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12  
13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **WESTERN DIVISION**

16 **JURY TRIAL DEMANDED**

17 STEVEN TARACEVICZ, on behalf of  
18 himself, the WESTERN GLOBAL  
AIRLINES, INC. EMPLOYEE  
19 STOCK OWNERSHIP PLAN, and all  
other similarly situated individuals,

20 Plaintiff,

21 v.

22 PRUDENT FIDUCIARY SERVICES,  
23 LLC, MIGUEL PAREDES,  
WESTERN GLOBAL AIRLINES,  
24 INC., THE BOARD OF DIRECTORS  
OF WESTERN GLOBAL AIRLINES,  
25 INC., JAMES K. NEFF, CARMIT P.  
NEFF, and JOHN and JANE DOES 1  
26 to 5,

27 Defendants.

Case No. 2:21-cv-9615

**CLASS ACTION COMPLAINT**

1 **INTRODUCTION**

2 1. Plaintiff Steven Taracevicz, by his undersigned attorneys, on behalf of the  
3 Western Global Airlines, Inc. Employee Stock Ownership Plan and similarly situated  
4 participants in the plan, brings this action pursuant to the Employee Retirement Income  
5 Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, seeking plan-wide relief on  
6 behalf of the Western Global Airlines, Inc. Employee Stock Ownership Plan (the  
7 “Western Global ESOP” or the “ESOP”) and on behalf of a class of participants (and  
8 their beneficiaries) vested in the ESOP. Plaintiff alleges the following based upon his  
9 personal knowledge and the independent investigation of Counsel.

10 2. Western Global Airlines, Inc. (the “Company” or “Western Global”)  
11 employs several hundred people, and, until October 23, 2020, was privately owned by  
12 Defendants James K. (“Jim”) Neff and Carmit P. Neff (collectively, along with any Doe  
13 Defendants who sold shares in the Company to the ESOP, the “Sellers” or “Seller  
14 Defendants”).

15 3. In June 2020, the Seller Defendants created the Western Global ESOP for  
16 the purpose of purchasing 37.5% of the Sellers’ private Western Global stock. Shortly  
17 following its creation, Defendants caused the ESOP to purchase 375,000 shares of  
18 Company stock from the Seller Defendants at an inflated price of \$510 million or \$1,360  
19 per share.

20 4. The newly created ESOP did not have any money to purchase the Western  
21 Global stock from the Sellers, so the ESOP borrowed the entire purchase price from the  
22 Company.<sup>1</sup>

23 5. Western Global, in turn, lacked sufficient money to *lend* the ESOP the full  
24 \$510 million purchase price. To raise those funds, the Company issued approximately  
25 \$350 million in junk bonds. The Company originally offered the bonds at an interest  
26 rate of approximately 8.25%. That interest rate, however, turned out to be insufficient

27 \_\_\_\_\_  
28 <sup>1</sup> The purchase and loan transactions are collectively referred to herein as the “ESOP Transaction” or “Transaction.”

1 to attract investors, forcing the Company to raise the interest rate above 9%, well above  
2 the usual rate at which a company would seek to borrow money to finance an ESOP  
3 transaction. Ultimately third-party demand for the junk bonds was insufficient to fund  
4 the ESOP Transaction and Jim Neff ended up purchasing a majority of the junk bonds.

5 6. The Sellers, in other words, saddled the Company with enormous debt at  
6 exorbitant interest rates in order to pay themselves \$510 million via the ESOP, while  
7 retaining full control over the Company and its day-to-day operations and loaning the  
8 company the money to pay themselves at over 9% interest.

9 7. There is no recognized market for private stock in a company like Western  
10 Global, so the price the ESOP paid for the Sellers' stock was determined by a valuation  
11 report. The Sellers controlled the valuation upon which the purchase price was based.  
12 The valuation documents related to Western Global's stock are, and continue to be,  
13 controlled by the Seller Defendants. Plaintiff and other employee-participants have  
14 never been given access to the valuation reports underlying the value of the Western  
15 Global stock in their retirement accounts.

16 8. Presumably, according to that valuation, the 37.5% stake the ESOP  
17 purchased was worth around \$510 million—the ultimate sale price. So that's how much  
18 the Company loaned the ESOP and how much the Sellers, in turn, received. However,  
19 the valuation report (i.e., the stock appraisal) relied upon unreliable and unrealistic  
20 projections of Western Global's future cash flows and earnings to justify the \$510  
21 million purchase price. For example, the stock appraisal relied heavily on a discounted  
22 cash flow method of valuation where the stock's value is driven by Western Global's  
23 financial projections of future cash flows and earnings. These values were inflated by  
24 the Selling Board Members,<sup>2</sup> who controlled those projections and were conflicted  
25 because they directly benefited from the inflation of the amount they received from the

26 \_\_\_\_\_  
27 <sup>2</sup> As further explained below, the "Selling Board Members" are Defendants Jim Neff  
28 and Carmit P. Neff, who were owners of the Western Global stock and members of  
the Board of Directors for Western Global Airlines, Inc. at the time of the ESOP  
Transaction.

1 ESOP. The stock appraisal also failed to account for the control the Selling Board  
2 Members retained over the Company.

3 9. As of December 2020, the Company reported that the shares were worth  
4 only \$328 million. As a result, ESOP participants were forced to purchase Western  
5 Global shares for their 401(k) account at \$1360 *even though* the shares were worth just  
6 \$875 on the day they were actually allocated to participants' accounts: December 31,  
7 2020.

8 10. Despite the immediate, massive loss, the ESOP must pay yearly principal  
9 and interest on the full \$510 million loan it received from the Company. And since the  
10 Transaction, the entirety of the retirement contributions that Western Global has made  
11 to the ESOP accounts have been used for that purpose.

12 11. Unsurprisingly, Plaintiff and other employee-participants (whose ESOP  
13 retirement accounts were used to purchase the 37.5% of Western Global stock from the  
14 Sellers) were not given the chance to negotiate or otherwise take part in the  
15 determination of the price the ESOP paid for Western Global stock. They only found  
16 out about the ESOP Transaction after it was completed and the \$510 million purchase  
17 price was approved.

18 12. Rather than involving the employee-participants directly, the primary  
19 Sellers who were members of the Board of Western Global—the “Selling Board  
20 Members”—hand-picked Defendant Prudent Fiduciary Services, LLC (“PFS”) and its  
21 owner, Defendant Miguel Paredes (together, “the Trustee”), to supposedly “represent”  
22 the ESOP and its participants before and after the ESOP Transaction. The Selling Board  
23 Members retained: (i) control of Western Global because, as Board members, they  
24 retained power over corporate decisions, and (ii) power over PFS because, as Board  
25 members, they retained the power to remove PFS from its Trustee position. In turn, the  
26 Trustee (who is appointed and can be removed by the Selling Board Members)  
27 “negotiated” the purchase price on behalf of the ESOP and now votes all shares of  
28

1 Company stock the ESOP holds. Thus, the Selling Board Members effectively retained  
2 control over the Trustee as well.

3 13. Supposedly acting on behalf of the ESOP, the Trustee approved the \$510  
4 million purchase price, even though that amount exceeded the fair market value of the  
5 stock.

6 14. Moreover, given that (1) the ESOP purchased only 37.5% of the Company,  
7 and (2) the Sellers effectively control the Trustee who is entitled to vote those shares,  
8 the ESOP participants have no power or control over Western Global. As a result, the  
9 price the ESOP paid for the stock should have reflected a steep lack-of-control discount.  
10 But the Trustee approved a purchase price that did not reflect a sufficient discount.

11 15. Ultimately, the ESOP Transaction allowed the Sellers to cash out of their  
12 Western Global stock for significantly more than it was worth. And by creating the  
13 ESOP, the Sellers created a buyer to purchase their interest without having to give up a  
14 scintilla of control, and without having to negotiate the price for their stock with a truly  
15 independent third-party buyer.

16 16. In short, the ESOP significantly overpaid for the stock it purchased from  
17 the Sellers, causing ESOP participants to suffer monetary losses in their retirement  
18 accounts. The ESOP Transaction also left the ESOP with significant debt to the  
19 Company, all while tying participants' retirement futures—now entirely invested in  
20 Western Global—to a company that itself became deeply indebted in order to finance  
21 the transaction. In the meantime, the Seller Defendants walked away with hundreds of  
22 millions.

23 17. The actions of the Trustee and the Sellers violate ERISA in multiple  
24 respects.

25 18. Under ERISA, the Trustee has a fiduciary obligation to act prudently and  
26 loyally on behalf of the ESOP and its participants. It must act not for the benefit of the  
27 Sellers, but with an “eye single” toward the interests of the ESOP and its participants.  
28 That means, among other things, that the Trustee must adequately investigate the

1 transaction and cannot agree to a deal that no reasonable arm’s-length investor would  
2 agree to. Yet that is exactly what happened here, causing significant losses to the  
3 participants’ ESOP retirement savings.

4 19. As for the Sellers, they are “parties-in-interest” to and co-fiduciaries of the  
5 Plan. Under ERISA, that means they cannot sell their shares to the Plan for more than  
6 fair market value. Again, however, that is exactly what happened here, generating  
7 potentially hundreds of millions in excess profits for the Sellers.

8 20. Plaintiff brings this action to recover the losses incurred by the Plan and to  
9 disgorge the profits wrongfully obtained by the Sellers.

10 **JURISDICTION AND VENUE**

11 21. This action arises under Title I of ERISA, 29 U.S.C. §§ 1001 et seq., and  
12 is brought by Plaintiff under ERISA § 502(a), 29 U.S.C. § 1132(a), to require the  
13 Trustee to make good to the Plan losses resulting from its violations of the provisions  
14 of Title I of ERISA, to obtain appropriate equitable relief against the Trustee and the  
15 Seller Defendants, to restore to the Plan any profits that have been made by breaching  
16 fiduciaries and parties-in-interest through the use of Plan assets, and to obtain other  
17 appropriate equitable and legal remedies in order to redress violations and enforce the  
18 provisions of ERISA.

19 22. **Subject Matter Jurisdiction.** This Court has subject matter jurisdiction  
20 over this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(a), 29 U.S.C. § 1132(a).

21 23. **Personal Jurisdiction.** This Court has personal jurisdiction over  
22 Defendants because they transact business in, and have significant contacts with, this  
23 District, and because ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), provides for  
24 nationwide service of process.



1           30. At the time of the ESOP Transaction, the Trustee was a fiduciary of the  
2 Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because it was  
3 the Plan’s trustee within the meaning of ERISA § 403(a), 29 U.S.C. § 1103(a), and  
4 because it exercised discretionary authority or discretionary control respecting  
5 management of the Plan, and/or exercised authority or control respecting management  
6 or disposition of the Plan’s assets, and/or had discretionary authority or discretionary  
7 responsibility in the administration of the Plan.

8           31. As Trustee, Defendants PFS and Defendant Paredes were named  
9 fiduciaries within the meaning of ERISA § 402(a), 29 U.S.C. § 1102(a), and under the  
10 terms of the written instruments under which the Plan was established and maintained,  
11 including the Western Global, Inc. Employee Stock Ownership Trust.

12           32. Throughout their terms as trustee of the Plan, including at the time of the  
13 ESOP Transaction, Defendant PFS and Defendant Paredes were service providers and  
14 thus parties-in-interest to the Plan within the meaning of ERISA § 3(14), 29 U.S.C. §  
15 1002(14).

16           **C. Seller Defendants**

17           33. Seller Defendants Jim Neff, Carmit P. Neff, and Doe Defendants  
18 collectively sold a 37.5% interest in Western Global to the ESOP for \$510 million in  
19 2020.

20           34. Defendant Jim Neff is and was at the time of the ESOP Transaction the  
21 Founder and CEO of Western Global and a member of the Board of Directors. He was  
22 also a selling shareholder in the ESOP Transaction. On information and belief, he may  
23 be found in this District, where he has conducted business with the Trustee.

24           35. Defendant Carmit P. Neff was at the time of the ESOP Transaction a  
25 Director of Western Global. He was a selling shareholder in the ESOP Transaction. On  
26 information and belief, he may be found in this District, where he has conducted  
27 business with the Trustee.

28

1           36. The members of Western Global’s Board of Directors had, at all relevant  
2 times, the power to appoint and remove the Trustee of the ESOP and the Plan  
3 Administrator. As such, they each exercised discretionary authority or discretionary  
4 control respecting management of the ESOP and each are fiduciaries with respect to the  
5 Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

6           37. Further, each of the Seller Defendants was a party-in-interest to the ESOP  
7 within the meaning of ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A), because each was,  
8 at all relevant times, a Board member with authority to appoint the ESOP Trustee and  
9 thus a fiduciary within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), and/or  
10 each of the Seller Defendants was, at all relevant times, a party in interest to the ESOP  
11 within the meaning of ERISA § 3(14)(H), 29 U.S.C. § 1002(14)(H), because each  
12 owned 10% or more of Western Global.

13           **D. John and Jane Does 1-5**

14           38. Plaintiff does not currently know the identity of other Seller Defendants,  
15 if any. When the identities of those not currently named, if any, are ascertained, Plaintiff  
16 will seek leave to join them under their true names.

17           **E. Board of Directors and its Members**

18           39. At the time of the Transaction there were two members of the Board of  
19 Directors for Western Global Airlines, Inc: Defendants Jim Neff and Carmit P. Neff,  
20 who together are referred to as the “Selling Board Members.” The two Selling Board  
21 Members had the power to appoint and did appoint Miguel Paredes and PFS together  
22 as Trustee to the Western Global Airlines Inc. ESOP prior to the ESOP Transaction.  
23 The two Selling Board Members thus had a fiduciary duty to monitor the Trustee’s  
24 actions with respect to the Transaction.

25           40. Based on the powers, actions and duties described herein, at all relevant  
26 times the Board of Directors and its members were fiduciaries of the ESOP within the  
27 meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because they exercised  
28 discretionary authority or discretionary control respecting management of the Plan,

1 and/or exercised authority or control respecting management or disposition of the Plan’s  
2 assets, and/or had discretionary authority or discretionary responsibility in the  
3 administration of the Plan.

4 **F. The Company**

5 41. The Company, Western Global Airlines, Inc. is joined as a party defendant  
6 pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that  
7 complete relief can be granted. Western Global Airlines, Inc. may be found in this  
8 District because it conducts business in this District.

9 **FACTUAL ALLEGATIONS**

10 **A. Western Global Airlines Inc.**

11 42. Western Global was founded in 2013 by Jim and Sunny Neff. The  
12 Company bills itself as an innovative and leading air cargo transportation company. It  
13 serves more than 400 airports in 134 countries. Before October 2020, the Neff family  
14 (including the Seller Defendants) were 100% owners of Western Global.

15 43. Western Global’s corporate headquarters is in Estero, Florida.

16 44. Western Global is incorporated in Delaware.

17 45. Western Global stock is not and never was readily tradable on an  
18 established securities market.

19 **B. The Plan**

20 46. Western Global adopted the Plan with an effective date of January 6, 2020.

21 47. The Plan is a pension plan within the meaning of ERISA § 3(2), 29 U.S.C.  
22 § 1002(2), and is subject to ERISA pursuant to ERISA § 4(a)(1), 29 U.S.C. §  
23 1003(a)(1).

24 48. The Plan is identified in Department of Labor filings as a “Leveraged  
25 ESOP,” and it is designed to invest primarily in the employer securities of Western  
26 Global.

1           49. The Plan is an individual account plan, or defined contribution plan, under  
2 which a separate individual account was established for each participant. Employees of  
3 Western Global participate in the Plan.

4           50. The Plan's 2020 Form 5500 states that it has 389 participants.

5           51. The Plan's 2020 Form 5500 and Summary Plan Description (SPD)  
6 identifies the Western Global Board of Directors acting for the Company as the  
7 Administrator of the Plan.

8           52. Western Global is the sponsor of the Plan within the meaning of ERISA  
9 § 3(16)(B), 29 U.S.C. § 1002(16)(B). Western Global also is the Plan's Administrator,  
10 within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

11           53. The Plan is established and maintained pursuant to a written document  
12 known as the Plan Document. The assets of the Plan are held in trust, which is governed  
13 by the Western Global, Inc. Employee Stock Ownership Trust Agreement.

14           54. The Plan Administrator has exclusive responsibility and authority to  
15 control and manage the operation and administration of the Plan.

16           55. The Trustee, in turn, is responsible for investing and holding Trust Assets,  
17 voting shares of Company Stock held by the Plan, and making distributions from the  
18 Plan. The Trustee was responsible for negotiating and approving the share price for the  
19 Transaction.

20           56. Based on the foregoing (and on information and belief, under the terms of  
21 the Plan Document), the Board of Directors (acting for the Company) and the Trustee  
22 are fiduciaries with respect to the Plan.

23           57. Western Global is and was at the time of the ESOP Transaction a party in  
24 interest to the Plan under ERISA § 3(14), 29 U.S.C. § 1002(14).

25           58. To effectuate their planned sale of Western Global, the Sellers established  
26 the ESOP, an ERISA-protected defined contribution plan where employer contributions  
27 made on behalf of employees are invested in the employer's stock. ERISA § 407(d)(6),  
28

1 29 U.S.C. § 1107(d)(6); *see also* 29 C.F.R. § 2550.407d-6 (definition of the term  
2 “employee stock ownership plan”).

3 59. The employer contributions, invested in employer stock, are part of  
4 employee compensation and comprise an important part of employee retirement  
5 savings.

6 60. Because—and only because—an ESOP contribution qualifies as employee  
7 compensation, an employer can deduct the total value of its ESOP contribution from its  
8 income tax liability as an ordinary business expense. 26 U.S.C. § 404; 26 C.F.R.  
9 § 1.404(a)-1(b).

10 61. As alleged further below, ERISA prohibits the sale of property, including  
11 common stock, by officers and directors of a company to a retirement plan sponsored  
12 by the company. ERISA § 406(a), 29 U.S.C. § 1106(a).

13 62. Here, because the Western Global stock that the Sellers sold to the ESOP  
14 does not trade on a public market, the share value is determined annually by a stock  
15 appraiser or valuation firm. The valuation of Western Global stock is heavily  
16 determined by a discounted cash flow method of valuation where the stock’s value is  
17 driven by financial projections of Western Global’s future cash flow and earnings,  
18 which are generated by the Selling Board Members.

19 63. To complete the planned sale of Western Global to the ESOP, two of the  
20 Sellers, Jim and Carmit Neff, acting as Board members, appointed Paredes and PFS as  
21 the Trustee of the ESOP to represent the ESOP in the Transaction.

22 64. The Trustee received consideration for its own personal account from  
23 Western Global for its services in the ESOP Transaction, in the form of fees and, on  
24 information and belief, an indemnification agreement, under a contract made when the  
25 Sellers still 100% owned Western Global.

26 65. Defendant PFS was founded in February 2017. It registered as a limited  
27 liability company in California on February 24, 2017.

28

1           66. On October 23, 2020, the Plan purchased from the Seller Defendants,  
2 directly or indirectly, 375,000 shares of Western Global common stock for \$510  
3 million. At that time, Western Global became 37.5% employee owned.

4           67. To complete the ESOP Transaction, the Plan entered into a \$510 million  
5 loan agreement with Western Global to purchase the shares of Western Global common  
6 stock from the Sellers.

7           **C. Sellers Structured the Transaction to Retain Control over the**  
8           **Company, but the \$510 Million Purchase Price Was Not Adequately**  
9           **Discounted for the ESOP's Lack of Control.**

10          68. Jim Neff was CEO and a Director of Western Global prior to, at the time  
11 of, and after the ESOP Transaction, and continues in that role at present.

12          69. At the time of the ESOP Transaction, Sellers were all parties-in-interest to  
13 the Plan under ERISA § 3(14), 29 U.S.C. § 1002(14), as 10 percent or more  
14 shareholders, directly or indirectly, of Western Global, and/or as directors, and/or as  
15 officers or individuals having powers or responsibilities similar to those of officers.  
16 (They were also fiduciaries.)

17          70. As discussed above, the Sellers ensured they retained control over Western  
18 Global's Board and operations, despite the contemplated sale to the ESOP, by selling  
19 only 37.5% of the Company's stock and by retaining control over the Trustee through  
20 their appointment power.

21          71. The powers to determine the Board members and to manage a company's  
22 operations are the main hallmarks of control over a corporation. No rational buyer,  
23 acting at arm's-length, would pay fair market value for a company if the buyer did not  
24 obtain control over the purchased company. And few buyers would be willing to buy a  
25 significant stake in a company if they could obtain no control over the company.

26          72. Because the ESOP did not gain any control over Western Global as a result  
27 of the Transaction, the purchase price the ESOP paid should have been heavily  
28 discounted, to reflect the lack of control. However, the valuation which was used to set

1 the purchase price of \$510 million for the ESOP Transaction was not adequately  
2 discounted for the utter lack of control that the ESOP obtained after it purchased the  
3 Company.

4 **D. The Transaction Price Reflected Inaccurate Financial and Economic**  
5 **Inputs.**

6 73. The Selling Board Members, James and Carmit Neff, controlled Western  
7 Global prior to the ESOP Transaction and provided financial projections to the Trustee  
8 for the valuation for the ESOP Transaction. The Selling Board Members, who stood to  
9 gain from the ESOP paying an inflated amount for the WGA stock, were incentivized  
10 to provide unrealistic financial projections for use in the stock valuation.

11 74. The factual allegations in this paragraph will likely have evidentiary  
12 support after a reasonable opportunity for further investigation or discovery. The  
13 Trustee did not perform due diligence in the course of the ESOP Transaction similar to  
14 the due diligence that is performed by third-party buyers in large corporate transactions.  
15 The Trustee's due diligence in the ESOP Transaction was less extensive and thorough  
16 than the due diligence performed by third-party buyers in corporate transactions of  
17 similar size and complexity. The Plan overpaid for Western Global stock in the ESOP  
18 Transaction due to the Trustee's reliance on unrealistic growth projections, unreliable  
19 or out-of-date financials, improper discount rates, inappropriate comparable companies,  
20 and/or its failure to test assumptions, failure to question or challenge underlying  
21 assumptions, and/or other factors that rendered its valuation of Western Global stock in  
22 the ESOP Transaction faulty. The valuation likewise did not adequately reflect the  
23 diminished value of the Company as a result of the \$350 million junk bond offering  
24 used to finance the ESOP. The Company issued those bonds at an inflated interest rate  
25 to attract investors, saddling the Company with debt that was not adequately reflected  
26 in the valuation. Nor did the valuation adequately reflect the fact that Congress  
27 demanded WGA repay a \$34 million loan it had received as part of the Covid-19 relief  
28 package known as the Paycheck Protection Act. Due to the Plan's overpayment, the

1 Plan’s participants, including Plaintiff, received diminished stock allocations, saw their  
2 Plan take on excessive debt to finance the Transaction, and suffered losses to their  
3 individual Plan account.

4 75. The Sellers originally sought to sell up to 49% of Western Global to the  
5 ESOP; however, that required selling hundreds of millions of dollars in junk bonds that  
6 the Sellers were ultimately unable to sell.

7 76. In August of 2020, the Sellers tried to raise \$420 million through junk  
8 bonds which would allow the Sellers to cash out of a large part of their interest in  
9 Western Global, Inc. The Sellers originally tried to sell the junk bonds at a yield of  
10 8.25% to 8.5%. However, the Sellers were forced to increase the yield on the junk bonds  
11 to rates ranging from 8.75% to 9% (and in some cases over 10%), which reporters  
12 viewed as “a sign of tepid demand from potential investors” and ultimately the Sellers  
13 were forced to reduce the junk bond offering to \$350 million.

14 77. The Trustee had incentives to act in favor of the Seller Defendants in the  
15 ESOP Transaction in breach of its duty of loyalty to the Plan. These incentives included  
16 the possibility of business from sellers of companies who understood that the Trustee  
17 applied a lesser degree of due diligence in ESOP purchases of businesses than is typical  
18 for non-ESOP-buyers’ purchases of businesses, and engagement as the Plan’s ongoing  
19 Trustee after the ESOP Transaction and the fees paid for that engagement.

20 78. The Trustee is liable to the Plan for the difference between the price paid  
21 by the Plan and the fair market value of Western Global shares at the time of the ESOP  
22 Transaction.

23 79. The Seller Defendants are liable to the Plan to repay the difference between  
24 the price they received and the fair market value of their Western Global shares at the  
25 time of the ESOP Transaction.

26 80. The terms of the Transaction required Western Global to make  
27 contributions in amounts sufficient for the ESOP to service the debt, which puts  
28 financial strain on the Company. Specifically, the ESOP Transaction also negatively

1 impacted Western Global's future cash flows because the Company is obligated to  
2 contribute \$230 million to the ESOP from 2021 to 2025 just to allow the ESOP to make  
3 all loan payments due. And because the Company's contributions to the ESOP so far  
4 have gone entirely to the payment of interest and principal on the loan, participants have  
5 received less for their own retirement accounts.

6 81. According to the ESOP's financial statements filed with the Department  
7 of Labor, the ESOP reported that the value of Western Global stock was \$875 per share,  
8 or \$328,188,750 in the aggregate, on December 31, 2020. Thus, the value of the  
9 Western Global stock reported by the ESOP a couple months after the sale was only  
10 64% of what the ESOP paid for it.

11 82. Contributions made to employees' individual accounts are an important  
12 part of Western Global employee compensation under ERISA. *See* 26 U.S.C. § 404; 26  
13 C.F.R. § 1.404(a)-1(b).

14 83. The ESOP is wholly undiversified, meaning the Company is the ESOP's  
15 only investment. The retirement savings of Plaintiff and other ESOP participants  
16 therefore depend on the Company continuing to be a viable business with a steadily  
17 increasing value. Yet the Company has been significantly weakened by the Transaction,  
18 and the Western Global stock the ESOP purchased is worth far less than what the ESOP  
19 paid for it.

20 84. PFS and the Board of Directors had fiduciary duties under ERISA to act  
21 prudently and in the best interest of the employee participants. *See* 29 U.S.C.  
22 § 1104(a)(1)(A)-(B). However, at all relevant times, they failed to do so. Among other  
23 things, they failed to perform adequate due diligence to ensure the \$1360 per share stock  
24 appraisal was based on reliable cash flow and earnings projections, disregarded other  
25 structural problems with the Transaction and ongoing conflicts of interest, and failed to  
26 appropriately discount the value of the Company stock due to the complete lack of  
27 control the ESOP obtained. As a result of Defendants' actions, ESOP participants  
28 suffered substantial losses, and their retirement accounts are worth far less than they

1 would have been had Defendants not violated ERISA through their actions in  
2 connection with the ESOP Transaction.

3 **PLAINTIFF SEEKS PLAN-WIDE RELIEF**

4 85. Plaintiff brings these claims for plan-wide relief pursuant to ERISA  
5 § 502(a)(2), 29 U.S.C. § 1132(a)(2), for relief against any Defendant in a non-fiduciary  
6 capacity under § 502(a)(3), 29 U.S.C. § 1132(a)(3), and as a class action pursuant to  
7 Federal Rule of Civil Procedure 23(a) and (b), on behalf of the following Class:<sup>3</sup>

8 All participants in the Western Global ESOP on or after June 6, 2020,  
9 who vested under the terms of the ESOP, and those participants'  
10 beneficiaries, excluding Defendants and their immediate family  
11 members; any fiduciary of the Plan; the directors of Western Global or  
of any entity in which a Defendant has a controlling interest; and legal  
representatives, successors, and assigns of any such excluded persons.

12 86. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), provides that “[a] civil action  
13 may be brought . . . by a participant, beneficiary or fiduciary for appropriate relief under  
14 [ERISA section 409, 29 U.S.C.] section 1109.” In turn, ERISA 29 U.S.C. § 1109 states  
15 that any fiduciary with respect to a plan who breaches “any of the responsibilities,  
16 obligations, or duties imposed upon fiduciaries by this subchapter *shall be personally*  
17 *liable to make good to such plan any losses resulting from each such breach.*” 29 U.S.C.  
18 § 1109(a) (emphasis added).

19 87. The Supreme Court has explained that Plaintiff’s ERISA § 502(a)(2), 29  
20 U.S.C. § 1132(a)(2), claims are necessarily “brought in a representative capacity on  
21 behalf of the plan as a whole.” *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 142  
22 (1985). In other words, the relief Plaintiff seeks pursuant to § 1132(a)(2) “inures to the  
23 benefit of the plan *as a whole.*” *Id.* at 140.

24 88. *LaRue v. DeWolff, Boberg, and Associates, Inc.*, 552 U.S. 248 (2008),  
25 which involved a defined contribution plan like the Western Global ESOP, further  
26 demonstrated that “[ERISA] §§ 409(a) and 502(a)(2) [29 U.S.C. §§ 1109 and

27 \_\_\_\_\_  
28 <sup>3</sup> Plaintiff reserves the right to revise the class definition, and to propose other or additional classes in  
subsequent pleadings or a motion for class certification, after discovery in this action.

1 1132(a)(2)] permit recovery of *all* plan losses caused by a fiduciary breach.” *LaRue*,  
2 552 U.S. at 261 (Thomas, J., concurring).

3 89. **Numerosity.** The Class satisfies the numerosity requirement because it is  
4 composed of hundreds of persons. Although the exact number and identities of Class  
5 members are unknown to Plaintiff at this time, the Plan’s Form 5500 filing for 2020  
6 indicates that as of December 31, 2020, there were nearly 400 participants in the Plan.  
7 The number of Class members is so large that joinder of all its members is  
8 impracticable.

9 90. **Commonality.** As to the members of the Class, this case presents  
10 numerous common questions of law and fact, among them:

- 11 a. Whether Defendants Paredes and PFS engaged in a prudent and loyal  
12 investigation of the proposed purchase of 37.5% of Western Global stock  
13 by the ESOP in the Transaction, including whether the Transaction’s terms  
14 and price were fair and in the best interest of ESOP participants;
- 15 b. Whether Defendants Paredes and PFS failed to properly consider the  
16 reduced cash flow the Company would suffer due to its obligation to make  
17 contributions to the ESOP in an amount sufficient to cover the ESOP’s  
18 loan payments and due to the excessive interest rate on its multi-hundred  
19 million junk bond offering;
- 20 c. Whether the ESOP engaged in prohibited transactions;
- 21 d. Whether the Seller Defendants were ERISA fiduciaries of the Plan;
- 22 e. Whether the Seller Defendants breached their ERISA fiduciary duties  
23 owed to the Plan and its participants when they selected and monitored the  
24 Trustee and Plan Administrator as Plan fiduciaries;
- 25 f. The amount of losses suffered by the ESOP as a result of the unlawful  
26 conduct alleged herein;
- 27 g. The proper form of equitable and injunctive relief; and
- 28 h. The extent to which any non-fiduciary Defendants are subject to equitable  
remedies and relief.

91. **Typicality.** Plaintiff’s claims are typical of the claims of the Class because  
(among other things): (a) he is employed by Western Global and is a participant in the  
Plan; (b) to the extent that Plaintiff seeks relief on behalf of the Plan pursuant to §  
502(a)(2) of ERISA, 29 U.S.C. § 1132(a)(2), his claims are not only typical of, but the

1 same as, a claim under § 502(a)(2) brought by any other Class member; (c) to the extent  
2 that Plaintiff seeks equitable relief, that relief would affect all Class members equally;  
3 and (d) all of the Class members were injured and continue to be injured in the same  
4 manner, because each of them overpaid for Western Global stock as a result of the same  
5 alleged breaches of fiduciary duty and prohibited transactions.

6 92. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the  
7 Class and is committed to the vigorous representation of the Class. Plaintiff's retained  
8 counsel, Stris & Maher LLP and Cohen Milstein Sellers and Toll PLLC, are experienced  
9 in class action and ERISA litigation, and Plaintiff has no interests antagonistic to or in  
10 conflict with the interests of the Class.

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

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

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

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

10 96. **Rule 23(b)(3).** Additionally and alternatively, class certification is  
11 appropriate pursuant to Federal Rule of Civil Procedure 23(b)(3) because questions of  
12 law and fact common to all Class members predominate over any questions affecting  
13 individual members of the Class, and because a class action is superior to other available  
14 methods for the fair and efficient adjudication of this action. Common questions related  
15 to liability will necessarily predominate over any individual questions because  
16 Defendants' duties and obligations were uniform to all participants and therefore all  
17 members of the Class. Plaintiff and all Class members have been harmed by the ESOP  
18 paying more than fair market value for Western Global stock in the Transaction. As  
19 relief and any recovery will be on behalf of the Plan, common questions as to remedies  
20 will likewise predominate over any individual issues.

21 97. A class action is a superior method to other available methods for the fair  
22 and efficient adjudication of this action. As the claims are brought on behalf of the  
23 ESOP, the issues in this litigation will be most efficiently resolved in a single  
24 proceeding rather than multiple proceedings. The losses suffered by individual Class  
25 members are small compared to the expense and burden of individual prosecution of  
26 this action. In addition, class certification is superior because it will obviate the need  
27 for unduly duplicative litigation which might result in inconsistent judgments about  
28 Defendants' duties with regard to the ESOP.

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- 98. The following also favor certification of this case as a class action:
  - (a) No other litigation concerning this controversy has been filed by any other members of the Class; and
  - (b) The names and addresses of the Class members are available from the ESOP.

99. Notice will be provided to all members of the Class to the extent required by Federal Rule of Civil Procedure 23.

**CAUSES OF ACTION**

**Count I  
Causing and Engaging in Prohibited Transactions in Violation of  
ERISA § 406, 29 U.S.C. § 1106  
(Against PFS and Miguel Paredes)**

100. Plaintiff incorporates the preceding paragraphs as though set forth herein.

101. ERISA § 406(a)(1)(A), 29 U.S.C. § 1106(a)(1)(A), prohibits a plan fiduciary, here the Trustee (PFS and Miguel Paredes), from causing a plan, here the Plan, to engage in a sale or exchange of any property, here Western Global stock, with a party in interest, here the Seller Defendants and/or Western Global, as took place in the ESOP Transaction.

102. ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B), prohibits the Trustee from causing the Plan to borrow money from a party-in-interest, here Western Global, as took place in the ESOP Transaction.

103. ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), prohibits the Trustee from causing the Plan to engage in a transaction that constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, here the Seller Defendants, of any assets of the Plan, as took place in and after the ESOP Transaction with the transfer of Plan assets as payment for Western Global stock and in continuing payments on the loan.

104. The stock and loan transactions between the Plan and the parties-in-interest were authorized by the Trustee in its capacity as trustee for the Plan.

1 105. The Trustee caused the Plan to engage in prohibited transactions in  
2 violation of ERISA § 406(a), 29 U.S.C. § 1106(a), in the ESOP Transaction.

3 106. ERISA § 406(b), 29 U.S.C. § 1106(b), *inter alia*, mandates that a plan  
4 fiduciary shall not “act in any transaction involving the plan on behalf of a party (or  
5 represent a party) whose interests are adverse to the interests of the plan or the interests  
6 of its participants,” or “receive any consideration for his own personal account from  
7 any party dealing with such plan in connection with a transaction involving the assets  
8 of the plan.”

9 107. The Trustee caused the Plan to acquire Western Global stock from the  
10 Seller Defendants and/or Western Global at a price above fair market value and with  
11 the proceeds of a loan that was used to pay the Seller Defendants. This primarily  
12 benefited the Seller Defendants to the substantial detriment of the Plan and its  
13 participants and beneficiaries, even though the Trustee was required to act solely in the  
14 interests of the Plan’s participants and beneficiaries in connection with any such  
15 transaction.

16 108. The Trustee received consideration for its own personal account from  
17 Western Global—fees and, on information and belief, an indemnification agreement—  
18 as trustee for the Plan in the ESOP Transaction, in violation of ERISA § 406(b)(3).

19 109. The Trustee caused and engaged in prohibited transactions in violation of  
20 ERISA § 406(b), 29 U.S.C. § 1106(b), in the ESOP Transaction.

21 110. ERISA § 409, 29 U.S.C. § 1109, provides, *inter alia*, that any person who  
22 is a fiduciary with respect to a plan and who breaches any of the responsibilities,  
23 obligations, or duties imposed on fiduciaries by Title I of ERISA shall be personally  
24 liable to make good to the plan any losses to the plan resulting from each such breach,  
25 and additionally is subject to such other equitable or remedial relief as the court may  
26 deem appropriate.

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1 111. ERISA § 502(a), 29 U.S.C. § 1132(a), permits a plan participant to bring  
2 a suit for relief under ERISA § 409 and to obtain appropriate equitable relief to enforce  
3 the provisions of Title I of ERISA or to enforce the terms of a plan.

4 112. The Trustee has caused losses to the Plan by the prohibited transactions in  
5 an amount to be proved specifically at trial.

6 **Count II**  
7 **Breach of Fiduciary Duty Under ERISA § 404(a), 29 U.S.C. § 1104(a)**  
8 **(Against PFS and Miguel Paredes)**

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

10 114. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires, *inter alia*, that a plan  
11 fiduciary discharge his or her duties with respect to a plan solely in the interest of the  
12 participants and beneficiaries, (A) for the exclusive purpose of providing benefits to  
13 participants and the beneficiaries of the plan and defraying reasonable expenses of  
14 administering the plan, (B) with the care, skill, prudence, and diligence under the  
15 circumstances then prevailing that a prudent person acting in a like capacity and familiar  
16 with such matters would use in the conduct of an enterprise of a like character and with  
17 like aims, and (D) in accordance with the documents and instruments governing the  
18 plan insofar as such documents and instruments are consistent with ERISA.

19 115. The fiduciary duty of loyalty entails a duty to avoid conflicts of interest  
20 and to resolve them promptly when they occur. A fiduciary must always administer a  
21 plan with an “eye single” to the interests of the participants and beneficiaries, regardless  
22 of the interests of the fiduciaries themselves or the plan sponsor.

23 116. ERISA § 409, 29 U.S.C. § 1109, provides, *inter alia*, that any person who  
24 is a fiduciary with respect to a plan and who breaches any of the responsibilities,  
25 obligations, or duties imposed on fiduciaries by Title I of ERISA shall be personally  
26 liable to make good to the plan any losses to the plan resulting from each such breach,  
27 and additionally is subject to such other equitable or remedial relief as the court may  
28 deem appropriate.

1 117. ERISA § 502(a), 29 U.S.C. § 1132(a), permits a plan participant to bring  
2 a suit for relief under ERISA § 409 and to obtain appropriate equitable relief to enforce  
3 the provisions of Title I of ERISA or to enforce the terms of a plan.

4 118. The Trustee was required to undertake an appropriate and independent  
5 investigation of the fair market value of Western Global stock in or about June 2020 in  
6 order to fulfill its fiduciary duties, and an appropriate investigation would have revealed  
7 that the valuation used for the ESOP Transaction did not reflect the fair market value of  
8 the Western Global stock purchased by the Plan.

9 119. The Trustee breached its duties under ERISA § 404(a)(1), 29 U.S.C.  
10 § 1104(a)(1).

11 120. The Trustee has caused losses to the Plan by its breaches of fiduciary duty  
12 in an amount to be proved specifically at trial.

13 **Count III**  
14 **Violation of ERISA §§ 410 and 404(a)(1)(A), (B),**  
15 **29 U.S.C. §§ 1110 and 1104(a)(1)(A), (B),**  
16 **(Against PFS and Miguel Paredes)**

17 121. Plaintiff incorporates the preceding paragraphs as though set forth herein.

18 122. ERISA § 410(a), 29 U.S.C. § 1110(a), provides in relevant part (with  
19 exceptions not applicable here) that “any provision in an agreement or instrument which  
20 purports to relieve a fiduciary from responsibility or liability for any responsibility,  
21 obligation, or duty under this part [Part IV of Subtitle B of Title I of ERISA] shall be  
22 void as against public policy.” As ERISA § 406 is under Part IV, any provision that  
23 attempts to relieve the Trustee, a Plan fiduciary, of responsibility or liability is void  
24 pursuant to ERISA § 410(a) unless there is an exception or exemption. No such  
25 exception or exemption is applicable to the Count I claim here.

26 123. ERISA § 409, 29 U.S.C. § 1109, provides, *inter alia*, that any person who  
27 is a fiduciary with respect to a plan and who breaches any of the responsibilities,  
28 obligations, or duties imposed on fiduciaries by Title I of ERISA shall be personally  
liable to make good to the plan any losses to the plan resulting from each such breach,

1 and additionally is subject to such other equitable or remedial relief as the court may  
2 deem appropriate.

3 124. ERISA § 502(a), 29 U.S.C. § 1132(a), permits a plan participant to bring  
4 a suit for relief under ERISA § 409 and to obtain appropriate equitable relief to enforce  
5 the provisions of Title I of ERISA or to enforce the terms of a plan.

6 125. The indemnification agreement purports to provide payment or  
7 reimbursement for the benefit of the Trustee for its expenses, losses, costs, and damages,  
8 including but not limited to attorneys' fees.

9 126. To the extent that the indemnification agreement attempts to relieve the  
10 Trustee of its responsibility or liability to discharge its duties under ERISA, or attempts  
11 to have Western Global (a Plan-owned company) and thereby the Plan be responsible  
12 for the Trustee's liability for breaches of the statute, including but not limited to defense  
13 costs, such provisions are void as against public policy.

14 127. To the extent that any of the fiduciaries of the Plan would agree to the  
15 exercise of such a provision that is void against public policy under ERISA § 410, they  
16 breached their fiduciary duties under ERISA by failing to discharge their duties with  
17 respect to the Plan solely in the interest of the participants and beneficiaries and with  
18 the care, skill, prudence and diligence under the circumstances then prevailing that a  
19 prudent person acting in a like capacity and familiar with such matters would use in the  
20 conduct of an enterprise of like character and aims, in violation of ERISA §  
21 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B). *See also* ERISA § 403(c)(1),  
22 29 U.S.C. § 1103(c)(1).

23 **Count IV**  
24 **Co-Fiduciary Liability Under ERISA § 405(a), 29 U.S.C. § 1105(a)**  
**(Against Selling Board Members and the Board of Directors)**

25 128. Plaintiff incorporates the preceding paragraphs as though set forth herein.

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

3 130. James Neff and Carmit Neff, both members of the Board prior to the  
4 Transaction, and the Board of Directors had the authority to (1) appoint the Trustee and  
5 to (2) either appoint the Plan Administrator or act as Plan Administrator who in turn  
6 had the power to direct the ESOP Trustee. As such, they were fiduciaries to the ESOP  
7 at all relevant times.

8 131. The Selling Board Members were also the highest-level management at  
9 Western Global and were involved in and directed the preparation of the financial  
10 projections underlying the stock appraisal that the Trustee relied upon in determining  
11 (i) the purchase price the ESOP paid for the Company; and (ii) the subsequent valuation  
12 of Western Global stock at year-end 2020.

13 132. Given their involvement in hiring and directing the Trustee (through the  
14 Plan Administrator), the Selling Board Members knew or should have known that the  
15 price the ESOP paid for Western Global stock was not adequately discounted to reflect  
16 the fact that the Sellers retained control over the Company.

17 133. Based on their position and unique access to company financial  
18 information and involvement in hiring and directing the Trustee, the Selling Board  
19 Members knowingly participated in the fiduciary violations of the Trustee alleged  
20 above and knew that the Trustee—PFS and Paredes—failed to undertake an appropriate  
21 and independent investigation of the fair market value of Western Global stock prior to  
22 the ESOP Transaction.

23 134. As such, under ERISA § 405(a)(1), 29 U.S.C. § 1105(a)(1), the Selling  
24 Board Members are liable as co-fiduciaries for the ESOP’s losses resulting from the  
25 Trustee’s fiduciary breaches.

26 135. ERISA § 405(a)(3), 29 U.S.C. § 1105(a)(3) provides that fiduciaries “with  
27 respect to a plan shall be liable for a breach of fiduciary responsibility of another  
28 fiduciary with respect to the same plan” “if he has knowledge of a breach by such other

1 fiduciary, unless he makes reasonable efforts under the circumstances to remedy the  
2 breach.”

3 136. The Selling Board Members failed to make reasonable efforts to remedy  
4 the Trustee’s violations of ERISA associated with the ESOP Transaction.

5 137. For example, the Selling Board Members could have simply returned the  
6 overpayment for the Western Global stock that they received from the ESOP  
7 Transaction, but because of their conflicts of interest they failed to do so.

8 138. At a bare minimum, the Selling Board Members could have brought the  
9 matter to the attention of the Secretary of Labor.

10 139. Instead, the Selling Board Members took no actions and made no efforts  
11 to remedy the fiduciary violations of the Trustee. Thus, pursuant to ERISA  
12 §§ 405(a)(3), 29 U.S.C. §§ 1105(a)(3), the Selling Board Members are liable as co-  
13 fiduciaries for the ESOP’s losses resulting from the Trustee’s fiduciary breaches.

14 **Count V**  
15 **Prohibited Transaction in Violation of ERISA § 406, 29 U.S.C. § 1106**  
16 **(Against Seller Defendants)**

17 140. Plaintiff incorporates the preceding paragraphs as though set forth herein.

18 141. The Seller Defendants were fiduciaries to the Plan and/or parties-in-  
19 interest to the Plan under ERISA, as described above.

20 142. ERISA § 406(b), 29 U.S.C. § 1106(b) prohibits a fiduciary from engaging  
21 in self-dealing transactions with the Plan.

22 143. To the extent any Seller is a fiduciary, by selling their shares to the Plan  
23 (and doing so for greater than fair market value), the Sellers engaged in a prohibited  
24 transaction under § 1106(b).

25 144. Plaintiff may accordingly obtain relief against Sellers on behalf of the Plan  
26 under 29 U.S.C. § 1132(a)(2).

27 145. In addition to Plan-wide relief under 29 U.S.C. § 1132(a)(2), the statute  
28 (ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3)) permits a plan participant to bring a civil

1 action to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA  
2 or to enforce the terms of a plan.

3 146. The Supreme Court has held that anyone, including a non-fiduciary, who  
4 receives the benefit of conduct that violates ERISA may be subject to equitable  
5 remedies under ERISA § 502(a)(3) if they have “actual or constructive knowledge of  
6 the circumstances that rendered the transaction unlawful.” *Harris Trust & Sav. Bank v.*  
7 *Salomon Smith Barney, Inc.*, 530 U.S. 238, 251 (2000).

8 147. As a result of the prohibited transactions described above, the Seller  
9 Defendants received Plan assets in payments above fair market value for their Western  
10 Global stock.

11 148. The Seller Defendants knew or should have known: (1) about the existence  
12 of the Plan, (2) about the Plan’s purchase, directly or indirectly, of their Western Global  
13 stock in the ESOP Transaction, (3) that the Trustee was a fiduciary to the Plan, (4) that  
14 they were directors and/or 10% or more shareholders of Western Global or otherwise  
15 parties-in-interest, and (5) that the Trustee caused the Plan to engage in the stock  
16 purchase transaction.

17 149. As directors and/or officers of the Company and as selling shareholders,  
18 the Seller Defendants were aware of sufficient facts that the ESOP Transaction  
19 constituted a prohibited transaction with parties-in-interest.

20 150. Accordingly, even to the extent any Seller is not a fiduciary, the Seller  
21 Defendants are liable as parties-in-interest for violations of ERISA § 406(a)(1)(A) and  
22 (D), 29 U.S.C. § 1106(a)(1)(A) and (D).

23 151. The Seller Defendants have profited from the prohibited transactions in an  
24 amount to be proven at trial, and upon information and belief, they remain in possession  
25 of some or all of the assets that belong to the Plan.

26 152. The Seller Defendants are subject to appropriate equitable relief under 29  
27 U.S.C. § 1132(a)(2) and/or (a)(3), including disgorgement of any profits, accounting for  
28 profits, surcharge, having a constructive trust placed on any proceeds received (or which

1 are traceable thereto), having the transactions rescinded, requiring all or part of the  
2 consideration to be restored to the Plan, or to be subject to other appropriate equitable  
3 relief.

4 **PRAYER FOR RELIEF**

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

- 8 A. Declare that Defendant Trustee caused the Plan to engage in and itself  
9 engaged in prohibited transactions and breached its duties under ERISA;
- 10 B. Declare that the Seller Defendants have knowingly participated in the  
11 Trustee's violations of ERISA;
- 12 C. Declare that the Seller Defendants had knowledge of the Trustee's breach  
13 but failed to make reasonable efforts to remedy that breach because of their  
14 own self-interest in keeping the ESOP's overpayment for Western Global  
15 stock;
- 16 D. Declare that the indemnification agreement between Defendant Trustee and  
17 Western Global violates ERISA § 410, 29 U.S.C. § 1110;
- 18 E. Order Defendant Trustee to reimburse Western Global for any money paid  
19 by Western Global under any indemnification agreement between the  
20 Trustee and Western Global, plus interest;
- 21 F. Rescind the Transaction in whole or in part;
- 22 G. Enjoin the Trustee and the Seller Defendants from further violations of their  
23 fiduciary responsibilities, obligations, and duties;
- 24 H. Remove Paredes and PFS as the Trustee of the Western Global ESOP and  
25 bar them from serving as a fiduciary of the ESOP in the future;
- 26 I. Appoint a new independent fiduciary to manage the Western Global ESOP  
27 and order the costs of such independent fiduciary be paid for by Defendants;
- 28 J. Order each Defendant found to have violated ERISA to jointly and  
severally make good to the Plan and/or to any successor trust(s) the losses  
resulting from the breaches of ERISA and restore any profits it, he, or she  
has made through use of assets of the Plan;
- K. Order that Defendants provide other appropriate equitable relief to the Plan  
and its participants and beneficiaries, including, but not limited to,  
surcharge, providing an accounting for profits, disgorgement of profits  
(including any interest or investment returns), and imposing a constructive  
trust and/or equitable lien on any funds wrongfully held by Defendants;

- 1 L. Order the proceeds of any recovery for the Plan to be allocated to the  
2 accounts of the Class members to make them whole for any injury that they  
3 suffered as a result of the breaches of ERISA in accordance with the Court's  
4 declaration;
- 5 M. Order the allocation to the accounts of the class members of the additional  
6 shares of stock that would have been allocated but for the Plan's  
7 overpayment on company stock and Defendants' breaches of ERISA;
- 8 N. Enjoin the Defendants from dissipating any of the proceeds they received  
9 from the Transaction held in their actual or constructive possession until  
10 the ESOP participants' rights can be adjudicated;
- 11 O. Enjoin the Defendants from transferring or disposing of any of the proceeds  
12 they received from the Transaction to any person or entity, which would  
13 prejudice, frustrate, or impair the ESOP participants' ability to recover the  
14 same;
- 15 P. Require Defendants to pay attorneys' fees and costs pursuant to ERISA  
16 § 502(g), 29 U.S.C. § 1132(g), and/or order payment of fees and expenses  
17 to Plaintiff's counsel on the basis of the common benefit or common fund  
18 doctrine out of any money recovered for the Class;
- 19 Q. Certify this action as a class action pursuant to Fed. R. Civ. P. 23, certify  
20 the named Plaintiff as class representative and his counsel as class counsel;
- 21 R. Award pre-judgment interest and post-judgment interest; and
- 22 S. Award such other and further relief that the Court determines is appropriate  
23 pursuant to ERISA § 502(a)(2) and/or (a)(3), 29 U.S.C. § 1132(a)(2) and/or  
24 (a)(3), or pursuant to Rule 54(c) of the Federal Rules of Civil Procedure, or  
25 that is equitable and just.

26 **DEMAND FOR JURY TRIAL**

27 Plaintiff hereby demands trial by jury on all issues so triable, pursuant to Rule  
28 38 of the Federal Rules of Civil Procedure.

1 December 13, 2021

Respectfully submitted,

2  
3 s/ Peter K. Stris

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