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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

CV '11 - 633

AC

PLUMBERS LOCAL NO. 137 PENSION )  
FUND and LABORERS' LOCAL #231 )  
PENSION FUND, Derivatively on Behalf of )  
UMPQUA HOLDINGS CORPORATION, )

Plaintiffs, )

vs. )

RAYMOND P. DAVIS, BRADLEY F. )  
COPELAND, RONALD L. FARNSWORTH, )  
MARK P. WARDLOW, ALLYN C. FORD, )  
PEGGY Y. FOWLER, STEPHEN M. )  
GAMBEE, JOSE R. HERMOCILLO, )  
WILLIAM A. LANSING, LUIS F. )  
MACHUCA, DIANE D. MILLER, HILLIARD )  
C. TERRY III, BRYAN L. TIMM, FRANK R.J. )  
WHITTAKER and PRICEWATERHOUSE )  
COOPERS LLP, )

Defendants, )

- and - )

UMPQUA HOLDINGS CORPORATION, an )  
Oregon corporation, )

Nominal Party. )

Case No.

VERIFIED SHAREHOLDER DERIVATIVE  
COMPLAINT FOR BREACH OF  
FIDUCIARY DUTY OF LOYALTY,  
AIDING AND ABETTING, BREACH OF  
CONTRACT AND UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

40669

## INTRODUCTION

1. This is a shareholder derivative action on behalf of nominal party Umpqua Holdings Corporation (“Umpqua”). The complaint seeks relief against the entire Umpqua Board of Directors – defendants Allyn C. Ford, Peggy Y. Fowler, Stephen M. Gambee, Jose R. Hermocillo, William A. Lansing, Luis F. Machuca, Diane D. Miller, Hilliard C. Terry III, Bryan L. Timm and Frank R.J. Whittaker (together, “Umpqua Board”); Umpqua’s top executives – defendants Raymond P. Davis (Umpqua’s President and Chief Executive Officer (“CEO”)), Bradley F. Copeland, Ronald L. Farnsworth and Mark P. Wardlow; and Umpqua’s compensation consultant, defendant PricewaterhouseCoopers LLP (“PwC”).

2. On April 19, 2011, a majority of voting Umpqua shareholders (65%) rejected the Company’s excessive 2010 CEO and top executive compensation. The 2010 executive compensation, which included a 61.1% raise for Umpqua’s CEO, despite Umpqua’s sagging 2010 stock price performance and a negative 7.7% annual shareholder return, was approved by the Umpqua Board and unanimously recommended for shareholder approval by the directors. Umpqua is only the fourteenth U.S. company (and the tenth in 2011 under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 “say-on-pay” law) to fail to receive majority support for its executive compensation in recent years.

3. The Umpqua Board’s decisions to increase CEO and top executive pay in 2010, despite the Company’s severely impaired financial results, were disloyal, irrational and unreasonable, and not the product of a valid exercise of business judgment. Instead, the Umpqua Board’s pay hikes violated its own pay-for-performance policy and, as intended, favored the interests of Umpqua’s CEO and top executives at the expense of the corporation and its shareholders. The Umpqua Board’s unanimous recommendation that Umpqua shareholders approve the 2010 executive compensation was also materially false and misleading when made. This is because the Umpqua

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT Page 1

Board failed to disclose that the 2010 raises for Umpqua's CEO and top executives were excessively large and irrational based on Umpqua's poor 2010 shareholder returns.

4. The Umpqua Board is not entitled to business judgment protection for the 2010 pay hikes and/or the false and misleading unanimous recommendation for shareholder approval of the 2010 executive compensation. The adverse shareholder vote on the 2010 executive compensation is evidence which rebutted that presumption. Umpqua shareholders concluded, in their independent business judgment, that the Umpqua Board's 2010 CEO and top executive pay hikes were not in the best interest of Umpqua and its shareholders. The Umpqua Board must now demonstrate that the 2010 executive pay hikes were not a breach of fiduciary duty of loyalty (and candor and good faith). This is unlikely, however, because increasing executive pay during a period of negative shareholder returns is not rewarding Umpqua's CEO and top executives for superior performance, but rather rewarding Umpqua's executives for underperformance.

5. Umpqua has been damaged by the Umpqua Board's failure to publicly rescind the 2010 pay hikes to Umpqua's CEO and top officers. By this action, plaintiffs seek relief for Umpqua as a result of the Umpqua Board's disloyalty, its CEO and top executives' unjust enrichment, and its compensation consultant's aiding and abetting breaches of fiduciary duty and breach of contract.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction under 28 U.S.C. §1332(a)(1), because plaintiffs and defendants are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs. This action is not a collusive action designed to confer jurisdiction on a court of the United States that it would not otherwise have.

7. This Court has jurisdiction over each defendant named herein because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District so as to render the exercise of

jurisdiction by the courts of this District permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this Court under 28 U.S.C. §1391(a) because: (i) Umpqua is incorporated and maintains its executive offices and principal place of business in this District; (ii) one or more of the defendants either resides in or maintains offices in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein, and aiding and abetting and conspiracy in violation of fiduciary duties owed to Umpqua, occurred in this District; and (iv) defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

#### **THE PARTIES**

9. (a) Plaintiff Plumbers Local No. 137 Pension Fund is a shareholder of Umpqua and has been continuously since at least December 2009. Plaintiff Plumbers Local No. 137 Pension Fund is a citizen of the State of Illinois.

(b) Plaintiff Laborers' Local #231 Pension Fund is a shareholder of Umpqua and has been continuously since at least January 2009. Plaintiff Laborers' Local #231 Pension Fund is a citizen of the State of Illinois.

10. Nominal party Umpqua is an Oregon corporation with its executive offices located at One SW Columbia Street, Suite 1200, Portland, Oregon 97258. According to its public filings, Umpqua is a bank holding company engaged primarily in the business of commercial and retail banking and the delivery of retail brokerage services. Umpqua provides a wide range of banking, mortgage banking and other financial services to corporate, institutional and individual customers. Umpqua is a citizen of the State of Oregon.

11. Defendant Raymond P. Davis (“Davis”) is the CEO, President and a director of Umpqua. Despite Umpqua’s poor stock price performance and negative 7.7% annual shareholder return for 2010, Davis’s 2010 pay increased 61.1% to \$3,731,340. Davis has been unjustly enriched. Davis also falsely represented to Umpqua’s shareholders in Umpqua’s 2011 Proxy Statement, dated February 25, 2011 (the “2011 Proxy Statement”) that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Davis is a citizen of the State of Oregon.

12. Defendant Bradley F. Copeland (“Copeland”) is the Chief Operating Officer of Umpqua. Despite Umpqua’s poor stock price performance and negative 7.7% annual shareholder return for 2010, Copeland’s pay increased 112.4% to \$1,502,938. Copeland has been unjustly enriched. Copeland also falsely represented to Umpqua’s shareholders in Umpqua’s 2011 Proxy Statement that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Copeland is a citizen of the State of Oregon.

13. Defendant Ronald L. Farnsworth (“Farnsworth”) is Chief Financial Officer of Umpqua. Despite Umpqua’s poor stock price performance and negative 7.7% annual shareholder return for 2010, Farnsworth’s 2010 pay increased 140.6% to \$879,963. Farnsworth has been unjustly enriched. Farnsworth also falsely represented to Umpqua’s shareholders in Umpqua’s 2011 Proxy Statement that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Farnsworth is a citizen of the State of Oregon.

14. Defendant Mark P. Wardlow (“Wardlow”) is Executive Vice President and Senior Credit Officer of Umpqua. Despite Umpqua’s poor stock price performance and negative 7.7% annual shareholder return for 2010, Wardlow’s 2010 pay increased 161.2% to \$897,073. Wardlow has been unjustly enriched. Wardlow also falsely represented to Umpqua’s shareholders in

Umpqua's 2011 Proxy Statement that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Wardlow is a citizen of the State of Oregon.

15. Defendant Allyn C. Ford ("Ford") has been an Umpqua director since 1999. Despite Umpqua's poor stock price performance and negative annual shareholder return for 2010, Ford approved hikes in pay for Umpqua's CEO and top executives in 2010. Not only were the 2010 pay hikes irrational and unreasonable under the circumstances, they also violated the Umpqua Board's own pay-for-performance executive compensation policy. Although the Umpqua Board said that its "executive compensation is designed to recognize superior operating performance" and that "we strongly reward performance," in a year where Umpqua posted a negative 7.7% annual shareholder return, granting pay hikes ranging from 61.1% to 161.2% to Umpqua's CEO and top executives was not rewarding superior performance, but rather favoring Umpqua's CEO and top executives at the expense of the Company. Ford also falsely represented to Umpqua's shareholders in the 2011 Proxy Statement that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Ford is a citizen of the State of Oregon.

16. Defendant Peggy Y. Fowler ("Fowler") has been an Umpqua director since 2009. In 2010, she served on the Compensation Committee of the Umpqua Board ("Compensation Committee"). Despite Umpqua's poor stock price performance and negative annual shareholder return for 2010, Fowler approved hikes in pay for Umpqua's CEO and top executives in 2010. Not only were the 2010 pay hikes irrational and unreasonable under the circumstances, they also violated the Umpqua Board's own pay-for-performance executive compensation policy. Although the Umpqua Board said that its "executive compensation is designed to recognize superior operating performance" and that "we strongly reward performance," in a year where Umpqua posted a

negative 7.7% annual shareholder return, granting pay hikes ranging from 61.1% to 161.2% to Umpqua's CEO and top executives was not rewarding superior performance, but rather favoring Umpqua's CEO and top executives at the expense of the Company. Fowler also falsely represented to Umpqua's shareholders in the 2011 Proxy Statement that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Fowler is a citizen of the State of Oregon.

17. Defendant Stephen M. Gambee ("Gambee") has been an Umpqua director since 2005. Despite Umpqua's poor stock price performance and negative annual shareholder return for 2010, Gambee approved hikes in pay for Umpqua's CEO and top executives in 2010. Not only were the 2010 pay hikes irrational and unreasonable under the circumstances, they also violated the Umpqua Board's own pay-for-performance executive compensation policy. Although the Umpqua Board said that its "executive compensation is designed to recognize superior operating performance" and that "we strongly reward performance," in a year where Umpqua posted a negative 7.7% annual shareholder return granting pay hikes ranging from 61.1% to 161.2% to Umpqua's CEO and top executives, was not rewarding superior performance, but rather favoring Umpqua's CEO and top executives at the expense of the Company. Gambee also falsely represented to Umpqua's shareholders in the 2011 Proxy Statement that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Gambee is a citizen of the State of Oregon.

18. Defendant Jose R. Hermocillo ("Hermocillo") has been an Umpqua director since 2009. Despite Umpqua's poor stock price performance and negative annual shareholder return for 2010, Hermocillo approved hikes in pay for Umpqua's CEO and top executives in 2010. Not only were the 2010 pay hikes irrational and unreasonable under the circumstances, they also violated the

Umpqua Board's own pay-for-performance executive compensation policy. Although the Umpqua Board said that its "executive compensation is designed to recognize superior operating performance" and that "we strongly reward performance," in a year where Umpqua posted a negative 7.7% annual shareholder return granting pay hikes ranging from 61.1% to 161.2% to Umpqua's CEO and top executives, was not rewarding superior performance, but rather favoring Umpqua's CEO and top executives at the expense of the Company. Hermocillo also falsely represented to Umpqua's shareholders in the 2011 Proxy Statement that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Hermocillo is a citizen of the State of California.

19. Defendant William A. Lansing ("Lansing") has been an Umpqua director since 2001. In 2010, he served on the Compensation Committee. Despite Umpqua's poor stock price performance and negative annual shareholder return for 2010, Lansing approved hikes in pay for Umpqua's CEO and top executives in 2010. Not only were the 2010 pay hikes irrational and unreasonable under the circumstances, they also violated the Umpqua Board's own pay-for-performance executive compensation policy. Although the Umpqua Board said that its "executive compensation is designed to recognize superior operating performance" and that "we strongly reward performance," in a year where Umpqua posted a negative 7.7% annual shareholder return, granting pay hikes ranging from 61.1% to 161.2% to Umpqua's CEO and top executives was not rewarding superior performance, but rather favoring Umpqua's CEO and top executives at the expense of the Company. Lansing also falsely represented to Umpqua's shareholders in the 2011 Proxy Statement that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Lansing is a citizen of the State of Oregon.

20. Defendant Luis F. Machuca (“Machuca”) has been an Umpqua director since January 2010. Despite Umpqua’s poor stock price performance and negative annual shareholder return for 2010, Machuca approved hikes in pay for Umpqua’s CEO and top executives in 2010. Not only were the 2010 pay hikes irrational and unreasonable under the circumstances, they also violated the Umpqua Board’s own pay-for-performance executive compensation policy. Although the Umpqua Board said that its “executive compensation is designed to recognize superior operating performance” and that “we strongly reward performance,” in a year where Umpqua posted a negative 7.7% annual shareholder return, granting pay hikes ranging from 61.1% to 161.2% to Umpqua’s CEO and top executives was not rewarding superior performance, but rather favoring Umpqua’s CEO and top executives at the expense of the Company. Machuca also falsely represented to Umpqua’s shareholders in the 2011 Proxy Statement that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Machuca is a citizen of the State of Oregon.

21. Defendant Diane D. Miller (“Miller”) has been an Umpqua director since 2004. In 2010, she served on the Compensation Committee. Despite Umpqua’s poor stock price performance and negative annual shareholder return for 2010, Miller approved hikes in pay for Umpqua’s CEO and top executives in 2010. Not only were the 2010 pay hikes irrational and unreasonable under the circumstances, they also violated the Umpqua Board’s own pay-for-performance executive compensation policy. Although the Umpqua Board said that its “executive compensation is designed to recognize superior operating performance” and that “we strongly reward performance,” in a year where Umpqua posted a negative 7.7% annual shareholder return, granting pay hikes ranging from 61.1% to 161.2% to Umpqua’s CEO and top executives was not rewarding superior performance, but rather favoring Umpqua’s CEO and top executives at the expense of the Company.

Miller also falsely represented to Umpqua's shareholders in the 2011 Proxy Statement that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Miller is a citizen of the State of California.

22. Defendant Hilliard C. Terry III ("Terry") has been an Umpqua director of since January 2010. Despite Umpqua's poor stock price performance and negative annual shareholder return for 2010, Terry approved hikes in pay for Umpqua's CEO and top executives in 2010. Not only were the 2010 pay hikes irrational and unreasonable under the circumstances, they also violated the Umpqua Board's own pay-for-performance executive compensation policy. Although the Umpqua Board said that its "executive compensation is designed to recognize superior operating performance" and that "we strongly reward performance," in a year where Umpqua posted a negative 7.7% annual shareholder return, granting pay hikes ranging from 61.1% to 161.2% to Umpqua's CEO and top executives was not rewarding superior performance, but rather favoring Umpqua's CEO and top executives at the expense of the Company. Terry also falsely represented to Umpqua's shareholders in the 2011 Proxy Statement that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Terry is a citizen of the State of California.

23. Defendant Bryan L. Timm ("Timm") has been an Umpqua director since 2004. In 2010, he served on the Compensation Committee. Despite Umpqua's poor stock price performance and negative annual shareholder return for 2010, Timm approved hikes in pay for Umpqua's CEO and top executives in 2010. Not only were the 2010 pay hikes irrational and unreasonable under the circumstances, they also violated the Umpqua Board's own pay-for-performance executive compensation policy. Although the Umpqua Board said that its "executive compensation is designed to recognize superior operating performance" and that "we strongly reward performance,"

in a year where Umpqua posted a negative 7.7% annual shareholder return, granting pay hikes ranging from 61.1% to 161.2% to Umpqua's CEO and top executives was not rewarding superior performance, but rather favoring Umpqua's CEO and top executives at the expense of the Company. Timm also falsely represented to Umpqua's shareholders in the 2011 Proxy Statement that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Timm is a citizen of the State of Oregon.

24. Defendant Frank R.J. Whittaker ("Whittaker") has been an Umpqua director since 2009. In 2010, he served on the Compensation Committee. Despite Umpqua's poor stock price performance and negative annual shareholder return for 2010, Whittaker approved hikes in pay for Umpqua's CEO and top executives in 2010. Not only were the 2010 pay hikes irrational and unreasonable under the circumstances, they also violated the Umpqua Board's own pay-for-performance executive compensation policy. Although the Umpqua Board said that its "executive compensation is designed to recognize superior operating performance" and that "we strongly reward performance," in a year where Umpqua posted a negative 7.7% annual shareholder return, granting pay hikes ranging from 61.1% to 161.2% to Umpqua's CEO and top executives was not rewarding superior performance, but rather favoring Umpqua's CEO and top executives at the expense of the Company. Whittaker also falsely represented to Umpqua's shareholders in the 2011 Proxy Statement that Umpqua followed a pay-for-performance executive compensation policy in 2010 when, in fact, it did not. Defendant Whittaker is a citizen of the State of California.

25. Defendant Pricewaterhouse Coopers LLP ("PwC") is an executive compensation advisory firm. Among other things, PwC assisted the Umpqua Board in connection with the 2010 pay hikes for Umpqua's CEO and top executives described in Umpqua's 2011 proxy materials. PwC is a citizen of the State of New York.

## THE DUTIES OF UMPQUA'S DIRECTORS AND OFFICERS

26. As directors and officers of Umpqua, defendants owed fiduciary duties to Umpqua – the highest duties known to the law. These fiduciary duties include duties of care and loyalty. Defendants' fiduciary duty of loyalty prohibits them from acting in bad faith as well as from making false statements to Umpqua's shareholders about, among other things, its executive compensation practices and/or pay-for-performance executive compensation policy.

27. Defendants, because of their positions of control and authority as directors and/or officers of Umpqua, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein. Because of their executive positions and/or access to Umpqua's internal information, defendants knew or should have known that increasing 2010 CEO and top executive pay from between 61.1% and 161.2% – despite the Company's negative 7.7% 2010 annual shareholder return – was unreasonably excessive and violated the Umpqua Board's own pay-for-performance executive compensation philosophy. And, as the overwhelming rejection of the Umpqua's Board's 2010 CEO and top executive pay hikes by Umpqua's institutional shareholders strongly evidences, the 2010 pay hikes are not in the best interest of Umpqua and/or its shareholders. The 2010 pay hikes were irrational and unreasonable and not the product of a valid exercise of business judgment and, as intended by the Umpqua Board, served the interest of Umpqua's CEO and top executives at the expense of the Company and its shareholders.

28. Defendants also knew or should have known that the Umpqua Board's unanimous recommendation to Umpqua shareholders to approve the 2010 executive compensation was false and misleading when made. This is because the 2010 Proxy Statement omitted to disclose that the 2010 CEO and top executive pay hikes violated Umpqua's pay-for-performance policy, were excessive under the circumstances, and were not the product of a valid exercise of business judgment.

29. At times relevant hereto, defendants were the agents of each of the other defendants and were at all times acting within the course and scope of such agency.

#### **AIDING AND ABETTING AND CONCERTED ACTION**

30. In committing the wrongful acts particularized herein, defendants have pursued or joined in the pursuit of a common course of conduct, and have acted in concert with one another in furtherance of their common plan or design. In addition to the wrongful conduct particularized herein as giving rise to primary liability, defendants further aided and abetted and/or assisted each other in breach of their respective duties.

31. Each of the defendants aided and abetted and rendered substantial assistance in the wrongs detailed herein. In taking such actions to substantially assist the commission of the wrongdoing detailed herein, each defendant acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of his, her, or its overall contribution to and furtherance of the wrongdoing.

#### **FACTUAL ALLEGATIONS**

32. Historically, the Umpqua Board has represented to Umpqua shareholders that the Company's executive compensation practices are firmly rooted in a pay-for-performance philosophy. For instance, in Umpqua's 2011 Proxy Statement, the Umpqua Board represented that it had developed a compensation program designed not only to retain outstanding executives, but also to incentivize and reward them for achieving superior performance in the pursuit of Umpqua's business and financial term objectives, stating:

***“Umpqua’s executive compensation is designed to recognize superior operating performance thereby maximizing shareholder value, and to attract, motivate and retain the high performing executive team critical to our Company’s success. Our executive compensation philosophy is simple: we pay competitive base salaries and we strongly reward performance.”***

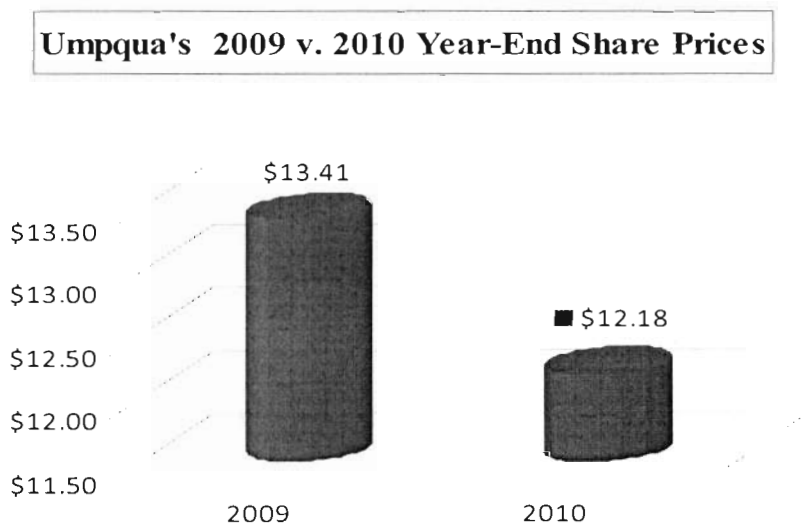
\* \* \*

A significant component of compensation is related to performance. *We believe that an employee's compensation should be tied to how well the employee's team and the Company perform against both financial and non-financial goals and objectives.*

2011 Proxy Statement at 30-31. In 2010, however, there was little, if any, meaningful relationship between Umpqua's executive pay and corporate performance.

33. In 2010, the most important financial metrics to Umpqua shareholders – stock price performance and annual shareholder return – declined. Specifically, while under the stewardship of Umpqua's CEO and top executives, the Company's stock performance languished behind the stock performance of its industry peers and its annual shareholder return declined to negative 7.7% for 2010.

34. The decline in Umpqua's stock performance and annual shareholder return from 2009 to 2010 is set forth graphically below:



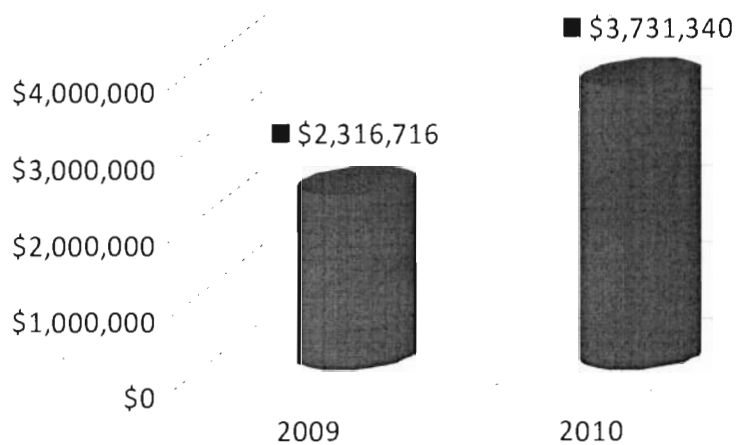
35. Defendants were not mere spectators to Umpqua's 2010 financial decline. On the contrary, defendants were at all relevant times responsible for the management and oversight of Umpqua's business and affairs. Throughout 2010, Umpqua's officers and directors regularly

communicated with one another about Umpqua’s financial performance and made decisions that directly and indirectly impacted the Company’s 2010 financial results. As a result, the Umpqua Board was a percipient witness to not only Umpqua’s 2010 financial decline but also to the significant underperformance of Umpqua’s CEO and top executives.

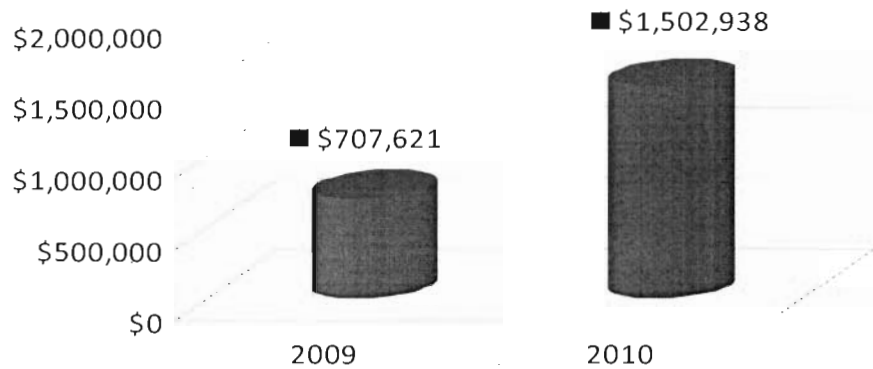
36. Notwithstanding Umpqua’s disappointing 2010 results, Umpqua’s executive compensation for the period still dramatically increased. In 2010, Umpqua’s CEO pay jumped 61.1% to over \$3.7 million. The compensation for Umpqua’s other top executive officers jumped even higher, rising between 112.6% and 161.2% in 2010. Overall, Umpqua’s 2010 executive compensation increased, on average, 118.8%, notwithstanding Umpqua’s negative 2010 annual shareholder return and lackluster stock price performance.

37. The Umpqua Board approved each of the excessive 2010 pay hikes, which are set forth graphically below.

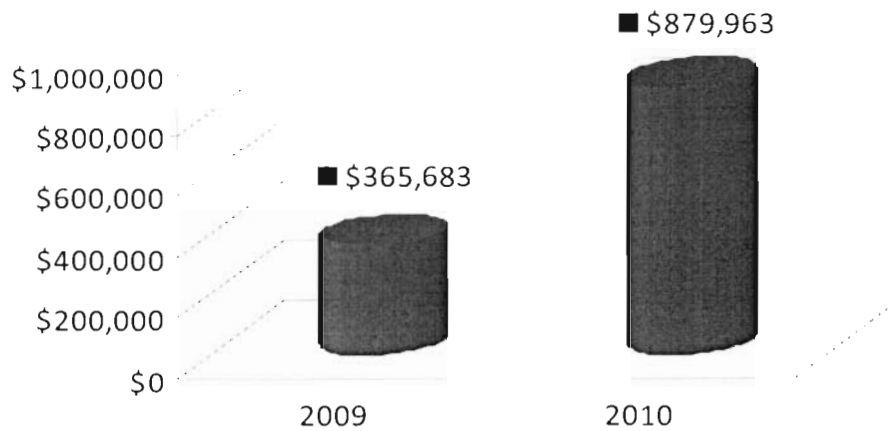
**Davis: 2009 v. 2010 Total Compensation**



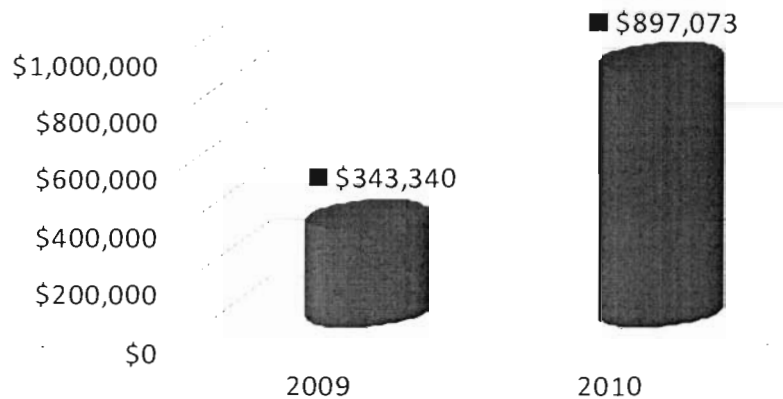
**Copeland: 2009 v. 2010 Total Compensation**



**Farnsworth: 2009 v. 2010 Total Compensation**



**Wardlow: 2009 v. 2010 Total Compensation**



38. On February 25, 2011, the Umpqua Board unanimously recommended shareholder approval of the Company's 2010 executive compensation. Interestingly, in an effort to justify the 2010 executive compensation, the Umpqua Board specifically cited the result of the previous year's advisory vote on executive compensation. See 2011 Proxy Statement at 28 ("Shareholders holding more than 91% of the votes cast, approved the Company's executive compensation program at the 2010 annual meeting.").

39. In further support of its resolution for approval of the 2010 executive compensation, which included pay hikes of 61.1% to 161.2% for Umpqua's CEO and top executives, the Umpqua Board stated:

***Item 3. Shareholder Advisory (Non-binding) Vote on Executive Compensation***

The *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank Act") enacted in July, 2010 includes a provision, commonly referred to as "Say-on-Pay," that entitles our shareholders to cast an advisory vote to approve the compensation of our named executive officers as disclosed in this proxy statement.

We believe that our compensation policies and procedures are strongly aligned with the long-term interests of our shareholders. Because your vote is

advisory, it will not be binding upon the Board. However, the Compensation Committee values your opinion and will take into account the outcome of the vote when considering future executive compensation arrangements.

Umpqua has several compensation governance programs in place, as described in this proxy, to align executive compensation with the long-term shareholder interests and to manage compensation risk, including:

- An independent Compensation Committee that engages its own advisors and consultants;
- Stock ownership guidelines and a “hold to retirement” policy for executives;
- Grants under performance-based equity incentive plans;
- Prohibition on repricing stock options;
- Annual incentive plans tied to Company earnings; and
- A compensation recoupment or clawback policy.

*Our program for compensation of named executive officers was approved by our shareholders in each of the last two years and we are requesting your non-binding vote on the following resolution:*

“RESOLVED, that the Company’s shareholders approve, on an advisory basis, the compensation of the named executive officers as described in the Proxy Statement for the 2011 Annual Meeting of Shareholders pursuant to the compensation disclosure rules of the SEC including the Compensation Discussion and Analysis, the 2010 Summary Compensation Table and the other related tables and narrative disclosure.”

***Board Recommendation***

**The board of directors unanimously recommends a vote “FOR” approval of the compensation of named executive officers as described in the Compensation Discussion and Analysis, the compensation tables and other narrative disclosure in this proxy statement.**

2011 Proxy Statement at 8-9.

40. The Umpqua Board has never suggested that its 2010 executive compensation decisions were based on considerations and/or factors other than those set forth in the 2011 Proxy Statement in general and the Compensation Discussion and Analysis section in particular. So by

disclosing the rationale for the 2010 pay hikes, the Umpqua Board lifted shareholders to the Umpqua Board's level with respect to what the Board deemed as the appropriate information necessary to assess whether the 2010 executive compensation was reasonable in light of the circumstances and in the best interest of the Company. As a result, unlike in previous years, Umpqua shareholders were able to assess the reasonableness of the 2010 executive compensation in their own business judgment based on exactly the same information that the Umpqua Board had at its disposal. Moreover, institutional investors own the majority of Umpqua's outstanding shares. These sophisticated investors have extensive resources at their disposal and possess significant experience in making business decisions regarding executive compensation.

41. Despite the Umpqua Board's unanimous recommendation, on April 19, 2011, an overwhelming majority of voting Umpqua shareholders rejected the Company's 2010 executive compensation. According to the Company, 65% of voting Umpqua shareholders voted "against" the 2010 executive compensation resolution. *See* SEC Report on Form 8-K, dated April 22, 2011 ("We believe that the vote against the 'say on pay' resolution was primarily the result of votes cast by institutional investors that followed the recommendation of Institutional Shareholder Services (ISS), a proxy advisory service. The ISS report found a 'disconnect' between our CEO's compensation in 2010 and the company's total shareholder return.").

42. By voting against the Umpqua Board's "say-on-pay" resolution, Umpqua shareholders in general and institutional shareholders in particular concluded, in their independent business judgment, that the 2010 pay hikes approved by the Umpqua Board were not pay-for-performance and, therefore, not in the best interest of Umpqua and/or its shareholders. Accordingly, Umpqua's shareholders voted down the 2010 executive compensation, as excessively large, irrational and not in the best interest of Umpqua and its shareholders, making Umpqua only the tenth

U.S. company this year to fail to obtain majority support from stockholders for its executive compensation.

43. Although advisory in nature, the adverse shareholder vote on Umpqua's 2010 executive compensation is nonetheless evidence that the 2010 pay hikes were irrational and unreasonable under the circumstances, and were not primarily motivated by a desire to protect Umpqua's interest. In sum, the 2010 executive compensation was not a valid exercise of business judgment by the Umpqua Board. In light of the adverse shareholder vote, the presumption of business judgment surrounding the Umpqua Board's 2010 executive compensation decisions has been rebutted, and the burden of proof to demonstrate that the 2010 pay hikes did not violate the Umpqua Board's own pay-for-performance executive compensation policy and, in fact, were in the best interest of Umpqua now rests with the Umpqua Board.

44. Moreover, although the adverse shareholder vote rebuts the presumption that the Umpqua Board's 2010 pay hikes were the product of a valid exercise of business judgment, the Umpqua Board has not rescinded the excessive 2010 executive compensation, nor has it publicly indicated any intention to do so. This result ignores the will of Umpqua shareholders, many of whom are sophisticated institutional investors and voted down the 2010 executive compensation.

45. By this action, plaintiffs seek to hold (i) the Umpqua Board liable for breach of fiduciary duty of loyalty; (ii) Umpqua's CEO and top executives liable for unjust enrichment; and (iii) PwC, its compensation consultant, liable for aiding and abetting breaches of fiduciary duty and breach of contract in connection with Umpqua's excessive 2010 executive compensation.

#### **DAMAGE TO UMPQUA**

46. Umpqua has been severely injured by the Umpqua Board's excessive 2010 CEO and top executive compensation. In 2010, Umpqua's stock price trailed the stock performance of its

industry peers and its annual shareholder return declined significantly to negative 7.7% for 2010. Yet, incredibly, Umpqua's CEO and top executive compensation increased, on average, by 118.8%.

47. When asked by the Umpqua Board to appraise the Umpqua Board's 2010 pay hikes as in the best interest of the Company, Umpqua shareholders rejected the 2010 executive compensation. Instead, Umpqua shareholders concluded, in their own independent business judgment, that the 2010 CEO and top executive pay hikes were not in the best interest of Umpqua and its shareholders, and were only in the interest of the Company's executives. This notwithstanding, however, the Umpqua Board has not publicly rescinded or amended the 2010 executive compensation to the detriment of the Company. By contrast, Umpqua's CEO and top executives have been unjustly enriched by the windfall profits they received in 2010.

48. By this action, plaintiffs seek to recover damages and other relief for Umpqua against the Umpqua Board members for their breach of loyalty, Umpqua's CEO and top executives for unjust enrichment, and Umpqua's compensation consultant for aiding and abetting breaches of fiduciary duty and breach of contract. Absent this action, the Company's rights against its wayward fiduciaries and/or their advisor will not be exercised to the further detriment of Umpqua and its shareholders.

#### **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

49. Plaintiffs incorporate ¶¶1-48.

50. Pursuant Rule 23.1 of the Federal Rules of Civil Procedure, plaintiffs bring this action derivatively on behalf of Umpqua to redress injuries suffered, and yet to be suffered, by the Company as a direct and proximate result of defendants' misconduct. Plaintiffs are shareholders of Umpqua and will adequately represent the interests of the Company in this litigation.

51. A pre-suit demand upon the Umpqua Board is a useless and futile action, and therefore, excused for several reasons. First, a pre-suit demand is excused because the entire

Umpqua Board is interested in the outcome of this litigation. After approving the unlawful 2010 pay hikes for Umpqua's CEO and top executives, the Umpqua Board then unanimously recommended that shareholders approve the 2010 executive compensation. The Umpqua Board's decisions to grant the 2010 pay hikes and to unanimously recommend shareholder approval of the 2010 executive compensation violated Umpqua's pay-for-performance policy and breached the Umpqua Board's fiduciary duty of loyalty (and candor and good faith). Consequently, the entire Umpqua Board faces a substantial likelihood of liability and is interested in the outcome of this action.

52. In addition, the Umpqua Board is not entitled to business judgment protection for the 2010 pay hikes and/or the false and misleading unanimous recommendation for shareholder approval of the 2010 executive compensation. The adverse shareholder vote on the 2010 executive compensation is persuasive evidence that rebutted that presumption. Umpqua shareholders in general and institutional shareholders in particular concluded, in their independent business judgment, that the Umpqua Board's 2010 CEO and top executive pay hikes were not in the best interest of Umpqua and its shareholders. The Umpqua Board now bears the burden of demonstrating the independence, good faith and reasonableness of its 2010 executive pay decisions, which the Umpqua Board cannot do because increasing executive pay during a period of declining corporate performance violated Umpqua's pay-for-performance executive compensation policy and, on its face, was disloyal and lacked good faith. Accordingly, a pre-suit demand upon the Umpqua Board to take action with respect to the 2010 CEO and top executive pay hikes is a useless and futile act and therefore excused.

53. Second, a pre-suit demand is excused because the Umpqua Board unanimously recommended that Umpqua shareholders approve the excessive 2010 executive compensation, including 61.1% to 156% raises for Umpqua's CEO and top executives, despite Umpqua's sagging

2010 stock price performance and negative 2010 annual shareholder return. On April 19, 2011, Umpqua shareholders rejected Umpqua's 2010 executive compensation. This was hardly a typical event – indeed, Umpqua is only the tenth of over 120 companies that held “say on pay” votes this year in which shareholders rejected executive compensation. Nevertheless, the Umpqua Board has not rescinded or amended the 2010 executive compensation, nor publicly indicated that it has any intention of doing so. By first unanimously recommending that Umpqua shareholders approve the excessive 2010 executive compensation, and then ratifying their own prior decisions to award the 2010 compensation by not rescinding it after a majority negative vote, the Umpqua Board has demonstrated its hostility towards the relief sought in the action. Accordingly, a pre-suit demand upon the Umpqua Board to take action with respect to the 2010 CEO and top executive pay hikes is a useless and futile act and therefore excused.

54. Third, a pre-suit demand on defendant Davis is excused because his principal professional occupation is his employment as CEO and President of Umpqua. Accordingly, Davis has received and continues to receive substantial monetary compensation and other valuable benefits (including the excessive compensation complained of herein). Thus, Davis lacks independence, rendering him incapable of impartially considering a demand to commence and vigorously prosecute this action. Moreover, Davis was unjustly enriched by the 2010 CEO and top executive pay hikes, and, as a result, financially benefitted from the misconduct challenged herein. Accordingly, a pre-suit demand upon Davis to take action with respect to the 2010 CEO and top executive pay hikes is a useless and futile act and therefore excused.

55. Plaintiffs have not made any demand on shareholders of Umpqua to institute this action since such demand would be a futile and useless act for the following reasons:

(a) Umpqua is a publicly traded company with approximately 114.4 million shares outstanding, and thousands of shareholders;

(b) Making demand on such a number of shareholders would be impossible for plaintiffs who have no way of finding out the names, addresses or phone numbers of shareholders; and

(c) Making demand on all shareholders would force plaintiffs to incur huge expenses, assuming all shareholders could be individually identified.

### COUNT I

**Against Defendants Davis, Ford, Fowler, Gambee, Hermocillo,  
Lansing, Machuca, Miller, Terry, Timm and Whitaker for  
Breach of Fiduciary Duty of Loyalty**

56. Plaintiffs incorporate ¶¶1-55.

57. Defendants Davis, Ford, Fowler, Gambee, Hermocillo, Lansing, Machuca, Miller, Terry, Timm and Whitaker are directors of Umpqua and as such owe to Umpqua the highest duty known to the law. Each of these defendants agreed to and did participate in and/or aided and abetted one another in a deliberate course of action designed to divert corporate assets in breach of his/her fiduciary duty of loyalty owed to Umpqua.

58. Defendants Davis, Ford, Fowler, Gambee, Hermocillo, Lansing, Machuca, Miller, Terry, Timm and Whitaker breached their fiduciary duty of loyalty (and candor and good faith) by approving the 2010 pay hikes for Umpqua's CEO and top executives, and by concealing that the 2010 executive compensation violated the executive compensation policy, was irrational and unreasonable under the circumstances, and was not a valid exercise of business judgment.

59. Defendants Davis, Ford, Fowler, Gambee, Hermocillo, Lansing, Machuca, Miller, Terry, Timm and Whitaker's misconduct was not due to an honest error of judgment, but rather to

their bad faith and was done knowingly, willfully, intentionally or recklessly for the purpose of favoring the interests of Umpqua's CEO and top executives at the Company's expense.

60. By reason of the 2010 pay hikes, defendants Davis, Ford, Fowler, Gамbee, Hermocillo, Lansing, Machuca, Miller, Terry, Timm and Whitaker acted irrationally under the circumstances and violated the Umpqua Board's own policy regarding pay-for-performance executive compensation. Further, the Umpqua Board unlawfully placed the interests of the Company's CEO and top executives ahead of the interests of Umpqua and its shareholders, and, in doing so, failed to exercise good faith and have acted disloyally toward Umpqua and its shareholders. As a result, Umpqua and its shareholders have been damaged and injured.

## COUNT II

### **Against Defendant PwC for Aiding and Abetting Breaches of Fiduciary Duties**

61. Plaintiffs incorporate ¶¶1-55.

62. Defendants Davis, Ford, Fowler, Gамbee, Hermocillo, Lansing, Machuca, Miller, Terry, Timm and Whitaker breached their fiduciary duty of loyalty owed to Umpqua and its shareholders by approving and then unanimously recommending shareholder approval of the excessive 2010 executive compensation.

63. Defendant PwC aided and abetted and rendered substantial assistance in the Umpqua Board's breach of fiduciary duty. In taking such actions to substantially assist the commission of the wrongdoing detailed herein, defendant PwC acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of its overall contribution to and furtherance of the wrongdoing.

64. By reason of the foregoing, defendant PwC has aided and abetted the Umpqua Board's breaches of fiduciary duty. As a result, Umpqua and its shareholders have been damaged and injured.

### **COUNT III**

#### **Against Defendant PwC for Breach of Contract**

65. Plaintiffs incorporate ¶¶1-55.

66. Defendant PwC entered into a contract with Umpqua to provide advice and assistance with respect to Umpqua's 2010 executive compensation program. PwC assisted the Umpqua Board with setting the amount of executive compensation payments in 2010. In light of Umpqua's dismal financial results, increasing the amounts of compensation paid, or to be paid, to Umpqua CEO and top executives in 2010 was unreasonable and not in good faith.

67. By reason of the foregoing, PwC breached its contract with Umpqua to render competent and sound advice and services regarding Umpqua's 2010 executive compensation. As a result, Umpqua and its shareholders have been damaged and injured.

### **COUNT IV**

#### **Against Defendants Davis, Copeland, Farnsworth and Wardlow for Unjust Enrichment**

68. Plaintiffs incorporate ¶¶1-55.

69. The 2010 pay hikes for Umpqua's CEO and top executives violated Umpqua's pay-for-performance policy, and were unwarranted in light of Umpqua's dismal 2010 financial performance. By reason of the foregoing, defendants Davis, Copeland, Farnsworth and Wardlow have been unjustly enriched. As a result, Umpqua and its shareholders have been damaged and injured.

**PRAYER FOR RELIEF**

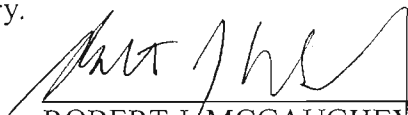
WHEREFORE, plaintiffs demand judgment as follows:

- A. Against defendants and in favor of Umpqua for the amount of damages sustained by the Company as a result of defendants' violations of law;
- B. Declaring that the adverse April 19, 2011 advisory shareholder vote on the Umpqua Board's 2010 executive compensation rebutted the presumption of business judgment surrounding the Umpqua Board's decisions to increase executive compensation in 2010;
- C. Extraordinary equitable and/or injunctive relief as necessary or permitted by law, equity and the statutory provisions sued hereunder, including disgorgement, attachment, impoundment, imposition of a constructive trust on or otherwise restricting the disposition/exercise of improvidently awarded 2010 executive compensation;
- D. Ordering the implementation and administration of internal controls and systems at Umpqua designed to prohibit and prevent the payment of excessive compensation to Umpqua's CEO and/or top executives;
- E. Awarding to plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, and accountants' and experts' fees, costs, and expenses; and
- F. Granting such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury.

DATED: May 25, 2011



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