IN THE SUPREME COURT OF THE STATE OF IDAHO

WADSWORTH REESE, PLLC, an Idaho professional corporation; CLARK A. REESE CPA, P.C., an Idaho professional corporation; and WADSWORTH ACCOUNTING CPA, PLLC and Idaho professional limited liability company, *Plaintiffs-Counter Defendants-Respondents* v. SIDDOWAY & COMPANY, PC, an Idaho professional corporation; RANDY SIDDOWAY, an individual, *Defendants-Counterclaimants-Appellants*	Docket No. 46126-2018 Ada County District Court No. CV-OC-2015-21225
SIDDOWAY & COMPANY, PC, an Idaho professional corporation; RANDY SIDDOWAY, an individual, *Counterclaimants-Appellants* v. FREDERICK WADWORTH, an individual, and CLARK A. REEE, and individual, *Counter Defendants-Respondents*	

APPELLANTS' REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT FOR ADA COUNTY. THE HONORABLE JASON D. SCOTT, PRESIDING.

Brett W. Hastings, of Hastings Law Group, LLC, residing in Salt Lake City, Utah, *pro hac vice*, and Jennifer Reid Mahoney, of Kaufman Reid PLLC, residing in Boise, Idaho, for Appellants.

Vaughn Fisher, of Fisher Rainey Hudson, residing in Boise, Idaho, for Respondent

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A. The Proper Context of the Case

In multiple sections of their responsive brief, Appellees mischaracterize this case as merely the efforts of Wadsworth and Reese "to judicially dissociate a third accountant from their business" (Respondent's Brief, p. 1) "and resolve Siddoway's claim that he owned a two-thirds interest in the company and that Reese owned none." (Id., p. 2). Additionally, multiple sections of Appellees' Brief mischaracterize several aspects of the underlying case, irrelevant to this appeal. The most troubling example is Appellees implication that Siddoway wrongfully resigned as a manager of SWR, started a competitive business with Dustin Siddoway, induced employees to leave SWR, and solicited "hundreds of [SWR] clients" to follow. (Id., p. 1.) (Id., p. 2 -

Appellees asserts that Siddoway seeks an unjust enrichment award "for the value of clients that did not follow Siddoway and his nephew to their new business.) (Id., p. 7 – Appellees assert that Siddoway "walked away and invited all of his client to join him . . . when he left to start a new business in a new location with his nephew.").

This incorrect implication was the underlying basis of nearly the entirety of Wadsworth's and Reese's Complaint, and was thoroughly defeated on summary judgment or disproved at trial. (R., Vol. I, pp. 390-91, ¶¶ 19, 24). Following more than two years of protracted litigation and a five-day bench trial, the district court held that Siddoway had not breached any fiduciary duty, did not usurp any benefit belonging to SWR, was not in business with Dustin, did not solicit hundreds of clients to leave SWR, and was not liable to Wadsworth, Reese, or SWR for any amount of money. (R., Vol. I, pp. 396-99).

Contrary to the context implied by Appellees' Brief, this intensively litigated and multifaceted case included Plaintiffs'/Appellees' claims for preliminary injunction, dissociation of Siddoway PC from SWR, breach of fiduciary duty by Siddoway, civil conspiracy to commit breach of fiduciary duty, violation of the Idaho Trade Secrets Act, interference with prospective business advantage, civil conspiracy to interfere with prospective economic advantage, breach of confidence, civil conspiracy to commit breach of confidence, and breach of the Reese Agreement. (R., Vol. I, pp. 32-55).

After more than two years of litigation and a five-day bench trial, all of Plaintiffs'/Appellees' claims were dismissed on summary judgment or defeated at trial, save only one, the effort to dissociate Siddoway PC. It is important to note that the dissociation of

Siddoway PC was not due to any "wrongful conduct" or a willful or persistent "material breach of the operating agreement" (IDAHO CODE ANN. § 30-25-602 (6)), but rather merely because "it was not reasonably practicable to carry on the activities and affairs" of SWR with Siddoway PC as a full member. (R., Vol. I, p. 394).

Appellant trusts that this Court will view this appeal in its true context and not through the tainted lens of the untrue and disproven statements in Appellees' Brief alleging wrongful conduct by Siddoway.

B. Arbitration Legal Fees and Costs

Appellees' Brief largely ignores the three primary legal arguments raised by Appellants regarding the district court's denial of Siddoway's multiple requests for attorney fees and costs related to litigation over the arbitration clause in the Reese Agreement. Specifically, in complex litigation, 1) at what point is it proper for the trial court to consider such an award, 2) what is the proper scope of consideration for such an award, and, in this case 3) did the district court lack jurisdiction, or otherwise err, in hearing Reese's successive Motion to Stay Arbitration after it had already granted Appellants' Motion to Compel Arbitration.

Indeed, it appears that the issue of timing and scope of awards of attorney fees related to arbitrability litigation, as raised in this case, is a matter of first impression in Idaho.

1. Award is Appropriate Immediately Following an Order to Arbitrate

As argued in Appellants' Initial Brief, Appellants contend that award of attorney fees and costs related to the arbitrability proceedings is appropriate at the conclusion of the arbitration

litigation, even if unrelated claims remain in the underlying district court case. Appellants' Initial Brief argues that this contention is supported and consistent with Idaho statute, the plain language of the Reese Agreement, and Idaho Supreme Court precedent.

In response, Appellees' Brief argues, only, that Appellants' Initial Brief misapplies this Court's holding in Grease Spot, Inc. v. Harnes, 148 Idaho 582, 226 P.3d 524 (2010). Appellee is incorrect.

Appellant recognizes that Grease Spot is different than the instant case in that Grease Spot did not include claims outside the contract at issue, as this case does. However, this distinction does not render Appellants' arguments incorrect. To the contrary, in Grease Monkey this Court held that it "became apparent that the [defendants] were the 'prevailing party' for purposes of receiving attorney fees **once they prevailed in compelling arbitration**, thereby terminating consideration of the merits of the action." Grease Spot, Inc., 148 Idaho 582, 586 (2010) (emphasis added). This holding is consistent with the well-established legal principle that when a party raises an objection to an arbitration clause, the court's "inquiry must be limited in scope" addressing only the question, "is there an agreement to arbitrate or is there not." Loomis, Inc. Cudahy, 104 Idaho 106, 109, 656 P.2d 1359, 1362 (1982). Additionally, in Grease Spot this Court held it proper to limit the scope of the award of attorney fees to those "attributed to compelling arbitration." Id.

Because a district court's jurisdiction in arbitrability disputes is strictly limited in scope, and because the resulting award of attorney's fees is also limited in scope, it naturally follows that the "prevailing party" analysis for such awards must also be limited in scope to the

arbitrability proceeding. To conclude otherwise would be inconsistent and require the district court to co-mingle the arbitrability proceeding with causes of action clearly beyond the limited scope of the arbitrability proceeding.

It must be remembered that Reese should never have included the Reese Agreement dispute in the district court action. The Reese Agreement dispute was subject to an unambiguous arbitration clause. Reese improperly included the Reese Agreement dispute in Plaintiffs initial Complaint, along with a myriad of unrelated claims, and then attempted to avoid arbitration by filing multiple motions opposing arbitration, all of which failed.

Consistent with Idaho statue, the plain language of the Reese Agreement, and Idaho Supreme Court precedent, it is proper for a court to award attorney's fees and costs immediately following granting or denying a motion regarding arbitrability. Prevailing party analysis, in such cases, is limited to the arbitrability proceedings only. Siddoway succeeded in compelling arbitration of the Reese Agreement in not one, but two protracted proceedings. Accordingly, Siddoway is entitled to an award of legal fees for successfully compelling arbitration of the Reese Agreement.

2. Reese's Improper Motion to Stay Arbitration

Appellees' Brief contains no direct rebuttal to Appellants' objection to the proceedings related to Reese's successive Motion to Stay Arbitration which was filed after the district court had already granted Appellants' Motion to Compel Arbitration. Suffice it to say that, as detailed in Appellants' Initial Brief, the district court erred in requiring further arbitrability proceedings after issuing the First Arbitration Order.

C. Use of SWR Funds to Pay Reese's Separate Expenses

Appellants' Initial Brief argues that the district court erred by holding that payment of Reese's substantial and separate attorney fees related to the litigation and arbitration of the Reese Agreement was a legitimate business expense of SWR. The primary justification provided by the district court for so ruling was that, at trial, Reese testified that in October 2015 he and Wadsworth voted to have SWR pay Reese's separate legal fees because of Siddoway's "previous claims that he felt like that he was a two-thirds owner" of SWR. (Tr. Vol. I, p. 129 L. 7-9). At trial Wadsworth testified that in October 2015 he and Reese voted to have SWR pay Reese's separate attorney fees to determine "whether or not Clark Reese had membership in [SWR]." (Tr. Vol. I, p. 776:1-7)

Appellants' Initial Brief argues that the weight of the evidence supports a finding that no such vote occurred and that, even if it had occurred, it would not justify payment of tens of thousands of SWR dollars (to which Siddoway had a 1/3 undivided interest as a member of SWR) to pay for a legal dispute in which SWR was not a party.

Appellees' Brief asserts that the evidence is sufficient to support the district court's finding and that use of SWR funds to pay Reese's separate legal fees is appropriate under Idaho law. Appellees' assertions and the holdings of the district court, in this regard, are incorrect as established below.

1. Appellees and the District Court Misconstrue Siddoway's Testimony.

Appellees and the district court reference Siddoway's trial testimony and assert that Siddoway "was claiming he owned two-thirds of [SWR]" in October 2015. (Appellees' Brief, p.

12). However, the cited testimony is taken out of context, and is mis-construed. Siddoway's cited testimony was related to the events surrounding the signing of the Reese Agreement in January 2015, long before the partnership broke down and litigation ensued. Siddoway testified that, in January 2015, if Reese refused to sign the Reese Agreement Siddoway's position was that "I would get back that interest." (Tr. Vol. I, p. 356 L. 11-12). Of course, Reese did sign the Reese Agreement and began making payments to Siddoway and, therefore, Siddoway never demanded that Reese transfer back to him Reese's 1/3 membership interest in SWR. (Tr. Vol. I, p. 175, L. 6-23).

2. Neither Siddoway's nor Reese's Membership Were Contested.

After the Reese Agreement was signed by Reese, Siddoway never claimed to be a defacto 2/3 owner of SWR and Siddoway consistently recognized Reese PC as a 1/3 member of SWR. Moreover, a dispute over who owned what percentage of SWR was never raised as an issue in this case until Wadsworth and Reese testified at trial, as the following timeline and evidence establish:

1) January 28, 2015 – Reese signs the Reese Agreement and commences making payments to Siddoway. (Tr. Vol. I, p. 175, L. 6-23).
2) August 2015 – Reese stops making payments to Siddoway under the Reese Agreement.
3) **October 5, 2015** - Alleged vote by Wadsworth and Reese to have SWR pay Reese's separate legal fees because Siddoway "was claiming he owned two-thirds of [SWR]." (Appellees' Brief, p. 12).

a) It is important to note that the only physical evidence presented to support the alleged vote is Exhibit 74, which does not mention Siddoway's alleged claim of 2/3 ownership. Rather, it evidences a self-dealing transaction between Reese and Wadsworth. (*See* Appellants' Initial Brief, p. 23-25).

4) December 12, 2016 – Appellees file their initial Complaint, which contains no mention or request for relief related to the alleged claim by Siddoway that he owns 2/3 of SWR. (R. Vol I. p. 32-55).

5) January 19, 2016 – Siddoway files an Answer to the Complaint and a Counterclaim. Siddoway's Counterclaim does not assert that he owns 2/3 of SWR. To the contrary, paragraphs 2, 4, and 6 of Siddoway's Counterclaim state that Siddoway PC, Wadsworth PC, and Reese PC are **each** members of SWR. Specifically, Paragraph 6 of the Siddoway's Counterclaim acknowledges that "Reese PC is an Idaho professional corporation in good standing with the Idaho Secretary of State **and a member of [SWR]**." (R. Vol. I, p. 79, ¶ 6) (emphasis added).

6) March 7, 2016 – Wadsworth and Reese file an Answer to Siddoway's Counterclaim expressly admitting to paragraphs 2, 4, and 6 and, thus, acknowledging that Siddoway PC, Wadsworth PC, and Reese PC are **each** members of SWR. (R. Vol. I, p. 137-38, ¶¶ 2, 4, 6).

7) May 24, 2016 – Wadsworth and Reese file an Amended Complaint containing no mention or request for relief related to the alleged claim by Siddoway that he owns 2/3 of SWR. (R. Vol. I, p. 161-80).

8) June 20, 2016 – Siddoway files an Answer and Amended Counterclaim in response to Appellees' Amended Complaint. Again, Siddoway does not assert that he owns 2/3 of SWR. To the contrary, paragraphs 2, 4, and 6 of Siddoway's Amended Counterclaim acknowledge that Siddoway PC, Wadsworth PC, and Reese PC are **each** members of SWR. (R. Vol. I, p. 197-198, ¶¶ 2, 4, and 6).

9) October 19, 2016 – Siddoway files a Motion for Preliminary Injunction with supporting memorandum and affidavit, seeking to enjoin Wadsworth and Reese from using SWR funds to pay Reese's separate legal fees. The memorandum and affidavit each include a statement by Siddoway that Siddoway PC, Reese PC, and Wadsworth PC "each hold a 1/3 membership interest in SWR."

10) November 22, 2016 – Oral argument on Siddoway's Motion for Preliminary Injunction is held. The district court held that, at oral argument, Wadsworth and Reese "did not identify a sound justification – a legitimate business reason – for [SWR] to cover Reese's legal expenses in connection with litigation and arbitration of claims involving the Reese Agreement." (R. Vol. I, p. 263).

11) December 30, 2016 – The district court issues its Order stating that "Siddoway has shown that [SWR] has been paying to litigate and arbitrate claims and issues to which it isn't a party, benefiting Reese but harming Siddoway." (R., Vol. I, p. 263). Accordingly, the district court enjoins Wadsworth and Reese by ordering that "unless and until Plaintiffs demonstrate that [SWR] has a legitimate business reason for covering Reese's legal expenses with respect to claims and issues relating to the Reese

Agreement . . . [SWR] is enjoined from doing so and Reese PC and Wadsworth PC are enjoined from causing [SWR] to do so." (R. Vol. 1, p. 263). While this order was favorable to Siddoway, it essentially invited and enticed Wadsworth and Reese to come up with some reason, any reason, to justify use of SWR funds to pay tens of thousands of dollars of Reese's separate legal fees.

12) January 1, 2017 – (Two days after issuance of the injunction) Wadsworth and Reese vote to increase their management salaries by $4,000 per month, over the objection of Siddoway. (Tr. Vol. I, pp. 888:13 – 891:4)

13) March 20, 2017 – With the permission of the district court, Siddoway files his second Amended Counterclaim. Again, Siddoway does not assert that he owns 2/3 of SWR. To the contrary, paragraphs 3, 5, and 7 of Siddoway's second Amended Counterclaim acknowledge that Siddoway PC, Wadsworth PC, and Reese PC are **each** members of SWR. (R., Vol. I, pg 274).

14) April 10, 2017 – Wadsworth and Reese file an Answer to Siddoway's second Amended Counterclaim expressly admitting to paragraphs 3, 5, and 7, acknowledging that Siddoway PC, Wadsworth PC, and Reese PC are **each** members of SWR. (R. Vol. I, p. 303, ¶¶ 3, 5, 7).

15) November 7, 2017 – Reese testifies at trial, under oath, that Siddoway was claiming he owned 2/3 of SWR in October 2015 and thereafter. Therefore, testified Reese, he and Wadsworth voted to have SWR pay all of Reese's litigation and arbitration attorney fees related to the Reese Agreement. (Tr. Vol. I, pp. 128:4-129:12).

16) November 13, 2017 – Wadsworth testifies, under oath, that in October 2015 he and Reese voted to have SWR pay Reese's separate attorney fees to determine "whether or not Clark Reese had membership in [SWR]." (Tr. Vol. I, p. 776:1-7).

The pleadings, trial testimony, and other circumstantial evidence, clearly and convincingly establish that Wadsworth and Reese did not vote as they testified, but rather, concocted their "2/3 Ownership Argument" long after October 2015, and likely in response to the district court's injunction order, all in an attempt to mask their blatant misappropriation of SWR funds. Indeed, from August 2015 until the date the trial began, neither Siddoway, Reese, nor Wadsworth contested the identity or ownership percentages of the members of SWR.

In holding otherwise, the district court committed clear error.

3. Even if True, Appellees' Theory Does Not Justify use of SWR Funds to Pay Reese's Separate Expenses.

Even if Reese's and Wadsworth's assertions were true, it would not justify the use of tens of thousands of dollars of SWR funds to pay Reese's separate legal fees. Neither the district court nor Appellees identify any statute, case law, or legal principle that would justify use of SWR funds to pay for Reese's personal expenses related to a dispute over a contract to which SWR was not a party. To the contrary, Idaho case law prohibits such action.

This Court has long recognized that majority shareholders can, and often do, apply numerous means to improperly benefit themselves at the expense of minority shareholders.

> Holders of a majority of the voting shares in a corporation, through their ability to elect and control a majority of the directors and to determine the outcome of shareholders' votes on other matters, have tremendous power to use a great variety

> of devices or modes of operation to benefit themselves at the expense of minority shareholders. Here are a few illustrations. **The squeezers may cut off the flow of income to the minority by refusing to declare dividends** or they may deprive minority shareholders of corporate offices and of employment by the company. **At the same time, the squeezers can protect their own income stream from the business by exorbitant salaries and bonuses to the majority shareholder**-officers and perhaps to their relatives, by high rental payments for property the corporation leases from majority shareholders, **or by unreasonable payments under contracts between the corporation and majority shareholders.**
>
> McCann v. McCann, 152 Idaho 809, 816, 275 P.3d 824, 831 (2012) (emphasis added).

In McCann, this Court observed that "courts have analyzed alleged 'oppressive' conduct by those in control in terms of 'fiduciary duties' owed by the majority shareholders to the minority." Id. at 815. "Typically, relief has been granted in non-fraud oppression cases where the majority has engaged in [oppressive] conduct." Id. at 816.

In McCann, the majority shareholders authorized corporate funds "directly to pay [a majority shareholder's personal] expenses." Id. at 832. This Court recognized that payment of a majority shareholder's personal expenses has "an effect on [minority shareholders] above and beyond the effect on every other shareholder. Each of these transactions hurts [the minority shareholder] specifically." Id. In McCann, this Court observed that because the majority shareholders "did not use an alternate and less harmful means of providing for [the majority shareholder], it may be argued that the transactions were not made in good faith." Id. For example, the company "could have issued a dividend that would benefit all shareholders." Id. Because the company did not issue the dividend, the minority shareholder "received no meaningful benefit." Id.

The district court's holding that it was proper for Wadsworth and Reese to use SWR funds to pay Reese's personal expenses is based on insufficient and misconstrued evidence. Even if Appellees' asserted reasoning for making the payments were true, such payments are contrary to Idaho law because, as in McCann, such payments specifically harm the minority member Siddoway. In fact, in this case the use of SWR funds to pay Reese's separate legal fees constitutes a multiplied harm to Siddoway, adding insult to injury. In effect, Wadsworth and Reese used Siddoway's share of SWR assets to finance Reese's litigation against Siddoway. Having done so constitutes a violation of Wadsworth's and Reese's duty of care, loyalty, and their duty to "exercise the **utmost** good faith in managing the [company]." Id. at 830.

D. Derivative v. Direct Actions

Appellees adopt the district courts holding that "neither term [direct or derivative] encompasses an action a limited liability company pursues in its own right." (Aug. R. p. 5). The district Court's holding is incorrect for at least three reasons. First, the district court's analysis is too narrow in scope and misconstrues Idaho statute. Second, the district court's analysis implies that Appellees' Complaint is a direct action, ignoring the fact that Appellees invoked Idaho's derivative action statues in their Complaint, First Amended Complaint, and Second Amended Complaint. Third, if the underlying litigation, initiated by Appellees, is not derivative or direct, what is it?

Idaho statutes provides that "a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights." IDAHO

CODE ANN. § 30-25-801. The district court, apparently, reads this statute as limiting "direct actions" solely to those brought by members of a LLC to enforce that member's rights.

This interpretation is too narrow and misconstrues the relevant statutes.

The derivative action statute, invoked by Appellees on three separate occasions, states that a "member may maintain a derivative action to enforce a right of a limited liability company." IDAHO CODE ANN. § 30-25-802.

Taken together, the context and plain language of the two statutes establish that a member can bring a "direct action" to enforce the member's rights. It naturally follows that, if a member can bring a "direct action" to enforce a member's rights, an LLC can bring a "direct action" to enforce a right of the LLC. However, the rights of an LLC can be enforced in an alternative fashion. A member, under certain circumstances, can enforce a LLC right derivatively (i.e. in lieu of a direct action by the LLC).

This action is a derivative action as evidenced by Appellees' invocation of Idaho's derivative action statutes. Even if the action is a direct action of SWR, it does not justify use of SWR funds to pay the separate legal expenses of the other Plaintiffs and Counterclaim Defendants. As established in Section V. above, such payments benefit Wadsworth and Reese only and constitute a specific harm to Siddoway.

In effect, Wadsworth and Reese used Siddoway's share of SWR assets to finance their protracted litigation against Siddoway and the other Defendants. To add insult to injury, after more than two years of litigation and a five-day bench trial, and expenditure of approximately $300,000 of SWR funds, Wadsworth and Reese recovered nothing for themselves or the

company. Having done so constitutes a violation of Wadsworth's and Reese's duty of care, loyalty, and their duty to "exercise the **utmost** good faith in managing the [company]." McCann, at 815.

E. Siddoway's Unjust Enrichment Claim

Appellees contend that Siddoway should receive nothing from Reese in unjust enrichment for the following reason:

1) Siddoway conveyed no benefit on Reese.
2) The voiding of the Reese Agreement should be viewed as having placed the parties "back in the position they were in as if [the Reese Agreement] had never been signed." (Respondents' Brief, p. 18.)
3) Siddoway didn't contribute as much to SWR as Reese.

Appellees arguments are insufficient to justify denial of recovery for Siddoway in unjust enrichment and, in many respects, supports a substantial recovery for Siddoway.

1. The Benefit Conveyed on Reese is Undeniable and Substantial.

Appellees assert that the district court erred in holding that "Reese PC undeniably benefited to some degree" from the actions of Siddoway. (R., Vol. I, p. 401, ¶ 19). Not only is Reese's assertion incorrect, it is improperly inserted into this appeal because Appellees filed no appeal on that issue.

Be that as it may, Appellees' assertion provides an opportunity to, once again, detail the undeniable and substantial benefit conferred on Reese by Siddoway:

1) Prior to January 2014, Reese had never been a partner in an accounting firm and was an employee of Siddoway PC. (R., Vol. I, p. 385 ¶ 2).
2) In November 2013, Siddoway and Reese began discussing becoming partners or co-owners of an accounting firm, on terms that involved Reese buying a one-half interest in Siddoway's practice, as Siddoway had spent 20-plus years establishing a client base but Reese had not. R., Vol. I, p. 386, ¶ 4.
3) Siddoway and Reese agreed on a formula to determine an amount Reese would pay Siddoway to become his equal partner, which included taking the prior year's annual collections of Siddoway PC, multiplying that number by a factor of .80, and then splitting the number in half. (Tr. 136:21-140:13).
4) The formula resulted in an amount Reese would pay Siddoway of approximately $200,000.00. (Tr. 145:1-12).
5) SWR was organized on December 20, 2013 and business operations commenced on January 1, 2014.
6) Reese was recognized by Siddoway, and prompted by Siddoway, as an equal partner/member with Siddoway from the moment SWR was organized in December 2013, and at all times thereafter. (Tr. Vol. I, p. 146:15 – 146:20) (Tr. Vol. I, p. 154:15-155:17).
7) When SWR commenced business operations in January 2014, Reese brought only 7 or 8 clients to SWR. (R., Vol. I, p. 386, ¶ 7).

8) Siddoway, by contrast, brought hundreds of clients into SWR, numbering around 450, that Siddoway had developed in his 20-plus years of prior practice. (Id. at ¶ 8).

9) Siddoway was instrumental in SWR purchasing the Harding client base. SWR had this opportunity because of the past relationship between Siddoway and Harding. (Id. at ¶ 6)

10) Siddoway recommended and introduced Reese to many of the Siddoway PC clients and many of the largest Harding clients, thus giving Reese the opportunity to service many of them as well as the opportunity to benefit from the resulting revenue to SWR. (Id. at ¶ 8).

11) Nevertheless, in approximately May 2014, Reese contended that there was no agreement between himself and Siddoway because he and Siddoway had not completed negotiations. (Tr., Vol. I, p. 168:16-170:6).

12) Siddoway and Reese, with the assistance of Wadsworth, discussed Reese's disavowment of the prior agreement for several months.

13) Ultimately, on January 28, 2015, the parties signed the Reese Agreement, **which included an effective date of January 1, 2014**, the date SWR commenced business operations. (Ex. 14, Vol. I, p. 73-77).

14) On January 28, 2015, Reese also signed the associated Promissory Note, promising to pay Siddoway $200,000, which included an amortization schedule **also reflecting an effective date of January 1, 2014**, the date SWR commenced business operations. (Ex. 14, Vol. I, p. 78-79) (Ex. 14, Vol. I, p. 238) (emphasis added).

15) The Reese Agreement provides that Reese PC must pay Siddoway PC $200,000 for the right to receive a one-third membership interest in SWR. (R., Vol. I, p. 373) (Ex. 14, Vol. I, p. 73).

16) From December 20, 2013 forward, Reese has been, and remains a member of SWR, with all of the rights appurtenant to such membership, including management rights, rights to distributions, and employment by SWR.

It is undeniable that Siddoway conveyed upon Reese a very valuable benefit by transitioning the Siddoway PC clients and practice into SWR, leveraging his prior relationship with Harding for the benefit of SWR, allowing Reese to be Siddoway's equal partner, and introducing and prompting Reese to hundreds of clients. It is similarly undeniable that Siddoway was induced to do so by Reese's promise to pay him approximately $200,000, which Reese later disavowed and then, through this litigation, sought to pay Siddoway nothing.

2. The Voiding of the Reese Agreement Supports Siddoway's Unjust Enrichment Claim.

Appellees' Brief correctly states that once the Reese Agreement was deemed void in arbitration, the parties should "be put back in the position they were in as if it had never been signed. (Respondents' Brief, p. 18). However, Appellees incorrectly represent to the Court that this date is January 28, 2015 (more than a year after SWR was organized). Appellees fail to mention that, although the Reese Agreement was executed on January 28, 2015, it is **effective as of January 1, 2014** by the express agreement of the parties. Which, of course, is the date SWR began business operations. Moreover, the express language of ¶ 8 of the Reese Agreement

unambiguously states the relationship of the parties and the primary purpose of the Reese Agreement effective as of **January 1, 2014**:

> 8. RELATIONSHIP OF THE PARTIES. Relationship between the parties is that of Sellers and Buyer. The parties are not partners or joint ventures, nor is there any other type of relationship. **This agreement is intended to create such a relationship since the seller and buyer will both become owners and members of Siddoway, Wadsworth & Reese, PLLC [SWR].**
>
> (Ex. 14, Vol. I, p. 233, ¶ 8) (emphasis added)

Ironically, and quite tragically, it is Reese's continued denials and double-speak, regarding how he acquired his equal partnership in SWR, that led to the deterioration of the relationship between Wadsworth, Reese, and Siddoway. Over time the distrust between the parties grew leading Siddoway to seek buyout of his membership interest in SWR and, when that failed, to resign as a manager. Later, when Dustin, of his own accord, left SWR to start his own CPA firm, taking with him other employees and clients of SWR, Wadsworth and Reese blamed Siddoway. Wadsworth and Reese then sued Siddoway and others, using SWR funds to pay for virtually all of the litigation and arbitration costs because, in Reese's words "I felt like what he was doing was unethical and not right, and we wanted him – basically, we wanted him dissociated. That was the reason." (Tr., Vol. I, p. 177:4-7).

Despite Appellees' multiple statements to the contrary, following more than two years of protracted litigation and a five-day bench trial, the district court held that Siddoway had not breached any fiduciary duty, did not usurp any benefit belonging to SWR, was not in business with Dustin, did not solicit hundreds of clients to leave SWR, and was not liable to Wadsworth, Reese, or SWR for any amount of money. (R., Vol. I, pp. 396-99).

A benefit was conferred on Reese by Siddoway. Reese enjoys the benefit to this day and will continue to enjoy the benefit into the foreseeable future. Under the circumstances, it would be unjust for Siddoway to be denied recovery of the value of the benefit. In denying Siddoway such recovery, the district court has committed reversible error.

IV. CONCLUSION

Siddoway is entitled to an award in the amount of his attorney fees and costs related to successfully compelling arbitration of the Reese Agreement. It was improper for Wadsworth and Reese to cause SWR to pay virtually all of the litigation costs in this matter, including Reese's separate legal expenses. Improper use of SWR funds constitutes defacto disproportionate distributions in favor of Reese and Wadsworth and is a breach of their utmost fiduciary duties owed to Siddoway. Reese has been unjustly enriched by Siddoway and, therefore, Siddoway is entitled to a judgment against Reese. Siddoway is entitle to, and requests, an award of attorney's fees and costs as mandated by the Reese Agreement and Idaho statute. Accordingly, Appellant respectfully requests that this Court take appropriate action to remedy the errors of the district court in this matter.

Respectfully submitted this 12th day of February, 2019.

/s/Brett W. Hastings
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