demands, and/or any other declarations necessary to implement full relief
18 to Simplot;
- 19 5. An order requiring Defendants to pay Plaintiff's costs of suit, interest at the
20 legal rate, reasonable attorney's fees to the extent permitted by law, including, but not
21 limited to, RCW 25.15.401, incurred in the prosecution of this action;
- 22 6. An order barring WPC and OPC from gaining any benefit from Simplot's
23 derivative claims as these Defendants are wrongdoers;
- 24 7. An order imposing a constructive trust on all profits improperly gained by
25 Defendants from Pasco or Gem State; and/or,
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

8. Such and other further relief as this Court deems just and proper, including, but not limited to, the appointment of a third-party receiver; removal of WPC and OPC as managers of Pasco and Gem State, respectively, and replacement of them by Simplot; removal of Tiegs as an officer of Pasco; removal of any managerial power from Tiegs as to Gem State; and other relief necessary to redress Defendants’ misconduct.

DATED December 2, 2016

YARMUTH WILSDON PLLC

By: /s/ Jeremy E. Roller
Jeremy E. Roller, WSBA No. 32021
1420 Fifth Avenue, Suite 1400
Seattle, WA 98101
Phone: 206.516.3800
Fax: 206.516.3888
Email: jroller@yarmuth.com

THOMPSON COBURN LLP

Robert H. Lang
Kimberly M. Bousquet
Renato Mariotti
Patrick Morales-Doyle
Ryan Gehbauer
(*pro hac vice* applications to be filed)
55 East Monroe Street, 37th Floor
Chicago, Illinois 60603
Phone: 312.580.2242
Fax: 312.580.2201
Email: rhlange@thompsoncoburn.com
kbousquet@thompsoncoburn.com
rmariotti@thompsoncoburn.com
pmoralesdoyle@thompsoncoburn.com
rgehbauer@thompsoncoburn.com

Attorneys for Plaintiff J. R. Simplot Company

DECLARATION

Pursuant to 28 U.S.C. §1746, I, Mark McKellar, President, North American Food Group, at J. R. Simplot Company, declare and certify under penalty of perjury that the foregoing is true and correct.

Executed on December 2nd, 2016

A handwritten signature in cursive script, appearing to read "M. McKellar", is written above a horizontal line.

Mark McKellar