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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES, CENTRAL DISTRICT
11

12 DAVID EYERLY, an individual,

13 Plaintiff,

14 v.

15 SURF AIRLINES, INC., a Delaware
corporation d/b/a SURF AIR; ANTHEM
16 VENTURE PARTNERS, a business entity of
form unknown; ANTHEM STRATEGIC
17 CAPITAL, LLC, a Delaware limited liability
company; ANTHEM/MIC STRATEGIC
18 PARTNERS, L.P., a Cayman Islands
exempted limited partnership; WILLIAM
19 WOODWARD, an individual; VELOS
PARTNERS GP, LLC, a Delaware limited
20 liability company; VELOS PARTNERS
FUND I, L.P., a Delaware limited partnership;
21 VELOS PARTNERS MANAGEMENT, LLC,
a Delaware limited liability company; RAJ
22 GANGULY, an individual; BASE
VENTURES, a business entity of form
23 unknown; BASE LV TECH., L.P., a Delaware
limited partnership; BASE VENTURE FUND,
24 L.P., a Delaware limited partnership; ERIK
MOORE, an individual; and DOES 1-50
25 inclusive,

26 Defendants.
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ORIGINAL FILED
Superior Court of California
County of Los Angeles

NOV 12 2015

Sherrill A. ... Deputy
County Clerk

CASE NO.

BC 6 0 0 7 8 0

COMPLAINT FOR

- (1) BREACH OF FIDUCIARY DUTY BY ANTHEM, VELOS AND BASE
- (2) BREACH OF FIDUCIARY DUTY BY WOODWARD, GANGULY AND MOORE
- (3) AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
- (4) FRAUDULENT CONCEALMENT
- (5) BREACH OF ORAL CONTRACT
- (6) PROMISSORY ESTOPPEL

JURY TRIAL DEMANDED

1 Plaintiff David Eyerly (“Dave”)¹ alleges in his Complaint against Defendants Surf
2 Airlines, Inc. d/b/a Surf Air (“Surf Air”); Anthem Venture Partners; Anthem Strategic Capital,
3 LLC; Anthem/MIC Strategic Partners, L.P. LLC (collectively, “Anthem”); William Woodward
4 (“Woodward”); Velos Partners GP, LLC; Velos Partners Fund I, L.P.; Velos Partners
5 Management, LLC (collectively, “Velos”); Raj Ganguly (“Ganguly”); Base Ventures; Base LV
6 Tech., L.P.; Base Venture Fund, L.P. (collectively, “Base”); and Erik Moore (“Moore”) (all
7 collectively, “Defendants”), as follows:

8 INTRODUCTION

9 1. Surf Air is a successful, rapidly growing airline. It is currently valued at more than
10 \$1 billion. It operates throughout California and is poised to launch throughout the United States
11 and internationally. It is projected to grow seven-fold in the next five years and will be worth
12 multiple billions of dollars.

13 2. Surf Air’s innovative business model is the key to its success. Surf Air operates
14 regularly-scheduled passenger flights out of smaller airports that do not have Transportation
15 Safety Administration (“TSA”) checkpoints and have more convenient parking. A passenger can
16 arrive 10 minutes before takeoff. Surf Air is an all-you-can-fly subscription airline. For a
17 monthly fee, currently \$1,750 a month, passengers have unlimited access to flights.

18 3. The Plaintiff herein, Dave, conceived of the idea for Surf Air. He is solely
19 responsible for the idea to operate a subscription-based, passenger airline operating regularly
20 scheduled flights under a regulatory scheme that is generally used for cargo and charter flights.
21 This is the model Surf Air operates under.

22 4. Dave co-founded Surf Air with his brother, Wade Eyerly (“Wade”). He initially
23 owned 50 percent of Surf Air. Dave worked tirelessly for two years to get the company off the
24 ground. After the company obtained financing to operate and grow, Dave was to own 12.5
25 percent of the airline, but no less.

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27 _____
28 ¹ To avoid confusion, first names are used for the two Eyerlys named in the Complaint.

1 15. On information and belief, Defendant William Woodward is an individual residing
2 in Los Angeles County, California.

3 16. On information and belief, Defendant Velos Partners GP, LLC is a Delaware
4 limited liability company with its principal place of business in Los Angeles County, California.

5 17. On information and belief, Defendant Velos Partners Fund I, L.P. is a Delaware
6 limited liability company with its principal place of business in Los Angeles County, California.

7 18. On information and belief, Defendant Velos Partners Management, LLC is a
8 Delaware limited liability company with its principal place of business in Los Angeles County,
9 California.

10 19. On information and belief, Defendant Raj Ganguly is an individual residing in Los
11 Angeles County, California.

12 20. On information and belief, Defendant Base Ventures is a business entity of form
13 unknown with its principal place of business in Alameda County, California.

14 21. On information and belief, Defendant Base LV Tech., L.P. is a Delaware limited
15 partnership with its principal place of business in Alameda County, California.

16 22. On information and belief, Defendant Base Venture Fund, L.P. is a Delaware
17 limited partnership with its principal place of business in Alameda County, California.

18 23. On information and belief, Defendant Erik Moore is an individual residing in
19 Alameda County, California.

20 24. Dave is ignorant of the true names, capacities, relationships and extent of
21 participation in the conduct herein alleged of the Defendants sued herein as Does 1 through 50,
22 inclusive, but on information and belief alleges that said Defendants are legally responsible to
23 him. Dave will amend this complaint to allege the true names and capacities of the Doe
24 Defendants when ascertained.

25 25. Defendants acting within the course and scope of their agency, employee, partner
26 and/or joint venture relationships, participated in, approved, sanctioned, cooperated in, assisted in,
27 consented to, acquiesced in, benefited from, or otherwise caused and/or failed to prevent the acts
28 described herein.

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JURISDICTION AND VENUE

26. The amount in controversy is in excess of \$125 million and thus within the jurisdiction of this Court.

27. Venue in Los Angeles Superior Court is proper in this case. Surf Air, Anthem and Velos are all headquartered in Los Angeles County. Woodward and Ganguly reside in Los Angeles County. The acts and conduct that form the bases of Dave’s causes of action occurred in Los Angeles County.

FACTUAL ALLEGATIONS

A. Surf Air Is A Successful And Unique Airline

28. Surf Air offers a private airline experience at a price point that is less expensive than owning or renting a private jet. Members pay a monthly subscription fee, which is currently \$1,750 a month. In return, members have unlimited access to Surf Air flights.

29. Surf Air operates out of smaller airports that are easier to get in and out of and do not have TSA checkpoints. Members can arrive as early as 10 minutes before their flight. The convenience of flying out of smaller airports without TSA checkpoints is a key driver of Surf Air’s success.

30. This business model has been widely referred to as “among the industry’s most innovative concepts.” Surf Air has won numerous accolades for its innovative service, including being named one of Forbes’ “Most Promising Companies” for 2015, to the “AlwaysOn Global 250” of most promising private companies in the world, and “Best in Business Travel” by Entrepreneur.

31. Surf Air is a highly successful company. Founded in 2011, it began flight services in June 2013. It has experienced rapid growth since its launch. It just announced its 2,000th member; its membership has recently grown 500 percent. Surf Air owns and operates 11 planes, Pilatus PC-12s that seat eight passengers in a first-class configuration. Surf Air’s annual revenues are believed to be in excess of \$40 million.

1 32. Surf Air flies to and from the following California locations: Carlsbad, Palm
2 Springs, Hawthorne (Los Angeles area), Burbank (Los Angeles area), Santa Barbara, Monterey,
3 San Carlos (San Francisco area), Oakland, Napa, Sacramento, and Truckee. It also arranges
4 flights to Las Vegas for its members.

5 33. Surf Air is poised for even more growth and expansion. Surf Air does not yet have
6 Department of Transportation (“DOT”) authorization to conduct interstate flights. Accordingly,
7 Surf Air currently does not operate its own flights outside of California.

8 34. Surf Air is expected to receive DOT approval in the near future. It has ordered 65
9 more planes. It plans to expand to Texas, Florida, the Northeast and undisclosed international
10 locations once it receives DOT approval.

11 35. Surf Air is a “unicorn”—a start-up worth more than \$1 billion. It is primed for
12 explosive nationwide and international growth.

13 **B. Dave Conceived Of Surf Air**

14 36. The person responsible for this innovative business model is Dave. While training
15 to become a pilot at the prestigious Embry-Riddle Aeronautical University (“Embry-Riddle”) in
16 Florida, Dave took an aviation business class. In that class, he was given an assignment to come
17 up with a business plan in the aviation industry. Improving upon concepts that he came up with
18 several years before while studying Aviation Science at Utah Valley University, Dave proposed a
19 one-of-a-kind passenger airline. After graduating from Embry-Riddle, Dave decided to pursue his
20 idea to create a passenger airline.

21 37. Dave’s idea was to operate a passenger airline with regularly-scheduled flights
22 under a Federal Aviation Administration (“FAA”) part 135 certificate (“part 135 certificate”),
23 which is usually used for cargo and charter airline operations. Generally, passenger airlines
24 operating regularly-scheduled flights operate under an FAA part 121 certificate (“part 121
25 certificate”). The financial component of his idea was that customers would pay a monthly
26 subscription fee to fly on the airline. This is the model that Surf Air operates under today.

27 38. There were two significant advantages to Dave’s plan. *First*, passengers would not
28 need to pass through a TSA checkpoint before boarding a plane. By way of comparison,

1 passengers using an airline operating under a part 121 certificate must go through a TSA
2 checkpoint, an unpleasant experience that adds significant time and stress to a passenger's flying
3 experience.

4 39. *Second*, because no TSA checkpoint would be required, the airline could fly out of
5 smaller airports. Other passenger airlines cannot fly out of many small airports because those
6 airports do not have a TSA checkpoint, a requirement for airlines flying under a part 121
7 certificate. Flying out of a smaller airport often means less competition and more convenience for
8 passengers because smaller airports are much less busy and have more convenient parking.

9 **C. Dave Co-Founds Surf Air**

10 40. Dave discussed his business plan with his older brother Wade. They decided to
11 look into starting an airline modeled after Dave's idea.

12 41. In late 2011, to test the concept, they created a webpage to gauge interest in a flight
13 service between New York City and Boston. The response was overwhelming. They received
14 thousands of emails expressing interest.

15 42. Their webpage caught the attention of MuckerLab—a seed stage venture capital
16 fund based in Los Angeles. MuckerLab invited Dave and Wade to participate in its first-ever class
17 of start-ups. MuckerLab conditioned participation in the program on Surf Air locating to Southern
18 California. Dave and Wade accepted MuckerLab's invitation and moved to Santa Monica,
19 California to start Surf Air.

20 43. Dave and Wade each owned 50 percent of Surf Air. They were the two founders of
21 the airline. Wade was the Chief Executive Officer ("CEO"). Dave was the Chief Operating
22 Officer ("COO"). They also both held seats on the board of directors.

23 44. Early on, Wade's friend, Reed Farnsworth ("Farnsworth"), joined Surf Air as the
24 Chief Financial Officer ("CFO") and a board member.

25 45. Wade and the other early contributors to Surf Air had no experience in the aviation
26 industry. Dave was the only person who had experience with aviation, and, in particular, FAA
27 regulations. As expressed by Wade in April 2012: "Dave is an incredible worker, with an
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1 uncommon understanding of Federal Aviation Regulations. He's an integral part of the Surf Air
2 team, and we couldn't do it without him."

3 46. Dave's plan for Surf Air was to prove that the business model worked in California
4 and then expand throughout the United States.

5 **D. Surf Air Obtains Series A Financing**

6 47. In 2012, Surf Air began to seek Series A financing. The Series A round was
7 oversubscribed. There was high investor interest in Surf Air.

8 48. Anthem, a venture capital firm based in Santa Monica, expressed interest in Surf
9 Air. Anthem's CEO is Woodward. Anthem recognized the opportunity and value offered by Surf
10 Air. It wanted to obtain equity in the company.

11 49. To induce founders to accept financing, Anthem holds itself out as a partner and
12 mentor. As a purported demonstration of that trust and commitment to founders, Anthem often
13 seeks to participate in Series A financing and to hold a board seat in the companies in which it
14 invests.

15 50. Anthem holds itself out as "unique" in this respect. It asserts that "[w]e take every
16 investment personally. We fight to the death for our founders and our companies. We are not
17 building a portfolio, we are building relationships with founders who want to do big things. If we
18 invest in 10 deals we expect all 10 to work. We take losses as hard as you do. We try to work as
19 hard as the successful entrepreneurs we're fortunate to work with and we tend to be the go-to guys
20 to support our founders when things are going wrong."

21 51. Anthem held itself out to Dave as a mentor and partner that would take him under
22 its wing and help him grow the business. Anthem led Dave to believe that Anthem had his best
23 interests at heart and would help him make his dream of Surf Air a reality.

24 52. In reliance on Anthem's representations, Dave and Wade decided to move forward
25 with Anthem as the leader of the Series A financing. In June 2012, Anthem led a \$3.5 million
26 Series A round. Woodward was so excited about Surf Air that he personally invested in Surf Air,
27 in addition to making an investment through Anthem. Woodward obtained a seat on Surf Air's
28 board.

1 53. In moving forward with Surf Air, Anthem expressed that it was critical to Anthem
2 that Dave had experience in the aviation industry. It said it would not have made the investment
3 without a founder with airline experience.

4 54. The decision to move forward with Anthem was a significant personal decision for
5 Dave. As part of the Series A financing, Dave agreed that his percentage ownership of the
6 company would be lowered and placed on a four-year vesting schedule. After Series A, Dave's
7 ownership of Surf Air would go down to 24 percent.

8 **E. Surf Air Obtains Series B Financing**

9 55. In December 2012, Surf Air closed a round of Series B financing. It raised \$7
10 million, \$6 million to buy three used planes and \$1 million for operating costs.

11 56. The Series B round was led by Anthem and two new investors, Velos and Base.
12 Ganguly, a principal at Velos, took a board seat at Surf Air as part of this financing. After Series
13 B, the board of directors for Surf Air was comprised of Woodward, Ganguly, Dave, Wade and
14 Farnsworth.

15 57. Dave agreed to an approximately 30 percent reduction in his equity, consistent
16 with the reduction of other shareholders, in order to raise this money. After Series B, once his
17 stock was fully vested, he would own 16 percent of Surf Air.

18 58. To induce Surf Air to agree to financing, Velos promised to Surf Air that it would
19 provide an additional \$1 million for operating costs once Surf Air received FAA approval and
20 began providing flight services.

21 **F. Surf Air Obtains FAA Approval And Launches**

22 59. One of the most significant hurdles to starting Surf Air was to obtain FAA approval
23 to operate a passenger airline with regularly-scheduled flights under a part 135 certificate. Dave
24 spearheaded Surf Air's efforts to obtain FAA approval, as well as Surf Air's efforts to obtain DOT
25 approval to fly across state lines.

26 60. At first the FAA expressed skepticism to Dave that his plan of operating such an
27 airline was legal. The FAA told Dave it had never seen this regulation used in the way he was
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1 proposing. Dave had to walk the FAA through arcane FAA regulations to demonstrate the legality
2 of his idea.

3 61. Dave worked tirelessly with the FAA for two years to obtain FAA approval.
4 Without approval from the FAA, Surf Air could not operate.

5 62. After two years, in June 2013, Surf Air received FAA approval and had its
6 inaugural flight. Dave flew as the first officer on Surf Air's inaugural flight.

7 63. Dave also performed his other duties at Surf Air, which included hiring and
8 training pilots and other operations aspects of the airline.

9 64. Surf Air was an immediate success. Passengers were happy; they overwhelmingly
10 renewed their subscriptions. There was a long waitlist of customers who wanted to participate.

11 **G. The Lenders Take Control Of Surf Air**

12 65. Anthem, Velos and Base (the "Controlling Shareholder Lenders"), acting as a
13 control group of shareholders with a joint purpose, hatched a plan to take over Surf Air and take
14 more than their rightful share of equity for themselves. They saw Surf Air's projections and
15 potential. They wanted that equity and upside for themselves.

16 66. Because of the equity position that Dave held as a co-founder of Surf Air, the
17 Controlling Shareholder Lenders targeted Dave and his equity. They viewed Dave as young,
18 vulnerable and unsophisticated in matters of finance.

19 67. The Controlling Shareholder Lenders were well positioned to execute this scheme.
20 Anthem and Velos had installed their agents, Woodward and Ganguly, as board members. They
21 also controlled the purse strings of Surf Air; they were on the board and steered Surf Air's
22 financing to themselves.

23 68. The Controlling Shareholder Lenders, through their agents Woodward and
24 Ganguly, began to call secret board meetings with certain other directors. These meetings were
25 not disclosed to Dave; he was not notified or invited.

26 69. At these secret board meetings, the Controlling Shareholder Lenders ordered the
27 hiring of a new COO and the removal of Dave from that position. This decision was motivated by
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1 the Controlling Shareholder Lenders' scheme to make Dave expendable, to make him vulnerable
2 to their scheme to take his equity.

3 70. Without prior warning, Dave was removed from his position as COO. Dave was an
4 employee without a title.

5 71. The Controlling Shareholder Lenders also used their power to exert more control.
6 Surf Air, which was now operating flights and rapidly growing, needed additional money for
7 operating costs.

8 72. The Controlling Shareholder Lenders knew of this need. They also knew that this
9 was exactly why they had been brought in as investors. They used this situation as an opportunity
10 to carry out their scheme to take the value of Surf Air for themselves.

11 73. When Surf Air asked Velos for the \$1 million in continued financing it had
12 promised once Surf Air had obtained FAA approval and launched, Velos reneged and provided an
13 excuse for why it could no longer provide the money it had promised.

14 74. Instead, the Controlling Shareholder Lenders steered Surf Air to a different form of
15 financing—a bridge loan that contained onerous, self-serving terms (the “Bridge Loan”).

16 75. The Bridge Loan was not an arms-length transaction. The Controlling Shareholder
17 Lenders were on both sides of the deal. Their agents—Woodward and Ganguly—negotiated both
18 for and against Surf Air. They were trying to get the best deal for their principals, the Controlling
19 Shareholder Lenders, but also owed fiduciary duties to Surf Air and its constituents because they
20 were directors. Despite this conflict of interest, Woodward and Ganguly, on behalf of the
21 Controlling Shareholder Lenders, participated in these negotiations and, in fact, spearheaded them.

22 76. The Controlling Shareholder Lenders used their positions as Surf Air directors to
23 unfairly benefit themselves. The Controlling Shareholder Lenders provided themselves with the
24 lucrative and exclusive right to convert the loan amount into preferred stock at the next financing
25 round for the company. To pad the value of this right, the Controlling Shareholder Lenders
26 negotiated this deal at an artificially low valuation of Surf Air. They used the Bridge Loan as a
27 way to obtain valuable equity on the cheap.

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1 77. The Controlling Shareholder Lenders did not market the financing opportunity to
2 other investors to see if there was willingness to invest at a higher valuation or under less onerous
3 terms. The financing was an inside job designed to unfairly enrich the Controlling Shareholder
4 Lenders.

5 78. The Controlling Shareholder Lenders also used their insider status at Surf Air to
6 stack the board. They mandated that Moore, the founder and Managing Director of Base, be
7 placed on the board.

8 79. Two of the “conditions precedent” of the Bridge Loan were specifically directed at
9 Dave. *First*, the Controlling Shareholder Lenders required the termination of “Dave Eyerly’s . . .
10 status as a service provider of the Company, effective at or prior to the Closing” of the Bridge
11 Loan. *Second*, Dave would lose his seat on the board of Surf Air. Thus, Dave would be ousted
12 from Surf Air altogether once the Bridge Loan was completed.

13 80. The Controlling Shareholder Lenders made no secret as to why they were targeting
14 Dave—they wanted Dave’s equity for themselves. As stated by Wade in an email to Surf Air
15 announcing Dave’s termination: “Unfortunately, in our current round of financing the Board of
16 Directors asked that these changes be made. As is sometimes the case, the outsized stock holdings
17 of a founder who is no longer in a management role make them a candidate to be replaced.” Of
18 course, Dave was only no longer in a management role because the Controlling Shareholder
19 Lenders had ordered that it be so.

20 81. Worse, to obtain the loyalty and acquiescence of Wade and Farnsworth in their
21 efforts to take control, the Controlling Shareholder Lenders compromised them with promised
22 benefits and through threats and coercion.

23 82. The Controlling Shareholder Lenders told Wade that if he went along with the
24 Bridge Loan he, unlike Dave, would retain his position as CEO and his seat on the board.
25 Remaining an employee of Surf Air meant Wade’s stock would continue to vest as well.

26 83. The Controlling Shareholder Lenders told Farnsworth he would keep his job as
27 CFO, meaning his stock would continue to vest as well. And, although he lost his board seat, he
28 was given the right to be a board observer, a right not offered to Dave.

1 84. The Controlling Shareholder Lenders' message to Wade and Farnsworth was clear.
2 Offer up Dave as a sacrificial lamb, and, in exchange, receive benefits and protections that were
3 not offered to Dave. Because of these promised benefits, Wade and Farnsworth had a personal
4 interest in the Bridge Loan that compromised them.

5 **H. Dave Is Terminated But Promised 12.5% Equity**

6 85. On November 13, 2013, Wade and Farnsworth told Dave they needed to have a
7 meeting at Wade's home. There, Wade and Farnsworth blindsided Dave with the news that the
8 Controlling Shareholder Lenders had ordered that Dave be terminated from Surf Air.

9 86. Wade told Dave that his termination was not for cause. He said Dave did not do
10 anything wrong. The Controlling Shareholder Lenders wanted Dave out of Surf Air so they could
11 take his equity.

12 87. Dave founded Surf Air and had worked hard for two years to build the company.
13 He asked to meet with the board to make his case for staying with the company. He also believed
14 that he could find alternative financing for Surf Air that did not require such onerous terms. He
15 wanted Surf Air to look for a better financing deal.

16 88. Wade and Farnsworth responded that meeting with the board would be fruitless
17 because the board decision that Dave had to go had already been made. Dave was unaware that
18 the board had been secretly meeting without him and had negotiated his departure on terms that
19 were favorable to each other board member.

20 89. Wade and Farnsworth promised Dave, on behalf of Surf Air, that Dave would have
21 a 12.5 percent ownership share in Surf Air if he did not fight his termination. This share was
22 based on the amount of equity Dave had already vested plus an extra year of vesting he had been
23 promised in the event he was terminated from Surf Air without cause. Wade and Farnsworth
24 showed Dave a shareholder schedule which reflected this percentage of ownership. Wade told
25 Dave that although he understood it was frustrating to be leaving the company, he would make a
26 lot of money with his 12.5 percent equity stake and that he should leave the company quietly.

27 90. Wade and Farnsworth, on behalf of Surf Air, warned Dave that if he resisted his
28 termination from Surf Air or took any actions to contest the actions of the Controlling Shareholder

1 Lenders—such as by seeking other financing options—then his termination would be for cause
2 rather than not for cause. This threat was material to Dave because he would lose the year of
3 vesting of his stock if he was terminated for cause.

4 91. Wade and Farnsworth further told Dave that if he did not agree to go quietly, the
5 entire company would be in jeopardy and he and everyone else would lose everything. They said
6 he should be content with his 12.5 percent and not put Surf Air at risk. They asked him to make a
7 sacrifice for the good of Surf Air by accepting the 12.5 percent and moving on.

8 92. In reliance on Wade's and Farnsworth's representations, Dave agreed to leave
9 peaceably from Surf Air. Wade and Farnsworth were acting at the direction of the Defendants
10 herein.

11 93. Dave kept his end of the bargain. He did not seek a board meeting or fight his
12 termination. He did not look for other financing options. He decided to take the 12.5 percent he
13 had been promised.

14 **I. Surf Air Threatens To Sue Dave, And Dave Resigns His Board Seat**

15 94. After Dave left Surf Air, he continued to hold his board seat. Dave, however, had
16 no role in Surf Air's affairs. The board continued to hold secret meetings without inviting him.

17 95. In December 2013, Surf Air sent Dave forms to sign to approve the Bridge Loan.
18 Dave refused to sign. Dave had been cut out of all board meetings relating to the Bridge Loan but
19 then was being asked to approve the deal as a director.

20 96. On behalf of the Defendants, Wade called Dave and threatened that Surf Air would
21 sue him if he did not resign from the board of Surf Air. Under pressure of a lawsuit, Dave
22 resigned.

23 97. After Dave had been forced to resign, the Bridge Loan was finalized. No
24 independent director approved this loan.

25 **J. The Rigged Series C Dilutive Round**

26 98. Two months later, the Controlling Shareholder Lenders, now endowed with greater
27 power over Surf Air because of the Bridge Loan, systematically removed as employees other Surf
28 Air shareholders. The Controlling Shareholder Lenders replaced these employees with their own

1 agents. In furtherance of their scheme, Anthem installed its agent Sudhin Shahani (“Shahani”), an
2 Anthem executive, as Executive Chairman of Surf Air.

3 99. Wade and Farnsworth were also forced out, both as employees and from their
4 positions on the board. Their plan to sacrifice Dave to save themselves backfired. The
5 Controlling Shareholder Lenders had used them as pawns to carry out their takeover scheme.
6 With Wade gone, on information and belief, the board of Surf Air was entirely held by the
7 Controlling Shareholder Lenders: Woodward, Ganguly and Moore.

8 100. The Controlling Shareholder Lenders claimed these management changes were
9 needed for the good of the company. This was a sham. Surf Air was healthy and doing great. At
10 the same time the Controlling Shareholder Lenders were clearing out Surf Air’s management for
11 supposed performance reasons, Surf Air was expanding to new cities like Las Vegas and Truckee.
12 Its customers were renewing their monthly memberships. There was a long waitlist to become a
13 Surf Air member. New planes were being ordered.

14 101. As stated by Jeff Potter, the new CEO of Surf Air: “In just our first year, Surf Air
15 has enjoyed incredible demand from consumers—more than our existing fleet of planes will be
16 able to accommodate going forward.” Surf Air announced plans “to significantly expand this
17 industry changing ‘All-You-Can-Fly’ membership model in California and other regions of the
18 country.”

19 102. In a furtherance of these plans for international expansion, Surf Air announced a 65
20 plane order, with a total order value of \$312 million. The first 15 aircraft were financed by a \$65
21 million senior facility offered by White Oak Global Advisors. This money was raised without
22 giving up any equity in Surf Air.

23 103. Shahani, the Anthem executive installed as Executive Chairman of Surf Air, stated:
24 “This new funding is coming at a natural inflection point for the company. The last year has
25 shown us that there is significant demand for Surf Air’s unique product and that the Pilatus PC-12
26 NG is capable of achieving profitable unit economics with our model”
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1 104. Yet, in August 2014, at the exact time that Surf Air announced all of this glowing
2 news, Surf Air—controlled by the Controlling Shareholder Lenders—undertook \$8 million in a
3 Series C financing round that was a “down round.”

4 105. This financing round was a sham. Its purpose was to enable the Controlling
5 Shareholder Lenders to complete their scheme that was designed to steal Dave’s ownership and
6 obtain outsized equity in Surf Air. The Controlling Shareholder Lenders raised money at an
7 artificially low valuation, far below the valuation of Surf Air used at the Series B stage. At Series
8 B, the issuance of new stock as part of financing lowered Dave’s percentage ownership of Surf Air
9 by 30 percent. At Series C, the issuance of new stock as part of financing lowered Dave’s
10 percentage ownership of Surf Air by 94%. In light of the health of the company—which was
11 capable of raising \$65 million without giving up equity—this is inexplicable.

12 106. The purpose of this “down round” was to allow the Controlling Shareholder
13 Lenders to wrongfully obtain even more equity in Surf Air at a steep discount. For a minimal
14 investment, the Controlling Shareholder Lenders were able to maintain and indeed increase their
15 already outsized ownership of Surf Air—by wiping out Dave.

16 107. The Controlling Shareholder Lenders were able to negotiate this sweetheart deal
17 because they were (again) on both sides of the transaction. Anthem, through its employee and
18 agent Woodward; Velos, through its employee and agent Ganguly; and Base, through its employee
19 and agent Moore, were, on information and belief, the directors of Surf Air. But instead of
20 representing Surf Air, they represented the interests of their principals, the Controlling
21 Shareholder Lenders and negotiated for the Controlling Shareholder Lenders a below market deal.

22 108. The Controlling Shareholder Lenders did not test the market to see if independent,
23 outside investors would be willing to invest at a higher valuation or on more favorable terms.
24 They just gave the equity to themselves at unilateral terms they set.

25 **K. Dave Learns He Has Been Wiped Out And Misled**

26 109. On November 20, 2013, Dave received a letter from Surf Air, written by Wade,
27 confirming that he would retain approximately 12.5 percent ownership of Surf Air. He was told to
28 return his stock certificate so that Surf Air could issue a certificate reflecting the 12.5 percent

1 amount, which consisted of 213,541 shares. Surf Air said, “We will then issue you a new stock
2 certificate for 213,541 shares.”

3 110. Dave returned his stock certificate. However, Dave did not receive a stock
4 certificate in return. Dave asked consistently and repeatedly for his stock certificate. For
5 approximately a year, Surf Air ignored his requests.

6 111. Approximately a year later, Dave received his stock certificate. However, it did not
7 contain the 213,541 shares in stock that he had been promised.

8 112. Bewildered, Dave reached out to Surf Air to determine if a mistake had been made.
9 Surf Air notified Dave in December 2014 that “[t]here was a stock split as part of the last
10 fundraising round. That was why your stock certificate was reissued. The 186,658 is correct and
11 represents 0.75% ownership of the company.” This was the first Dave had ever heard that he had
12 been diluted.

13 113. Of course, this answer from Surf Air makes no sense because if a stock split had
14 occurred, Dave would have retained his 12.5 percent equity share in Surf Air and would have
15 more than the 213,541 shares he had been promised. Surf Air has never explained this
16 discrepancy to Dave.

17 114. Dave came up with an idea and business model that resulted in a company worth
18 more than \$1 billion. He worked tirelessly for two years to build the company and led the efforts
19 to get FAA approval. At the beginning of the process, he owned 50 percent of Surf Air. Because
20 of the bad acts of the Controlling Shareholder Lenders, his ownership is now at .75 percent.

21 **FIRST CAUSE OF ACTION**

22 **Breach Of Fiduciary Duty**

23 **(Against Anthem, Velos and Base)**

24 115. Dave repeats and realleges each and every foregoing and subsequent allegation
25 contained in the Complaint, and further alleges as follows:

26 116. By virtue of special relationships of a fiduciary nature, the Controlling Shareholder
27 Lenders owed fiduciary duties to Dave due to their status as controlling shareholders of Surf Air
28 acting in concert to accomplish a joint purpose. Among other things, the Controlling Shareholder

1 Lenders (1) held or controlled a majority of Surf Air's board seats; (2) owned the most Surf Air
2 stock; (3) controlled the purse strings of Surf Air; and (4) dominated Surf Air's affairs.

3 117. In addition, as lenders in control of a borrower, the Controlling Shareholder
4 Lenders owed fiduciary duties to Dave as a shareholder. This control includes, but is not limited
5 to: (1) placing their top executives on the board of Surf Air; (2) Anthem installing its employee
6 and agent Shahani as Executive Chairman of Surf Air; (3) ordering key shareholders off payroll,
7 including Dave; (4) controlling from whom Surf Air would receive financing; (5) dictating the
8 composition of Surf Air's board of directors, including requiring that Dave be removed from the
9 board; and (6) preventing Dave's involvement in the company he co-founded.

10 118. The Controlling Shareholder Lenders breached their fiduciary duties by: (a) leading
11 and negotiating financing deals for Surf Air when acting on behalf of and in the interest of the
12 Controlling Shareholder Lenders rather than Surf Air; (b) failing to explore other reasonable and
13 fair alternatives to receive financing; (c) dictating that the Bridge Loan and Series C financing
14 occur at artificially low valuations to obtain more equity at a cheaper price; (d) offering
15 themselves the opportunity to invest in the dilutive financing on a pro-rata basis to maintain their
16 equity in Surf Air but not offering similar terms to Dave; (e) failing to inform Dave of their plans
17 to dilute him or that they had diluted him; (f) holding secret board meetings; (g) failing to provide
18 Dave information about the Bridge Loan and Series C; (h) failing to obtain a fairness opinion as to
19 whether the Bridge Loan and Series C were fair; (i) conditioning financing on Dave's termination;
20 (j) offering incentives to Wade and Farnsworth to obtain their loyalty with regard to the Bridge
21 Loan; and (k) coercing Dave into resigning his board seat.

22 119. Dave did not consent to any of the actions taken by the Controlling Shareholder
23 Lenders, which were contrary to his interests.

24 120. Dave has been damaged as a result of the Controlling Shareholder Lenders'
25 breaches of fiduciary duty in an amount in excess of \$125 million.

26 121. The Controlling Shareholder Lenders' actions were committed with the intent of
27 depriving Dave of his rights and causing injury to him. The conduct was despicable and subjected
28 Dave to unjust hardship. The Controlling Shareholder Lenders' conduct was malicious,

1 fraudulent, oppressive, and was committed with a conscious disregard for the rights of Dave.
2 Accordingly, Dave is entitled to an award of punitive or exemplary damages in an amount
3 sufficient to punish the Controlling Shareholder Lenders and to make an example of them.

4 **SECOND CAUSE OF ACTION**

5 **Breach Of Fiduciary Duty**

6 **(Against Woodward, Ganguly and Moore)**

7 122. Dave repeats and realleges each and every foregoing and subsequent allegation
8 contained in the Complaint, and further alleges as follows:

9 123. Woodward, Ganguly and Moore (the "Lender Directors") had special relationships
10 of a fiduciary nature with Dave, a shareholder of Surf Air, by virtue of their positions on the board
11 of directors at Surf Air.

12 124. The Lender Directors breached their fiduciary duties by: (a) leading and negotiating
13 financing deals for Surf Air when acting on behalf of and in the interest of the Controlling
14 Shareholder Lenders rather than Surf Air; (b) failing to explore other reasonable and fair
15 alternatives to receive financing; (c) dictating that the Bridge Loan and Series C financing occur at
16 artificially low valuations to obtain more equity at a cheaper price; (d) offering themselves the
17 opportunity to invest in the dilutive financing on a pro-rata basis to maintain their equity in Surf
18 Air but not offering similar terms to Dave; (e) failing to inform Dave of their plans to dilute him or
19 that they had diluted him; (f) holding secret board meetings; (g) failing to provide Dave
20 information about the Bridge Loan and Series C; (h) failing to obtain a fairness opinion as to
21 whether the Bridge Loan and Series C were fair; (i) in pursuit of Dave's equity, conditioning
22 providing financing on Dave's termination; (j) offering incentives to Wade and Farnsworth to
23 obtain their loyalty with regard to the Bridge Loan; and (k) coercing Dave into resigning his board
24 seat.

25 125. Dave did not consent to any of the actions taken by the Lender Directors, which
26 were contrary to his interests.

27 126. Dave has been damaged as a result of the Lender Directors' breaches of fiduciary
28 duty in an amount in excess of \$125 million.

1 Accordingly, Dave is entitled to an award of punitive or exemplary damages in an amount
2 sufficient to punish the Controlling Shareholder Lenders and to make an example of them.

3 **FOURTH CAUSE OF ACTION**

4 **Fraudulent Concealment**

5 **(Against Anthem, Velos, Base, Woodward, Ganguly and Moore)**

6 134. Dave repeats and realleges each and every foregoing and subsequent allegation
7 contained in the Complaint, and further alleges as follows:

8 135. As set forth in Dave's First Cause of Action (Breach of Fiduciary Duty) and
9 Second Cause of Action (Breach of Fiduciary Duty), the Controlling Shareholder Lenders and
10 Lender Directors owed fiduciary duties to Dave. The allegations in those causes of action are
11 joined and incorporated herein.

12 136. The Controlling Shareholder Lenders and Lender Directors intentionally failed to
13 disclose and, indeed, actively concealed, that they planned to and did massively dilute Dave's 12.5
14 percent equity in Surf Air. The Controlling Shareholder Lenders and Lender Directors had a duty
15 to disclose this information to Dave.

16 137. Dave was not aware that the Controlling Shareholder Lenders and Lender Directors
17 planned to and did massively dilute him.

18 138. The Controlling Shareholder Lenders and Lender Directors intended to deceive
19 Dave into believing that he would receive and maintain 12.5 percent equity in Surf Air.

20 139. Dave reasonably relied upon the deception of the Controlling Shareholder Lenders
21 and Lender Directors. Believing that he would receive and maintain 12.5 percent equity in Surf
22 Air, Dave, among other things, left Surf Air quietly, did not fight his termination by calling a
23 board meeting, and did not seek other financing options for Surf Air.

24 140. Dave has suffered damages in excess of \$125 million. The concealment by the
25 Controlling Shareholder Lenders and Lender Directors of their plans to dilute Dave, and their
26 concealment of the dilution once it had occurred, were a substantial factor in causing harm to
27 Dave.

28

1 141. The Controlling Shareholder Lenders and Lender Directors' actions were
2 committed with the intent of depriving Dave of his rights and causing injury to him. The conduct
3 was despicable and subjected Dave to unjust hardship. The Controlling Shareholder Lenders and
4 Lender Directors' conduct was malicious, fraudulent, oppressive, and was committed with a
5 conscious disregard for the rights of Dave. Accordingly, Dave is entitled to an award of punitive
6 or exemplary damages in an amount sufficient to punish the Controlling Shareholder Lenders and
7 Lender Directors and to make an example of them.

8 **FIFTH CAUSE OF ACTION**

9 **Breach Of Oral Contract**

10 **(Against Surf Air)**

11 142. Dave repeats and realleges each and every foregoing and subsequent allegation
12 contained in the Complaint, and further alleges as follows:

13 143. On or about November 13, 2013, Surf Air orally agreed to provide Dave with 12.5
14 percent equity in Surf Air and maintain that amount of equity percentage.

15 144. In exchange, Dave promised to leave Surf Air quietly, to not fight his termination
16 by calling a board meeting, and to not seek other financing options for Surf Air.

17 145. Subsequent to the making of these oral agreements, Dave performed all obligations,
18 conditions and covenants required of him by the agreement.

19 146. Surf Air failed to comply with its obligations under the oral agreement. Through at
20 least two financing rounds—the January 2014 Bridge Loan and August 2014 Equity round—Surf
21 Air provided lenders equity rights which resulted in Dave receiving only .75 percent of Surf Air.

22 147. As a direct and proximate result of Surf Air's breach, Dave has suffered damages in
23 excess of \$125 million.

24 **SIXTH CAUSE OF ACTION**

25 **Promissory Estoppel**

26 **(Against Surf Air)**

27 148. Dave repeats and realleges each and every foregoing and subsequent allegation
28 contained in the Complaint, and further alleges as follows:

1 149. As an alternative theory of recovery, Dave seeks damages for promissory estoppel.

2 150. Surf Air assigned to Wade, its CEO, director and agent, and Farnsworth, its CFO,
3 director and agent, the responsibility of notifying Dave of his termination from Surf Air and
4 negotiating the terms of his departure.

5 151. Surf Air put Wade and Farnsworth in a position to make representations and
6 commitments to Dave. Wade and Farnsworth had both actual and ostensible authority to act on
7 behalf of Surf Air in these negotiations with Dave.

8 152. Surf Air relied on Wade and Farnsworth to provide this information to Dave on its
9 behalf. Surf Air knew that Dave reasonably believed that Wade and Farnsworth were making
10 representations on its behalf.

11 153. Surf Air, through Wade and Farnsworth, promised Dave that he would obtain and
12 retain an approximately 12.5 percent ownership stake in Surf Air. Surf Air could have
13 subsequently disavowed this promise. It never did so.

14 154. Dave reasonably relied on the representations of Wade and Farnsworth, agents of
15 Surf Air, and had no reason to suspect that Surf Air would not keep its promise to him. In
16 reliance, Dave did not call a board meeting to contest his termination and did not seek alternative
17 financing. He peaceably left Surf Air.

18 155. It was foreseeable that Dave would rely on this promise. Surf Air knew that Dave
19 trusted his brother Wade and would believe his representations.

20 156. Surf Air benefitted from this broken promise. By diluting Dave's ownership of
21 Surf Air, it increased the per share value of the company.

22 157. As a direct and proximate result of Surf Air's breach, Dave has suffered damages
23 of at least \$125 million, the precise amount to be proven at trial.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment against Defendants and for relief as follow:

- 26 1. For general and consequential damages according to proof, but believed to
27 be in excess of \$125 million;
28 2. For punitive damages;

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- 3. For costs;
- 4. For pre-judgment and post-judgment interest; and
- 5. For such other and further relief as the Court may deem just and proper.

DATED: November 12, 2015

MILLER BARONDESS, LLP

By: 

LOUIS R. MILLER
Attorneys for Plaintiff
DAVID EYERLY

DEMAND FOR JURY TRIAL

By its undersigned attorney, Plaintiff David Eyerly hereby demands a jury trial.

DATED: November 12, 2015

MILLER BARONDESS, LLP

By: 

LOUIS R. MILLER
Attorneys for Plaintiff
DAVID EYERLY