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IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF BENTON

LISA MARIE BOYD, an individual,

Plaintiff,

v.

CATHERINE FISHER, an individual,

Defendant.

Case No. 21CV38650

**GENERAL JUDGMENT**

The above-captioned action came before the Court, the Honorable Locke Williams, for a bench trial on July 18, 2022 through July 20, 2022. Plaintiff-Counterclaim Defendant Lisa Marie Boyd was represented by Michael Willes and Will Gent of Tonkon Torp LLP. Defendant-Counterclaimant Catherine Fisher was represented by Jovita Wang of Richardson Wang LLP.

On July 20, 2022, after hearing the evidence and the arguments of counsel, the Court found, among other things, that: (1) Boyd is entitled to specific performance of the ISC Group, LLC (the “Company”) deadlock buyout procedures set forth in the Company’s Operating Agreement, a copy of which is attached hereto as Exhibit 1; (2) Boyd is entitled to a declaratory judgment declaring the parties’ rights and obligations under the Operating Agreement’s deadlock buyout provisions; (3) Fisher is not entitled to the specific performance she requested in the Answer and Affirmative Defenses and Counterclaims (the “Answer”); (4) Boyd did not breach the covenant of good faith and fair dealing alleged in the Answer; (5) Boyd did not breach the fiduciary duty owed to Fisher or the Company; and (6) Fisher is not entitled to the declaratory judgment she requested in the Answer.

1           **NOW, THEREFORE, IT IS ORDERED AND ADJUDGED:**

2           Consistent with the findings of fact and conclusions of law stated by the Court on the  
3 record following trial, on Boyd's First Claim for Relief, for specific performance, Boyd is  
4 entitled to specific performance as follows:

5           A.       Boyd shall purchase Fisher's entire interests in the equity and assets of the  
6 Company for the sum of \$218,090.50, such purchase to be effective as of October 13, 2021.  
7 Under Section 8.6.4 of the Operating Agreement, the closing of the sale shall occur at a time and  
8 place to be designated by Boyd, and at closing, Boyd shall pay Fisher the sum of \$218,090.50,  
9 and Fisher shall convey, transfer, and assign to Boyd by assignment, bill of sale, and such other  
10 instruments of transfer as shall reasonably be required, all of Fisher's rights and interests in and  
11 to the Company and all its assets, and shall, to the extent requested by Boyd, cooperate to effect  
12 the smooth and efficient continuation of the Company's business. The closing shall occur within  
13 seven days of entry of judgment;

14           B.       Within 60 days of entry of judgment, Boyd shall cause Fisher to be removed from  
15 all liability on all personal guarantees of Company debt, or, alternatively, refinance such debt to  
16 remove any personal liability for Fisher;

17           C.       To the extent that the Internal Revenue Service or Oregon Department of Revenue  
18 determine that Fisher has personal income tax liability for any earnings retained by the Company  
19 after October 13, 2021, Boyd shall cause the Company to promptly pay Fisher the amount of  
20 such tax liability, including to the extent the Company's payment of such tax liability is deemed  
21 income to Fisher, as well as interest at the statutory rate on all taxes paid by Fisher on account of  
22 such liability from the time Fisher paid those taxes until the time the Company reimburses her, to  
23 ensure that Fisher has zero tax impact from monies that were not distributed to her by the  
24 Company after October 13, 2021;

25           D.       The Operating Agreement does not contain a non-competition term. As such, the  
26 Court declines to impose a non-competition agreement on Fisher as part of the transaction; and

1 E. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
2 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

3 On Boyd's Second Claim for Relief, for breach of contract, the Court finds that:

4 A. Fisher has breached the Operating Agreement by failing to transfer her interest in  
5 the Company pursuant to the deadlock buyout provisions of the Operating Agreement;

6 B. Fisher shall perform pursuant to the Court's order regarding transfer of her entire  
7 interests in the equity and assets of the Company, and Fisher shall cooperate with Boyd to effect  
8 the smooth and efficient continuation of the Company's business; and

9 C. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
10 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

11 On Boyd's Third Claim for Relief, for declaratory relief, the Court declares:

12 A. Fisher issued an effective Deadlock Notice under Section 8.6.1 of the Operating  
13 Agreement on June 4, 2021;

14 B. Fisher issued an effective Buyout Notice under Section 8.6.1 of the Operating  
15 Agreement on August 13, 2021, setting the Company's Total Asset Value at \$1,239,778;

16 C. Boyd issued an effective Election Notice under Section 8.6.2 of the Operating  
17 Agreement on September 10, 2021, electing to purchase Fisher's interest in the Company;

18 D. Under Sections 8.6.5, 8.10.1, and 10 of the Operating Agreement, the purchase  
19 price for a member's interest following a Deadlock Buyout is determined using the following  
20 mathematical formula, based on the application and distribution provisions of Section 10.2;

21 
$$\text{Purchase Price} = (\text{Total Asset Value} - \text{Company Liabilities}) \times$$

22 
$$\text{Membership Percentage} + \text{Unreturned Capital Contribution}$$

23 E. Pursuant to the Operating Agreement, Boyd is entitled to purchase Fisher's fifty-  
24 percent interest in the Company for the sum of \$218,090.50, effective as of October 13, 2021;

25 F. Under Section 8.6.4 of the Operating Agreement, the closing of the sale shall  
26 occur at a time and place to be designated by Boyd, and at closing, Boyd shall pay Fisher the

1 sum of \$218,090.50, Fisher shall convey, transfer, and assign to Boyd by assignment, bill of sale,  
2 and such other instruments of transfer as shall reasonably be required, all of Fisher's rights and  
3 interests in and to the Company and all its assets, and shall, to the extent requested by Boyd,  
4 cooperate with Boyd to effect the smooth and efficient continuation of the Company's business;

5 G. Within 60 days of entry of judgment, Boyd shall cause Fisher to be removed from  
6 all liability on all personal guarantees of Company debt, or, alternatively, refinance such debt to  
7 remove any personal liability for Fisher;

8 H. To the extent that the Internal Revenue Service or Oregon Department of  
9 Revenue determine that Fisher has personal income tax liability for any earnings retained by the  
10 Company after October 13, 2021, Boyd shall cause the Company to pay Fisher the amount of  
11 such tax liability, including to the extent the Company's payment of such tax liability is deemed  
12 income to Fisher, as well as interest at the statutory rate on all taxes paid by Fisher on account of  
13 such liability from the time Fisher paid those taxes until the time the Company reimburses her, to  
14 ensure that Fisher has zero tax impact from monies that were not distributed to her by the  
15 Company after October 13, 2021;

16 I. The Operating Agreement does not contain a non-competition term. As such, the  
17 Court declines to impose a non-competition agreement on Fisher as part of the transaction; and

18 J. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
19 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

20 On Boyd's Fourth Claim for Relief, for attorney fees and costs, the Court finds:

21 K. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
22 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

23 The Court shall retain jurisdiction to resolve any dispute that arises in connection with the  
24 terms of this judgment.

25 ///

26 ///

1 On Fisher's Counterclaims and Affirmative Defenses, it is **FURTHER ORDERED**

2 **AND ADJUDGED THAT:**

3 A. Fisher's Counterclaims for specific performance, breach of covenant of good faith  
4 and fair dealing, breach of fiduciary duty, declaratory relief, and request for unjust enrichment  
5 (pursuant to oral motion to amend) are dismissed with prejudice; and

6 B. Fisher's Affirmative Defenses of failure to state a claim, unclean hands, no  
7 meeting of the minds, waiver/estoppel, lack of consideration/insufficient consideration, and  
8 mitigation are dismissed with prejudice.

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14 **Circuit Court Judge Locke A. Williams**

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18 Submitted this 5th day of August 2022 by:

19 TONKON TORP LLP

20 By: /s/ Michael Willes  
21 Michael Willes, OSB No. 141806  
22 Will Gent, OSB No. 165254  
23 Attorneys for Plaintiff  
24  
25  
26

**OPERATING AGREEMENT  
OF  
ISC Group, LLC  
An Oregon Limited Liability Company**

This OPERATING AGREEMENT (this "Agreement") is made and entered into effective January 12, 2015 (the "Effective Date"), by and among ISC Group, LLC, an Oregon limited liability company (the "Company"), and the parties identified in Appendix A to this Agreement (the "Members").

**SECTION 1. THE LIMITED LIABILITY COMPANY**

**1.1 Formation.** As of the Effective Date, the Members formed an Oregon limited liability company under the name ISC Group, LLC, on the terms and conditions set forth in this Agreement and pursuant to the Oregon Limited Liability Company Act (the "LLC Act"). The rights and obligations of the parties will be as provided in the LLC Act except as otherwise expressly provided in this Agreement.

**1.2 Name.** The business of the Company will be conducted under the name ISC Group, LLC, or under such other name(s) as the Manager shall from time to time designate, including without limitation, under the assumed business name ISC Group at Town & Country Realty.

**1.3 Purpose.** The purpose of the Company will be to act as real estate brokers on behalf of third parties (the "Business") and to engage in any act or activity incidental to the Business.

**1.4 Offices.** The Company will maintain its principal business office at 520 NW 4<sup>th</sup> Street, Corvallis, Oregon, 97330

**1.5 Registered Agent.** Catherine Fisher will be the Company's initial registered agent in Oregon and the registered office will be at 520 NW 4<sup>th</sup> Street, Corvallis, Oregon, 97330.

**1.6 Term.** The term of the Company will commence on the Effective Date and will continue until terminated as provided in this Agreement.

**1.7 Names and Addresses of Members.** The Members' names and addresses are as set forth in Appendix A.

**1.8 Approval of the Members.** For purposes of this Agreement, "Approval of the Members" means approval by Members holding 51% of the issued and outstanding Units.

**1.9 Admission of Additional Members.** Authorized but unissued Units (as described below) may only be issued to new Members upon the unanimous consent of all existing Members of the Company, and upon purchase thereof by the new Member(s) on terms and conditions acceptable to all existing Members of the Company. Except as otherwise expressly

provided in this Agreement, no additional members may be admitted to the Company without prior unanimous consent of all Members.

## **SECTION 2. CAPITAL CONTRIBUTIONS**

**2.1 Initial Capital Contributions.** The value, nature, and timing of each Member's initial capital contribution to the Company are as set forth in Appendix B to this Agreement.

**2.2 Units of Membership Interest.** Except as otherwise provided in this Agreement, the interest of each Member in the capital and profits of the Company will be in the form of units of membership interest ("Units"). The Company is authorized to issue up to 10,000 Units. Initially, 5,000 Units will be issued to the Members in exchange for the initial capital contributions described in Appendix B to this Agreement. No certificates will be issued to represent Units.

**2.3 Initial Allocation of Units.** The number of Units credited to each initial Member is as set forth in Appendix A to this Agreement.

**2.4 Membership Percentages.** Each Member's percentage interest in the Company (the "Membership Percentage") will be equal to the ratio, expressed as a percentage (rounded to the nearest one-hundredth of a percent), of the number of Units owned by the Member divided by the total number of issued and outstanding Units.

### **2.5 Additional Capital Contributions.**

**2.5.1 General.** The Members intend that, to the maximum extent possible, Company obligations are to be paid from operating cash flows and from short-term or long-term Company borrowings (including, but not limited to, loans from Members as provided in Section 5.5 of this Agreement).

**2.5.2 Capital Calls; Issuance of New Units.** To the extent that cash flow from operations and Company borrowings are not sufficient to meet the obligations of the Company as they become due, the Manager, with the Approval of the Members, may make a "Capital Call" to require the Members to contribute additional capital to the Company by purchasing additional Units ("New Units") in the Company pro rata in proportion to each Member's then-existing Membership Percentage. The Manager will, in conjunction with declaring such a Capital Call, establish the purchase price of the New Units at a value that reasonably estimates the then-current fair market value of an issued and outstanding Unit.

**2.5.3 Failure to Make Capital Call.** If any Member (a "Defaulting Member") for any reason fails to make such Member's Capital Call contribution by purchasing the Member's pro rata share of New Units at the established purchase price, the other Members (the "Advancing Members") may advance funds (a "Default Advance") pro rata in proportion to their respective Membership Percentages as in effect on the date of the Capital Call, or as they otherwise may agree, for the account of the Defaulting Member.

**2.5.4 Default Advance.** A Default Advance will be a debt of the Defaulting Member that is due to the Advancing Members and the amount of the Default Advance will bear interest from the date made at 5% per annum, compounded monthly, and will be immediately due and payable to the Advancing Members, with interest, without further demand or notice.

Notwithstanding any other provision of this Agreement, all amounts of cash otherwise distributable from the Company to the Defaulting Member will be charged against the Defaulting Member's Capital Account but will be paid to the Advancing Members until all Default Advances, and all interest and costs of collection with respect to all Default Advances, have been repaid in full. Default Advances will be repaid in chronological order (namely, a Default Advance relating to a particular Capital Call will be repaid before any Default Advance relating to subsequent Capital Calls). With respect to a particular Default Advance, payments will be allocated among the Advancing Members pro rata in proportion to their respective Default Advance amounts. A Default Advance will be the personal obligation of the Defaulting Member to the Advancing Members and, if not repaid within 30 days of the date made, the Advancing Members may pursue any remedy at law or in equity for its repayment, or may proceed as provided in Section 2.5.5.

**2.5.5 Elective Issuance of Additional New Units to Advancing Members.** If a Defaulting Member has not repaid to the Advancing Members the entire amount of all Default Advances, plus interest and costs of collection, within 30 days of the date of the Default Advance, each Advancing Member will have the absolute right, exercisable at any time and in the Advancing Member's sole discretion, to require in writing that the Company issue to the Advancing Member a number of New Units representing the amount of the Advancing Member's pro rata share of the principal amount of the unpaid Default Advance (the "Remaining Default Amount"), based on the purchase price established by the Managers at the time of the Capital Call with respect to the Default Advance. If an Advancing Member is issued additional New Units as provided in this Section 2.5.5, the Remaining Default Amount due to that Advancing Member will be extinguished on completion of the issuance of the New Units to the Advancing Member; however, the Defaulting Member will remain obligated to the Advancing Member for any interest accrued and any collection costs incurred through the issuance date.

**2.6 No Interest on Capital Contributions.** Members will not be entitled to interest or other compensation for their capital contributions except as expressly provided in this Agreement.

### **SECTION 3. ALLOCATION OF PROFITS AND LOSSES; DISTRIBUTIONS**

**3.1 Allocations of Income and Loss.** All items of income, gain, loss, deduction, and credit will be allocated among the Members pro rata in proportion to their respective Membership Percentages.

**3.2 Distributions.** No distribution may be made to any Member if, after giving effect to the distribution, in the judgment of the Members either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business or (b) the fair value of the total assets of the Company would not at least equal its total liabilities. Subject to the foregoing limitation, the Company will make distributions, including draws, to Members at such times and in such amounts as the Members mutually agree. All distributions will be allocated among the Members pro rata in proportion to their respective Membership Percentages.

### **SECTION 4. MANAGEMENT OF COMPANY; POWERS AND DUTIES OF MANAGER**

**4.1 Management of Company Business.** The Company is a manager-managed limited liability company. The management and control of the Company and its business and affairs will be vested exclusively in the manager or managers of the Company (the "Manager"). The Manager may be, but need not be, a Member. The initial Managers are Catherine Fisher and Lisa Marie Warren (collectively, the "Manager"). Each Manager will individually have all the rights and powers that may be possessed by a manager in a manager-managed limited liability company pursuant to the LLC Act and such rights and powers as are otherwise conferred by law or are necessary, advisable, or convenient to the discharge of the Manager's duties under this Agreement and to the management of the Business and affairs of the Company. Without limiting the generality of the foregoing, but subject to the limitations of Section 4.2, the Manager will have the following rights and powers (which he or she may exercise at the cost, expense, and risk of the Company):

- (a) To expend the funds of the Company in furtherance of the Company's Business;
- (b) To perform all acts necessary to manage and operate the Company's Business and properties, including engaging any person or persons that the Manager deems advisable for such purposes;
- (c) To execute, deliver, and perform on behalf of and in the name of the Company any and all agreements and documents deemed necessary or desirable by the Manager to carry out the Business of the Company, including any lease, deed, easement, bill of sale, mortgage, trust deed, security agreement, contract of sale, or other document conveying, leasing, or granting a security interest in the interest of the Company in any of its assets, or any part of its assets, whether held in the Company's name, the Manager's name, or otherwise, and no other signature or signatures will be required; and
- (d) To borrow or raise money on behalf of the Company in the Company's name or in the name of the Manager for the benefit of the Company and, from time to time, to draw, make, accept, endorse, execute, and issue promissory notes, drafts, checks, and other negotiable or nonnegotiable instruments and evidences of indebtedness, and to secure the payment of indebtedness by mortgage, security agreement, pledge, or conveyance or assignment in trust of the whole or any part of the assets of the Company, including contract rights.

**4.2 Limitations on Authority of the Manager.** Without first obtaining the Approval of the Members, no Manager will have the authority to:

- (a) Amend the Company's Articles of Organization or this Agreement;
- (b) Sell or otherwise dispose of any asset owned by the Company other than in the ordinary course of business;
- (c) Dissolve the Company;
- (d) Merge the Company with another entity or convert the Company into a different type of entity;
- (e) Admit a new Manager or Member; or
- (f) Borrow money or otherwise incur indebtedness in the Company's name in excess of \$10,000.00 in a single transaction or in a series of related transactions.

**4.3 Successor Manager; Multiple Managers.** If the Manager or any successor or additional Manager dies, resigns, or is removed as Manager, or is determined to be incompetent by a court in a protective proceeding, the Members may elect a successor Manager by Approval

of the Members. Provided, however, if there is more than one Manager serving at the time that another Manager dies, resigns, or is removed, the remaining Manager(s) shall continue to serve without further action of the Members. The Members, by Approval of the Members, may at any time or from time to time elect one or more additional Managers. Any successor or additional Manager will have the same powers, authority, and rights as provided for the Manager under this Agreement and the LLC Act. At any time when there are two or more Managers:

(a) References in this Agreement to the Manager will be deemed to include all the Managers; and

(b) Any Manager individually may execute on behalf of the Company any document authorized or approved by the Managers as provided in this Section and by the Members to the extent that authorization or approval is required pursuant to Section 4.2 of this Agreement.

**4.4 Duties of the Manager.** The Manager will manage and control the Company's Business and affairs to the best of his or her ability and will use his or her best efforts to carry out the Business of the Company. The Manager will devote such time to the Business and affairs of the Company as is reasonable, necessary, or appropriate. Whenever reasonably requested by any Member, the Manager will render a full and complete accounting of all dealings and transactions relating to the Business of the Company. The Manager will have a fiduciary responsibility for safekeeping and using all funds and assets of the Company, whether or not in his or her immediate possession or control, and the Manager will not employ or permit another to employ such funds or assets in any manner except for the exclusive benefit of the Company.

**4.5 Limitation on Liability of the Manager to the Company or the Members.** Subject to the restrictions set forth in Section 4.7, the Manager will have no liability to the Company or to any Member for any loss suffered by the Company or any Member that arises out of any action or inaction of the Manager as long as the Manager's conduct was in good faith and the Manager reasonably believed that his or her conduct was in the best interests of the Company.

**4.6 Indemnification of the Manager.** Subject to the restrictions of Section 4.7, the Company will indemnify the Manager against any losses, judgments, liabilities, expenses, and amounts paid in settlement of any claims sustained against the Company or against the Manager in connection with the Company, as long as the Manager's conduct was in good faith and the Manager reasonably believed that his or her conduct was in the best interests of the Company. The satisfaction of any indemnification and any saving harmless will be from, and limited to, Company assets, and the Members will not have any personal liability on account of any such indemnification.

**4.7 Restrictions.** The Manager will not be relieved of liability pursuant to Section 4.5 and will not be entitled to indemnification pursuant to Section 4.6 for:

- (a) Any breach of the Manager's duty of loyalty to the Company or its Members;
- (b) Any act or omission not in good faith that involves intentional misconduct or a knowing violation of law;
- (c) Any unlawful distribution to Members in violation of ORS 63.235; or
- (d) Any transaction from which the Manager derives an improper personal benefit.

**4.8 Removal of a Manager.** The Members may, by Approval of the Members, remove or replace any Manager or substitute another Manager for any Manager at any time and for any reason or for no reason.

## **SECTION 5. PROVISIONS APPLICABLE TO ALL MEMBERS**

**5.1 Dealing with the Company.** The Members, the Manager, and affiliates of the Members or the Manager may deal with the Company by providing or receiving property and services to or from the Company, and may receive from others or the Company normal profits, compensation, commissions, or other income incident to those dealings as long as any such transaction is approved in advance by the Manager or, for dealings with the Manager, by Approval of the Members.

**5.2 Limitations on Powers of the Members.** Except as otherwise expressly stated in this Agreement, no Member who is not also a Manager will:

- (a) Be permitted to take an active part in the control of the business or affairs of the Company;
- (b) Have any direct voice in the management or operation of the Company; or
- (c) Have any authority or power in the capacity of a Member to act as an agent for or on behalf of the Company to do any act that would be binding on the Company or to incur any expenditures with respect to the Company or its property.

**5.3 Liability of the Members and Manager.** Except to the limited extent provided in the LLC Act, no Member or Manager will have any personal liability for any Company obligation, expense, or liability.

**5.4 Other Business.** Nothing in this Agreement will be deemed to restrict in any way the freedom of any Member or Manager to conduct any other business or activity, even if that business or activity competes with the Business of the Company. As authorized by ORS 63.155(11), the Members mutually agree that neither of the following activities will constitute a breach of a Member's or a Manager's duty of loyalty to the Company and the Members:

- (a) Competing with the Company in the course of the Business; or
- (b) Entering into or engaging in, for a Member's or a Manager's own account, an investment (including, without limitation, a Member or Manager who buys and/or sells real estate for that Member's or Manager's own personal investment purposes), business, transaction, or activity that is similar to the investments, businesses, transactions, or activities of the Company (a "Similar Activity") without first offering the Company or the other Members an opportunity to participate in the Similar Activity or having any obligation to account to the Company or the other Members for the Similar Activity or the profits from the Similar Activity. Without limiting the generality of the foregoing, the Company and its initial Members and Manager understand and agree that initial Member and Manager Catherine Fisher holds real estate licenses in states other than Oregon and all activities (including all income and/or loss) associated with activities under those licenses are not Business of the Company. Further, and again without limiting the generality of the foregoing, the Company and its initial Members and Managers understand and agree that initial Member and Manager Catherine Fisher is a member in and/or shareholder of and operates other companies involved in certain consulting activities,

property management activities, and/or which function as real estate brokerages. Those companies include, without limitation, Fisher Real Estate Services, LLC, and Fisher & Company, Inc. None of these activities by Catherine Fisher, either individually or through the above-reference companies (or any other companies) are Business of the Company.

**5.5 Loans.** Any Member may, but will not be obligated to, make loans to the Company to cover the Company's cash requirements. Any such loans will bear interest at a reasonable rate to be determined by the Manager.

## **SECTION 6. COMPENSATION AND REIMBURSEMENT OF EXPENSES**

**6.1 Organization Expenses.** All expenses incurred in connection with the organization of the Company will be paid by the Company.

**6.2 Other Company Expenses.** The Manager will charge the Company for his or her actual out-of-pocket expenses incurred in connection with the Company's Business. Any amounts paid by the Manager to satisfy obligations of the Company will be treated as loans to the Company.

**6.3 Compensation.** The Manager will be paid such reasonable compensation as is specifically authorized by the Approval of the Members.

## **SECTION 7. BOOKS OF ACCOUNT; ACCOUNTING REPORTS; TAX RETURNS; FISCAL YEAR; BANKING**

**7.1 Books of Account.** The Company's books and records, a register showing the names of the Members and the respective interests held by each of them, and this Agreement will be maintained at the principal office of the Company. The Members will have access to those books and records at all reasonable times. The Members will keep and maintain books and records of the operations of the Company that are appropriate and adequate for the Company's Business and for carrying out this Agreement.

**7.2 Accounting Reports.** The Members will be furnished with copies of internally prepared financial statements of the Company.

**7.3 Tax Returns.** The Members will cause all federal and state income tax returns for the Company to be prepared and timely filed with the appropriate authorities as necessary. As soon as practicable after the end of each taxable year, each Member will be furnished with a statement that may be used by the Member in preparing the Member's income tax returns, showing the amounts of any distributions, gains, profits, losses, or credits allocated to or against the Member during the fiscal year.

**7.4 Fiscal Year; Taxable Year.** The fiscal year and the taxable year of the Company is the calendar year.

**7.5 Banking.** All funds of the Company must be deposited in a separate bank account or in an account or accounts of a savings and loan association in the Company's name as the Members determine. Those funds may be withdrawn from the account or accounts on the signature of the person or persons who are designated by the Members.

## **SECTION 8. TRANSFER OF MEMBERSHIP INTEREST**

**8.1 General Restriction.** Except as expressly set forth in this Agreement, no Member will have the right to sell, assign, transfer, pledge, mortgage, or otherwise dispose or encumber ("Transfer") all or any portion of the Units held by the Member, and no assignee or other person may become a Member of the Company, without the prior Approval of the Members. Any Member may withhold such approval in the Member's sole and absolute discretion. Any purported Transfer in violation of this Agreement will be null and void.

**8.2 Permitted Transfers.** Notwithstanding Section 8.1, any Member may, without further Approval of the Members and without compliance with the right-of-first-refusal provisions of Section 8.3, Transfer all or any portion of the Member's Units to any "Permitted Transferees" (as defined in this Section 8.2). For purposes of this Section 8, a "Permitted Transferee" means the Member or a lineal descendant of the Member. A trust for the benefit of one or more Members or Permitted Transferees or a partnership or limited liability company in which all the partners or members are Members or Permitted Transferees is also a Permitted Transferee.

### **8.3 Right of First Refusal.**

**8.3.1 Transfer Notice.** If a Member proposes to Transfer Units to a person who is not already a Permitted Transferee, the Member (the "Transferring Member") must first give a written notice (a "Transfer Notice") to the Company setting forth:

- (a) The name of the proposed transferee (the "Transferee");
- (b) The number of Units proposed to be Transferred (the "Transfer Units"); and
- (c) The purchase price and payment terms for the proposed Transfer (the "Transfer Terms").

**8.3.2 Transfer Option.** For a period of 120 days after actual receipt of a Transfer Notice (the "Option Period"), the Company will have the option (the "Transfer Option"), but not the obligation, to purchase all or any portion of the Transfer Units for the Transfer Terms; however, if the Transfer Terms provide for a gift or consideration other than cash, the price and payment terms with respect to the Transfer Option will be as provided in Section 8.10. The Company may assign its Transfer Option to one or more of the other Members.

**8.3.3 Sale.** If the Company (or the Member or Members, if any, to whom the Company has assigned the Transfer Option) does not exercise the Transfer Option during the Option Period, the Transferring Member may complete the proposed Transfer described in the Transfer Notice as long as:

- (a) The Transfer is for the same Transfer Units, the same Transferee, and the same Transfer Terms as described in the Transfer Notice;

(b) The Transfer is completed within 30 days after the expiration of the Option Period; and

(c) The Transferee signs a counterpart of and agrees to be bound by this Agreement. Otherwise, the Transferring Member must again comply with the provisions of Section 8 before Transferring any Units. Such a Transfer will be subject to Section 8.8.

**8.4 Death of a Member.** On the death of any Member, the Company will have the option to purchase all the Units held by the deceased Member at the price and pursuant to the terms described in Section 8.10. The Company may transfer the option to one or more of the other Members. This option may be exercised by the Company (or the other Member or Members) at any time within 150 days after the death of the Member. If the Company (or the Member or Members, if any, to whom the Company has assigned the option) does not exercise the option, the Units held by the deceased Member may be Transferred in accordance with the deceased Member's will or trust or in accordance with the applicable laws of succession.

**8.5 Divorce of a Member.** If, as a result of or in connection with the divorce or separation of any Member, all or any portion of the Units held by the Member would otherwise be Transferred (whether by agreement or pursuant to a court judgment, decree, or order) to the spouse of the Member (and the spouse is not also a Member), the Company will have the option to purchase the Units that would otherwise be Transferred to the spouse for the price and pursuant to the payment terms described in Section 8.10. This option may be exercised by the Company at any time within 60 days after the Company receives actual knowledge of the proposed Transfer. The Company may assign this option to one or more of the other Members. If the Company (or the Member or Members, if any, to whom the Company has assigned the option) does not exercise the option, the Units may be Transferred to the spouse, subject to the provisions of Section 8.8.

**8.6 Deadlock Buyout.** The provisions of this Section 8.6 shall apply if (1) this Agreement requires the unanimity of the Members, (2) the Members cannot agree among themselves as to a decision or course of action (a "Deadlock"), (3) a Member delivers to the other Members a written notice of the Member's election to invoke the provisions of this Section 8.6 (a "Deadlock Notice"), and (4) unanimity cannot be reached within 45 days after delivery of the Deadlock Notice to the other Members.

**8.6.1.** A Member who believes that there is a Deadlock may deliver to the other Members a Deadlock Notice stating with particularity the issue or decision on which the Member believes there is a Deadlock. If the Members cannot resolve the Deadlock within 45 days after delivery of the Deadlock Notice to other Members (the "Resolution Period"), then during the 30-day period after expiration of the Resolution Period, any Member (the "Initiating Member") may deliver to the other Members (the "Responding Members") a written notice (the "Buyout Notice") invoking the provisions of this Section 8.6. The Buyout Notice shall set forth a dollar figure selected by the Initiating Member for the total value of the Company's assets, such value to be determined without regard to any debts, mortgages, or other liabilities of the Company (which figure is hereinafter referred to as the "Total Asset Value").

**8.6.2** Within 60 days after the delivery of such notice by the Initiating Member, the Responding Members or any of them shall furnish written notice to the Initiating Member electing either to purchase the Initiating Member's entire rights and interests in the Company or to sell the Responding Members' entire rights and interest in the Company to the Initiating Member, at the cash purchase price provided for in Section 8.6.5. If the Responding Members do not effectively give either notice, then the Responding Members shall be deemed to have elected to sell their rights and interests in the Company to the Initiating Member at such purchase price.

**8.6.3.** For purposes of this Section 8.6.3, the election of the Responding Members shall be determined in accordance with the following:

**8.6.3.1** If all Responding Members elect to acquire the Initiating Member's interest, the Responding Members shall acquire that interest proportionately to their respective Ownership Interests or as they otherwise may agree;

**8.6.3.2** If less than all the Responding Members elect to acquire the Initiating Member's interest, the Responding Members so electing shall acquire the Initiating Member's interest proportionately to the Ownership Interests of the Responding Members electing to purchase, or in such other proportions as they may otherwise agree;

**8.6.3.3** If none of the Responding Members elects to acquire the Initiating Member's interest, then the Initiating Member must acquire all of the interests of all Responding Members.

**8.6.3.4** Responding Members cannot acquire the interests of other Responding Members who do not elect to participate in the acquisition of the Initiating Member's interest as the result of a Deadlock except in accordance with the provisions of this Section 8.6 wherein such purchasing Responding Member becomes an Initiating Member.

**8.6.4** Closing shall take place on the 30th day after the expiration of the 60-day period provided in Section 8.6.2 for the giving of notice of election by the Responding Members or, if that 30th day shall fall on a weekend or a holiday, then on the next ensuing business day thereafter. The closing shall occur at a time and place to be designated by the purchasing Member. At the time and place of closing, the selling Member(s) shall convey, transfer, and assign to the purchasing Member(s) by assignment, bill of sale, and such other instruments of transfer as shall reasonably be required, all of the selling Members' rights and interests in and to the Company and all its assets, and shall, to the extent requested by the purchasing Member(s), cooperate to effect the smooth and efficient continuation of Company affairs.

**8.6.5** The purchase price to be paid by the purchasing Member(s) to the selling Member(s) shall be equal to the amount that the selling Member(s) would have received if all of the Company's assets had been sold on the date of closing for a cash price equal to the Total Asset Value, and the proceeds thereof were applied and distributed in the manner provided in Section 8 of this Agreement, except that any reserves for contingencies shall not be taken into account for this purpose. The purchase price shall be payable in its entirety in cash, cashier's check, wire transfer, or certified funds (which funds shall be immediately available) at closing.

**8.7 Other Involuntary Transfer.** If, as a result of or in connection with the bankruptcy or similar insolvency proceeding against any Member or any proceeding by or on behalf of a creditor of any Member, all or any portion of the Units held by the Member would otherwise be involuntarily Transferred to a third party who is not already a Member, the Company will have the option to purchase the Units that would otherwise be Transferred to the third party for the price and pursuant to the payment terms described in Section 8.10. This option may be exercised by the Company at any time within 60 days after the Company receives actual knowledge of the proposed Transfer. The Company may assign this option to one or more of the other Members. If the Company (or the Member or Members, if any, to whom the Company has assigned the option) does not exercise the option, the Units may be retained by the third-party transferee subject to the provisions of Section 8.8.

**8.8 Effect of Transfer.** When a Transfer of Units occurs because neither the Company nor any Member exercised the option described in Section 8.3.3, 8.4, 8.5, or 8.7, the transferee will be treated as an assignee of the economic rights entitled to the capital and profits interest represented by the Transferred Units. However, such transferee will not have voting rights or any other rights of a Member under the LLC Act or this Agreement unless the transferee is admitted to the Company as a substitute Member. The transferee (or transferees) may become a Substituted Member or Members with respect to the Transferred Units only on:

- (a) Approval of the Members as provided in Section 8.1; and
- (b) Execution of a counterpart of this Agreement, as amended through the date of the Transfer, pursuant to which the transferee (or transferees) agrees to be bound by the terms and conditions of this Agreement.

Whether or not the transferee (or transferees) is admitted as a Substituted Member, the Transferred Units will remain subject to all the provisions of this Agreement, including the restrictions in Section 8.

**8.9 Voluntary Withdrawal.** If a Member voluntarily withdraws as a Member pursuant to Section 9, the Company will have the option to purchase that Member's Units for the price and pursuant to the payment terms described in Section 8.10. This option may be exercised by the Company at any time after the Member's withdrawal. The Company may assign this option to one or more of the other Members.

**8.10 Purchase Price and Payment.**

**8.10.1 Purchase Price.** On exercise by the Company (or the Member or Members, if any, to whom the Company has assigned the option) of an option pursuant to Section 8.3.2, 8.4, 8.5, 8.6, 8.7, or 8.9, the purchase price for the Units being purchased will be the fair market value of the Units (the "Fair Market Value"). The Fair Market Value will be determined by valuing the Units owned by the Member based on the fair market value of the Company's assets and the amount the Member would have received had the assets of the Company been sold at that time for an amount equal to such fair market value and the proceeds (after the Members' Capital Accounts were adjusted to reflect the Profits or Losses that would have been recognized by the Company from such a hypothetical sale, and after payment of all Company obligations) were distributed in the manner contemplated in Section 10. For this purpose, the determination of the Fair Market Value will not reflect any discount for the sale of a

minority interest in the Company or the lack of marketability of the interest. The Fair Market Value of the Units to be purchased will be determined by agreement between the Company and the Member (or the Member's representative), based on the foregoing description of Fair Market Value. If the Company and the Member (or the Member's representative) cannot agree on the Fair Market Value within 30 days, the Fair Market Value will be determined by a third-party appraiser acceptable to both the Company and the Member (or the Member's representative). That appraisal amount will be final and binding on all parties and their respective successors, assigns, and representatives. The costs and expenses of the appraiser will be shared by the Company and the Member.

**8.10.2 Payment.** The purchase price determined under Section 8.10.1 will be payable, in cash as to a down payment of \$5,000 or 10% of the purchase price, whichever is less, and the remaining balance together with interest at the prime rate as stated by US Bank plus 1%, in 36 substantially equal monthly installments of principal and interest commencing not later than 90 days after the date of exercise. The purchaser will have the right, but not the obligation, to prepay the purchase price at any time without penalty. The deferred purchase obligation will be an unsecured obligation of the Company or the purchasing Member or Members.

#### **SECTION 9. VOLUNTARY WITHDRAWAL**

Any Member may voluntarily withdraw as a Member on six months' prior written notice to the Company. On the effectiveness of a withdrawal by a Member (the "Withdrawing Member"), the Company will treat the Withdrawing Member as an assignee of the economic rights and benefits of the Units of the Withdrawing Member, but the Withdrawing Member will cease to have any voting or other rights under this Agreement with respect to those Units. The Company will have no obligation to purchase or redeem the Units of, or otherwise make any liquidating distribution to, the Withdrawing Member before the dissolution and winding up of the Company.

#### **SECTION 10. DISSOLUTION AND WINDING UP OF THE COMPANY**

**10.1 Dissolution.** The Company will be dissolved on the occurrence of any of the following events:

- (a) The Approval of the Members; or
- (b) Otherwise by operation of law.

**10.2 Winding Up.** On dissolution of the Company, the Members will take full account of the Company's assets and liabilities, and the assets will be liquidated as promptly as is consistent with obtaining their fair value, and the proceeds, to the extent sufficient to pay the Company's obligations with respect to the liquidation, will be applied and distributed in the following order:

- (a) To payment and discharge of the expenses of liquidation and of all the Company's debts, including debts and liabilities owed to the Members;
- (b) To the Members to the extent of, and allocated among them pro rata in proportion to, their respective previously unreturned capital contributions; and
- (c) To the Members and allocated among them pro rata in proportion to their respective Membership Percentages.

## **SECTION 11. MISCELLANEOUS PROVISIONS**

**11.1. Binding Effect.** This Agreement is binding on and inures to the benefit of the parties and their respective heirs, personal representatives, successors, and permitted assigns.

**11.2. Construction.** The captions used in this Agreement are provided for convenience only and will not affect the meaning or interpretation of any provision of this Agreement. All references in this Agreement to "Section" or "Sections" without additional identification refer to the Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Whenever the words "include" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."

**11.3. Waiver.** Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

**11.4. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.

**11.5 Attorney Fees.** If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and, if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

**11.6. Venue.** Any action or proceeding seeking to enforce any provision of this Agreement or based on any right arising out of this Agreement must be brought against any of the parties in Benton County Circuit Court of the State of Oregon and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.

**11.7. Exhibits and Appendices.** The exhibits and or appendices referenced in this Agreement are part of this Agreement as if fully set forth in this Agreement.

**11.8. Severability.** If any provision of this Agreement is deemed to be invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be impaired in any way.

**11.9. Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes

all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

The parties enter into this Agreement effective as of the date first written above.

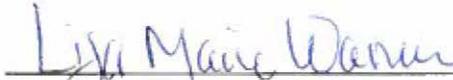


Catherine Fisher  
Member

ISC Group, LLC

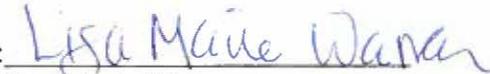
By: 

Catherine Fisher  
Manager and Member



Lisa Marie Warren  
Member

and

By: 

Lisa Marie Warren  
Manager and Member

**APPENDIX A  
SCHEDULE OF NAMES, ADDRESSES, AND  
INITIAL UNITS OF EACH INITIAL MEMBER  
FOR SECTION 1.7 OF THE AGREEMENT**

<u>Member's Name</u>	<u>Address</u>	<u>Initial Units</u>
Catherine Fisher	3020 SW Morris Ave. Corvallis, OR 97333	2,500
Lisa Marie Warren	460 NW Pondkross Ave Corvallis, OR 97330	2,500

**APPENDIX B  
INITIAL CAPITAL CONTRIBUTIONS  
FOR SECTION 2.1 OF THE AGREEMENT**

<u>Member's Name</u>	<u>Capital Contribution</u>
Catherine Fisher	\$1,000, cash
Lisa Marie Warren	\$1,000, cash

This has been revised.

**APPENDIX B  
INITIAL CAPITAL CONTRIBUTIONS  
FOR SECTION 2.1 OF THE AGREEMENT**

<u>Member's Name</u>	<u>Capital Contribution</u>
Catherine Fisher	\$3,500, cash
Lisa Marie Warren	\$3,500, cash

**UTCR 5.100(2)**  
**CERTIFICATE OF READINESS**

This proposed order or judgment is ready for judicial signature because:

1.  Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.
2.  Each opposing party affected by this order or judgment has approved the order or judgment, as shown by signature on the document being submitted or by written confirmation of approval sent to me.
3.  A copy of this order or judgment was served on each party entitled to service and:
  - a.  No objection has been served on me.
  - b.  I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
  - c.  After conferring about objections, Cody Hoesly, attorney for Defendant Catherine Fisher agreed to independently file any remaining objection.
4.  The relief sought is against an opposing party who has been found in default.
5.  An order of default is being requested with this proposed judgment.
6.  Service is not required pursuant to UTCR 5.100(3), or by statute, rule, or otherwise.
7.  This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by UTCR 5.100(4).

DATED: August 5, 2022.

TONKON TORP LLP

By     /s/ Michael Willes    

Michael Willes, OSB No. 141806

Will Gent, OSB No. 165254

Attorneys for Plaintiff

**From:** [Amanda Drenner](#)  
**To:** ["choesly@lvklaw.com"](mailto:choesly@lvklaw.com)  
**Cc:** [Michael Willes](#); [Will Gent](#); [Claire Brown](#)  
**Subject:** Boyd v. Fisher - Proposed General Judgment [IWOV-PDX.FID1287879]  
**Date:** Friday, July 29, 2022 2:55:08 PM  
**Attachments:** [2022-07-xx General Judgment.DOCX](#)

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Mr. Hoesly,

Attached is the proposed general judgment.

Sincerely,

Amanda Drenner | Tonkon Torp LLP  
Legal Assistant  
888 SW Fifth Ave., Suite 1600  
Portland OR 97204  
503.802.2178 direct | 503.274.8779 fax  
[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com) | [website](#)

This message may contain confidential and privileged communications and privileged information. If you received this message in error, please delete it and notify me promptly.

1  
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3  
4 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
5 FOR THE COUNTY OF BENTON

6 LISA MARIE BOYD, an individual,

7 Plaintiff,

8 v.

9 CATHERINE FISHER, an individual,

10 Defendant.  
11

Case No. 21CV38650

**GENERAL JUDGMENT AND MONEY  
AWARD OF REASONABLE  
ATTORNEY FEES AND COSTS**

12  
13 The above-captioned action came before the Court, the Honorable Locke Williams, for a  
14 bench trial on July 18, 2022 through July 20, 2022. Plaintiff-Counterclaim Defendant Lisa  
15 Marie Boyd was represented by Michael Willes and Will Gent of Tonkon Torp LLP. Defendant-  
16 Counterclaimant Catherine Fisher was represented by Jovita Wang of Richardson Wang LLP.

17 On July 20, 2022, after hearing the evidence and the arguments of counsel, the Court  
18 found, among other things, that: (1) Boyd is entitled to specific performance of the ISC Group,  
19 LLC (the “Company”) deadlock buyout procedures set forth in the Company’s Operating  
20 Agreement, a copy of which is attached hereto as Exhibit 1; (2) Boyd is entitled to a declaratory  
21 judgment declaring the parties’ rights and obligations under the Operating Agreement’s deadlock  
22 buyout provisions; (3) Fisher is not entitled to the specific performance she requested in the  
23 Answer and Affirmative Defenses and Counterclaims (the “Answer”); (4) Boyd did not breach  
24 the covenant of good faith and fair dealing alleged in the Answer; (5) Boyd did not breach the  
25 fiduciary duty owed to Fisher or the Company; and (6) Fisher is not entitled to the declaratory  
26 judgment she requested in the Answer.

1           **NOW, THEREFORE, IT IS ORDERED AND ADJUDGED:**

2           Consistent with the findings of fact and conclusions of law stated by the Court on the  
3 record following trial, on Boyd’s First Claim for Relief, for specific performance, Boyd is  
4 entitled to specific performance as follows:

5           A.     Boyd shall purchase Fisher’s entire interests in the equity and assets of the  
6 Company for the sum of \$218,090.50, such purchase to be effective as of October 13, 2021.  
7 Under Section 8.6.4 of the Operating Agreement, the closing of the sale shall occur at a time and  
8 place to be designated by Boyd, and at closing, Fisher shall convey, transfer, and assign to Boyd  
9 by assignment, bill of sale, and such other instruments of transfer as shall reasonably be required,  
10 all of Fisher’s rights and interests in and to the Company and all its assets, and shall, to the extent  
11 requested by Boyd, cooperate to effect the smooth and efficient continuation of Company affairs.  
12 Fisher shall transfer all of her membership units and interests in the Company to Boyd on these  
13 terms within seven days of entry of judgment;

14           B.     Within 60 days of entry of judgment, Boyd shall cause Fisher to be removed from  
15 all liability on all personal guarantees of Company debt, or, alternatively, refinance such debt to  
16 remove any personal liability for Fisher;

17           C.     To the extent that the Internal Revenue Service or Oregon Department of Revenue  
18 determine that Fisher has personal income tax liability for any earnings retained by the Company  
19 after October 13, 2021, Boyd shall cause the Company to pay Fisher the amount of such tax  
20 liability, including to the extent the Company’s payment of such tax liability is deemed income  
21 to Fisher;

22           D.     This Court shall retain jurisdiction to resolve any dispute that arises in connection  
23 with the specific performance ordered herein; and

24           E.     Boyd is entitled to recover her costs and reasonable attorney fees under Section  
25 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

26     ///

1 On Boyd's Second Claim for Relief, for breach of contract, the Court finds that:

2 A. Fisher has breached the Operating Agreement by failing to transfer her interest in  
3 the Company pursuant to the deadlock buyout provisions of the Operating Agreement;

4 B. Fisher shall perform pursuant to the Court's order regarding transfer of her entire  
5 interests in the equity and assets of the Company, and Fisher shall cooperate with Boyd to effect  
6 the smooth and efficient continuation of the Company's business; and

7 C. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
8 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

9 On Boyd's Third Claim for Relief, for declaratory relief, the Court declares:

10 A. Fisher issued an effective Deadlock Notice under Section 8.6.1 of the Operating  
11 Agreement on June 4, 2021;

12 B. Fisher issued an effective Buyout Notice under Section 8.6.1 of the Operating  
13 Agreement on August 13, 2021, setting the Company's Total Asset Value at \$1,239,778;

14 C. Boyd issued an effective Election Notice under Section 8.6.2 of the Operating  
15 Agreement on September 10, 2021, electing to purchase Fisher's interest in the Company;

16 D. Under Sections 8.6.5, 8.10.1, and 10 of the Operating Agreement, the purchase  
17 price for a member's interest following a Deadlock Buyout is determined using the following  
18 mathematical formula, based on the application and distribution provisions of Section 10.2;

19 
$$\text{Purchase Price} = (\text{Total Asset Value} - \text{Company Liabilities}) \times$$

20 
$$\text{Membership Percentage} + \text{Unreturned Capital Contribution}$$

21 E. Pursuant to the Operating Agreement, Boyd is entitled to purchase Fisher's fifty-  
22 percent interest in the Company for the sum of \$218,090.50, effective as of October 13, 2021;

23 F. Under Section 8.6.4 of the Operating Agreement, the closing of the sale shall  
24 occur at a time and place to be designated by Boyd, and at Closing, Fisher shall convey, transfer,  
25 and assign to Boyd by assignment, bill of sale, and such other instruments of transfer as shall  
26 reasonably be required, all of Fisher's rights and interests in and to the Company and all its

1 assets, and Fisher shall cooperate with Boyd to effect the smooth and efficient continuation of  
2 the Company's business; and

3 G. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
4 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

5 On Boyd's Fourth Claim for Relief, for attorney fees and costs, the Court finds:

6 H. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
7 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

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**MONEY AWARD**

Judgment Creditor:	Lisa Marie Boyd 3378 SW Badger Pl. Corvallis, OR 97333  Michael Willes Will Gent Tonkon Torp LLP 888 SW 5th Ave. Suite 1500 Portland, OR 97239 503-221-1440
Judgment Debtor:	Catherine Fisher 3931 NW Clarence Cir Corvallis 97330  Year of birth: 1975  SSN: Unknown  Driver's License: Unknown  Jovita Wang Richardson Wang LLP 805 SW Broadway Suite 470 Portland, OR 97204 503-546-4631
Persons or Public Entities Entitled to Portion of Money Award:	None of which Judgment Creditor is aware.
Amount of Money Awarded:	To be determined pursuant to ORCP 68.
Pre-Judgment Interest:	Not applicable.
Post-Judgment Accrual:	9% per annum pursuant to ORS 82.010(2)(d).
Arrearages:	Not applicable.
Attorney Fees and Costs:	To be determined pursuant to ORCP 68.

1 On Fisher's Counterclaims and Affirmative Defenses, it is **FURTHER ORDERED**

2 **AND ADJUDGED THAT:**

3 A. There being insufficient evidence of each of the following, Fisher's  
4 Counterclaims for specific performance, breach of covenant of good faith and fair dealing,  
5 breach of fiduciary duty, declaratory relief, and request for unjust enrichment (pursuant to oral  
6 motion to amend) are dismissed with prejudice; and

7 B. There being insufficient evidence of each of the following, Fisher's Affirmative  
8 Defenses of failure to state a claim, unclean hands, no meeting of the minds, waiver/estoppel,  
9 lack of consideration/insufficient consideration, and mitigation are dismissed with prejudice.

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16 Submitted this \_\_\_ day of July 2022 by:

17 TONKON TORP LLP

18 By: \_\_\_\_\_  
19 Michael Willes, OSB No. 141806  
20 Will Gent, OSB No. 165254  
21 Attorneys for Plaintiff  
22  
23  
24  
25  
26

**UTCR 5.100(2)**  
**CERTIFICATE OF READINESS**

This proposed order or judgment is ready for judicial signature because:

1.  Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.
2.  Each opposing party affected by this order or judgment has approved the order or judgment, as shown by signature on the document being submitted or by written confirmation of approval sent to me.
3.  A copy of this order or judgment was served on each party entitled to service and:
  - a.  No objection has been served on me.
  - b.  I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
  - c.  After conferring about objections, [role and name of opposing party] agreed to independently file any remaining objection with the court by [date], which predated my submission.
4.  The relief sought is against an opposing party who has been found in default.
5.  An order of default is being requested with this proposed judgment.
6.  Service is not required pursuant to UTCR 5.100(3), or by statute, rule, or otherwise.
7.  This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by UTCR 5.100(4).

DATED: July \_\_, 2022.

TONKON TORP LLP

By \_\_\_\_\_  
Michael Willes, OSB No. 141806  
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing **GENERAL JUDGMENT AND MONEY**  
3 **AWARD OF REASONABLE ATTORNEY FEES AND COSTS** on:

4 Cody Hoesly  
5 Larkins Vacura Kayser LLP  
6 121 SW Morrison Street, Suite 700  
7 Portland, OR 97204  
8 *choesly@lvklaw.com*  
9 Attorney for Defendant Catherine Fisher

- 10  by electronic means through the Court's File & Serve system (if registered) on the
- 11 date set forth below;
- 12  by mailing a copy thereof in a sealed, first-class postage prepaid envelope,
- 13 addressed to each attorney's last-known address and depositing in the U.S. mail at
- 14 Portland, Oregon on the date set forth below; and
- 15  by causing a copy thereof to be emailed to said attorneys at each attorney's last-
- 16 known email address on the date set forth below.

17 DATED: August 5, 2022.

18 TONKON TORP LLP

19 By: \_\_\_\_\_  
20 Michael Willes, OSB No. 141806  
21 Will Gent, OSB No. 165254

22 Attorneys for Plaintiff

23 042474\00001\13836267v3

**From:** [Cody Hoesly](#)  
**To:** [Michael Willes](#)  
**Cc:** [Claire Brown](#); [Will Gent](#); [Amanda Drenner](#); [Annette Kimmel](#)  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]  
**Date:** Monday, August 1, 2022 8:00:18 PM  
**Attachments:** [image001.png](#)  
[General Judgment.docx](#)

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Hi Michael,

Below are responses to the questions/requests you sent. I've also attached redlines to the proposed form of order; to the degree you disagree with the redlines, you can consider them my objections, but I think we should confer before you file anything with the court, because I think we can reach agreement on all or most all the changes. I am available tomorrow. I think most of the redlines are self-explanatory, but I'll add a few brief comments on some of them here.

First, regarding the closing date, I think the judge made clear his desire to have the buyout close quickly, and I don't see Operating Agreement Section 8.6.4 as giving Boyd discretion to choose the closing date (only the time and place, as in "11:00 at First American").

Second, on taxes, Fisher paid estimated taxes in April but hasn't filed a 2021 return yet – once we get an amended K-1 from the company (accounting for the 10/13/21 split) she will file her return and can determine what amount, if any, she owes or overpaid for the company's post-10/13/21 earnings.

Third, I didn't understand why there was a money award when there was no money awarded; if and when a supplemental judgment for attorney fees gets entered, then that judgment will have a money award.

Finally, the court's retention of jurisdiction pertains to more than just the specific performance claim, as I read the ruling, especially given the way you've structured the judgment as regards the other two substantive claims.

I also want to let you know that I plan to file a motion for clarification or reconsideration, arguing that Fisher should receive additional compensation for the October 2021 to July 2022 period (and potentially the July 2021 to October 2021 period as well). We can discuss that when we talk.

Thanks,



**CODY HOESLY**

Attorney

121 SW Morrison St., Suite 700  
Portland, Oregon 97204  
☎ 503-222-4424 ☎ 503-542-3109

[LVKLAW.COM](http://LVKLAW.COM)

**From:** Michael Willes <michael.willes@tonkon.com>  
**Sent:** Friday, July 29, 2022 2:43 PM  
**To:** Cody Hoesly <choesly@lvklaw.com>  
**Cc:** Claire Brown <claire.brown@tonkon.com>; Will Gent <will.gent@tonkon.com>; Amanda Drenner <amanda.drenner@tonkon.com>  
**Subject:** Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Cody,

Here is the consolidated list of questions/requests that I have sent to Jovita:

- On paper, Ms. Fisher is still an employee of the company. Does she intend to resign, or would she prefer to have her employment terminated? *I'm still looking into that. I assume that, if Ms. Fisher requested it, Ms. Boyd would agree to termination without cause and/or to not contesting any application for unemployment benefits – please let me know if that's incorrect.*
- For purposes of her final pay check and benefits, does Ms. Fisher intend to propose a date certain for her last date of employment? *Yes, let's discuss in conjunction with the form of judgment, closing of sale, return of company property, etc. What is Ms. Boyd's preference in this regard?*
- Has Ms. Fisher filed her tax returns for 2021 yet? Has she paid her 2021 tax liability in full? These questions relate to the Court's questions about tax liabilities. *She is on extension.*
- Company property to return: *Ms. Fisher can make the return by this Friday – she can drop the items off at the office. Please let me know if that works on your end.*
  - MacBook Pro computers (there should be 2, one old one and one purchased in 2020), and all associated cords – *she'll return what she has*
  - Computer gaming monitor, stands and all associated cords – *she doesn't have any from the company; only the staff got one from the company*
  - External hard drives and back-ups and all associated cords – *she'll return what she has (e.g., old ones were discarded)*
  - All Keys: Albany, Main office, Annex A, Annex B – *she'll return what she has*
  - All drawer keys – *she left them all in the drawers*
  - All Town & Country Realty logo'd signage – *she doesn't have any*
  - All lockboxes – *she doesn't have any*
  - All Town & Country Realty marketing, training, and documents – *she left them all in the drawer*
- Please disconnect all company-paid accounts, including Hulu – *Nicole controls the accounts, not Ms. Fisher, so Nicole should be able to do this*

Amanda will send the Word version of the proposed judgment. Feel free to reach out with any questions.

Thanks.

**Michael Willes | Tonkon Torp LLP**

Partner  
888 SW Fifth Ave., Suite 1600  
Portland, OR 97204  
503.802.5737 direct

[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com) | [website](#) | [bio](#)

This message may contain confidential and privileged communications and privileged information. If you received this message in error, please delete it and notify me promptly.

1  
2  
3  
4 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
5 FOR THE COUNTY OF BENTON

6 LISA MARIE BOYD, an individual,

7 Plaintiff,

8 v.

9 CATHERINE FISHER, an individual,

10 Defendant.  
11

Case No. 21CV38650

**GENERAL JUDGMENT AND MONEY  
AWARD OF REASONABLE  
ATTORNEY FEES AND COSTS**

12  
13 The above-captioned action came before the Court, the Honorable Locke Williams, for a  
14 bench trial on July 18, 2022 through July 20, 2022. Plaintiff-Counterclaim Defendant Lisa  
15 Marie Boyd was represented by Michael Willes and Will Gent of Tonkon Torp LLP. Defendant-  
16 Counterclaimant Catherine Fisher was represented by Jovita Wang of Richardson Wang LLP.

17 On July 20, 2022, after hearing the evidence and the arguments of counsel, the Court  
18 found, among other things, that: (1) Boyd is entitled to specific performance of the ISC Group,  
19 LLC (the “Company”) deadlock buyout procedures set forth in the Company’s Operating  
20 Agreement, a copy of which is attached hereto as Exhibit 1; (2) Boyd is entitled to a declaratory  
21 judgment declaring the parties’ rights and obligations under the Operating Agreement’s deadlock  
22 buyout provisions; (3) Fisher is not entitled to the specific performance she requested in the  
23 Answer and Affirmative Defenses and Counterclaims (the “Answer”); (4) Boyd did not breach  
24 the covenant of good faith and fair dealing alleged in the Answer; (5) Boyd did not breach the  
25 fiduciary duty owed to Fisher or the Company; and (6) Fisher is not entitled to the declaratory  
26 judgment she requested in the Answer.

1           **NOW, THEREFORE, IT IS ORDERED AND ADJUDGED:**

2           Consistent with the findings of fact and conclusions of law stated by the Court on the  
3 record following trial, on Boyd's First Claim for Relief, for specific performance, Boyd is  
4 entitled to specific performance as follows:

5           A.     Boyd shall purchase Fisher's entire interests in the equity and assets of the  
6 Company for the sum of \$218,090.50, such purchase to be effective as of October 13, 2021.  
7 Under Section 8.6.4 of the Operating Agreement, the closing of the sale shall occur at a time and  
8 place to be designated by Boyd, and at closing, Boyd shall pay Fisher the sum of \$218,090.50,  
9 and Fisher shall convey, transfer, and assign to Boyd by assignment, bill of sale, and such other  
10 instruments of transfer as shall reasonably be required, all of Fisher's rights and interests in and  
11 to the Company and all its assets, and shall, to the extent requested by Boyd, cooperate to effect  
12 the smooth and efficient continuation of the Company's businessCompany affairs. Fisher shall  
13 transfer all of her membership units and interests in the Company to Boyd on these termsThe  
14 closing shall occur within seven days of entry of judgment;

15           B.     Within 60 days of entry of judgment, Boyd shall cause Fisher to be removed from  
16 all liability on all personal guarantees of Company debt (including the EIDL loan, SBA loan,  
17 Seacoast loan, Seker loan, Albany debt, Key Bank line of credit, and credit cards), or,  
18 alternatively, refinance such debt to remove any personal liability for Fisher;

19           C.     The Company shall promptly re-file its 2021 taxes to try to obtain a determination  
20 from the Internal Revenue Service and Oregon Department of Revenue that Fisher has no  
21 personal income tax liability for any earnings retained by the Company after October 13, 2021.

22 To the extent that the Internal Revenue Service or Oregon Department of Revenue determine that  
23 Fisher has personal income tax liability for any earnings retained by the Company after October  
24 13, 2021, Boyd shall cause the Company to promptly pay Fisher the amount of such tax liability,  
25 including to the extent the Company's payment of such tax liability is deemed income to Fisher,  
26 as well as interest at the statutory rate on all taxes paid by Fisher on account of such liability

1 from the time Fisher paid those taxes until the time the Company reimburses her, to ensure that  
2 Fisher has zero tax impact from monies that were not distributed to her by the Company after  
3 October 13, 2021;

4 D. ~~This Court shall retain jurisdiction to resolve any dispute that arises in connection~~  
5 ~~with the specific performance ordered herein~~ Fisher is not bound by any obligation not to  
6 compete with the Company, as there is nothing in the buyout provisions or in the Operating  
7 Agreement that would require the imposition of a noncompete obligation on Fisher; and

8 E. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
9 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

10 ///

11 On Boyd's Second Claim for Relief, for breach of contract, the Court finds that:

12 A. Fisher has breached the Operating Agreement by failing to transfer her interest in  
13 the Company pursuant to the deadlock buyout provisions of the Operating Agreement;

14 B. Fisher shall perform pursuant to the Court's order regarding transfer of her entire  
15 interests in the equity and assets of the Company, and Fisher shall cooperate with Boyd to effect  
16 the smooth and efficient continuation of the Company's business; and

17 C. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
18 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

19 On Boyd's Third Claim for Relief, for declaratory relief, the Court declares:

20 A. Fisher issued an effective Deadlock Notice under Section 8.6.1 of the Operating  
21 Agreement on June 4, 2021;

22 B. Fisher issued an effective Buyout Notice under Section 8.6.1 of the Operating  
23 Agreement on August 13, 2021, setting the Company's Total Asset Value at \$1,239,778;

24 C. Boyd issued an effective Election Notice under Section 8.6.2 of the Operating  
25 Agreement on September 10, 2021, electing to purchase Fisher's interest in the Company;

1 D. Under Sections 8.6.5, 8.10.1, and 10 of the Operating Agreement, the purchase  
2 price for a member's interest following a Deadlock Buyout is determined using the following  
3 mathematical formula, based on the application and distribution provisions of Section 10.2;

$$\text{Purchase Price} = (\text{Total Asset Value} - \text{Company Liabilities}) \times \\ \text{Membership Percentage} + \text{Unreturned Capital Contribution}$$

6 E. Pursuant to the Operating Agreement, Boyd is entitled to purchase Fisher's fifty-  
7 percent interest in the Company for the sum of \$218,090.50, effective as of October 13, 2021;

8 F. Under Section 8.6.4 of the Operating Agreement, the closing of the sale shall  
9 occur at a time and place to be designated by Boyd, and at ~~C~~closing, Boyd shall pay Fisher the  
10 sum of \$218,090.50, Fisher shall convey, transfer, and assign to Boyd by assignment, bill of sale,  
11 and such other instruments of transfer as shall reasonably be required, all of Fisher's rights and  
12 interests in and to the Company and all its assets, and ~~Fisher shall,~~ to the extent requested by  
13 Boyd, cooperate with Boyd to effect the smooth and efficient continuation of the Company's  
14 business;

15 G. Within 60 days of entry of judgment, Boyd shall cause Fisher to be removed from  
16 all liability on all personal guarantees of Company debt (including the EIDL loan, SBA loan,  
17 Seacoast loan, Seker loan, Albany debt, Key Bank line of credit, and credit cards), or,  
18 alternatively, refinance such debt to remove any personal liability for Fisher;

19 H. The Company shall promptly re-file its 2021 taxes to try to obtain a determination  
20 from the Internal Revenue Service and Oregon Department of Revenue that Fisher has no  
21 personal income tax liability for any earnings retained by the Company after October 13, 2021.  
22 To the extent that the Internal Revenue Service or Oregon Department of Revenue determine that  
23 Fisher has personal income tax liability for any earnings retained by the Company after October  
24 13, 2021, Boyd shall cause the Company to pay Fisher the amount of such tax liability, including  
25 to the extent the Company's payment of such tax liability is deemed income to Fisher, as well as  
26 interest at the statutory rate on all taxes paid by Fisher on account of such liability from the time

1 Fisher paid those taxes until the time the Company reimburses her, to ensure that Fisher has zero  
2 tax impact from monies that were not distributed to her by the Company after October 13, 2021;

3 F.I. Fisher is not bound by any obligation not to compete with the Company, as there  
4 is nothing in the buyout provisions or in the Operating Agreement that would require the  
5 imposition of a noncompete obligation on Fisher; and

6 G.J. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
7 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

8 On Boyd's Fourth Claim for Relief, for attorney fees and costs, the Court finds:

9 K. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
10 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

11 The Court shall retain jurisdiction to resolve any dispute that arises in connection with the  
12 terms of this judgment.

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**MONEY AWARD**

<p>Judgment Creditor:</p>	<p>Lisa Marie Boyd 3378 SW Badger Pl. Corvallis, OR 97333</p> <p>Michael Willes Will Gent Tonkon Torp LLP 888 SW 5th Ave. Suite 1500 Portland, OR 97239 503-221-1440</p>
<p>Judgment Debtor:</p>	<p>Catherine Fisher 3931 NW Clarence Cir Corvallis 97330</p> <p>Year of birth: 1975</p> <p>SSN: Unknown</p> <p>Driver's License: Unknown</p> <p>Jovita Wang Richardson Wang LLP 805 SW Broadway Suite 470 Portland, OR 97204 503-546-4634</p>
<p>Persons or Public Entities Entitled to Portion of Money Award:</p>	<p>None of which Judgment Creditor is aware.</p>
<p>Amount of Money Awarded:</p>	<p>To be determined pursuant to ORCP 68.</p>

1	<del>Pre Judgment Interest:</del>	<del>Not applicable.</del>
2	<del>Post Judgment Accrual:</del>	<del>9% per annum pursuant to ORS 82.010(2)(d).</del>
3	<del>Arrearages:</del>	<del>Not applicable.</del>
4	<del>Attorney Fees and Costs:</del>	<del>To be determined pursuant to ORCP 68.</del>

6 On Fisher's Counterclaims and Affirmative Defenses, it is **FURTHER ORDERED**  
7 **AND ADJUDGED THAT:**

8 A. ~~There being insufficient evidence of each of the following,~~ Fisher's  
9 Counterclaims for specific performance, breach of covenant of good faith and fair dealing,  
10 breach of fiduciary duty, declaratory relief, and request for unjust enrichment (pursuant to oral  
11 motion to amend) are dismissed with prejudice; and

12 B. ~~There being insufficient evidence of each of the following,~~ Fisher's Affirmative  
13 Defenses of failure to state a claim, unclean hands, no meeting of the minds, waiver/estoppel,  
14 lack of consideration/insufficient consideration, and mitigation are dismissed with prejudice.

19 \_\_\_\_\_  
20  
21 Submitted this \_\_\_ day of July 2022 by:

22 TONKON TORP LLP

23  
24 By: \_\_\_\_\_  
25 Michael Willes, OSB No. 141806  
26 Will Gent, OSB No. 165254  
Attorneys for Plaintiff

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**UTCRC 5.100(2)**  
**CERTIFICATE OF READINESS**

This proposed order or judgment is ready for judicial signature because:

1.  Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.
2.  Each opposing party affected by this order or judgment has approved the order or judgment, as shown by signature on the document being submitted or by written confirmation of approval sent to me.
3.  A copy of this order or judgment was served on each party entitled to service and:
  - a.  No objection has been served on me.
  - b.  I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
  - c.  After conferring about objections, [role and name of opposing party] agreed to independently file any remaining objection with the court by [date], which predated my submission.
4.  The relief sought is against an opposing party who has been found in default.
5.  An order of default is being requested with this proposed judgment.
6.  Service is not required pursuant to UTCRC 5.100(3), or by statute, rule, or otherwise.
7.  This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by UTCRC 5.100(4).

DATED: July \_\_, 2022.

TONKON TORP LLP

By \_\_\_\_\_  
Michael Willes, OSB No. 141806  
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing **GENERAL JUDGMENT AND MONEY**  
3 **AWARD OF REASONABLE ATTORNEY FEES AND COSTS** on:

4 Cody Hoesly  
5 Larkins Vacura Kayser LLP  
6 121 SW Morrison Street, Suite 700  
7 Portland, OR 97204  
8 *choesly@lvklaw.com*  
9 Attorney for Defendant Catherine Fisher

- 10  by electronic means through the Court's File & Serve system (if registered) on the
  - 11  by mailing a copy thereof in a sealed, first-class postage prepaid envelope,
  - 12  by causing a copy thereof to be emailed to said attorneys at each attorney's last-
- 13 date set forth below;
- 14 addressed to each attorney's last-known address and depositing in the U.S. mail at
- 15 Portland, Oregon on the date set forth below; and
- 16 known email address on the date set forth below.

17 DATED: August 5, 2022.

18 TONKON TORP LLP

19 By: \_\_\_\_\_  
20 Michael Willes, OSB No. 141806  
21 Will Gent, OSB No. 165254

22 Attorneys for Plaintiff

23 042474\00001\13836267v3

**From:** [Cody Hoesly](#)  
**To:** [Michael Willes](#)  
**Cc:** [Claire Brown](#); [Will Gent](#); [Amanda Drenner](#); [Annette Kimmel](#)  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]  
**Date:** Tuesday, August 2, 2022 4:52:00 PM  
**Attachments:** [image001.png](#)

---

Hi Will,

Good talking to you today. Fisher will drop off the equipment to the TNC office between 11:00 and 12:00 on Friday. You and I discussed that the last date of employment issue will be addressed later, but I can say that we can agree that the form of the separation can be termination without cause with no contesting Fisher's application for unemployment benefits. Also, on the form of judgment, it's okay to drop that parenthetical listing the debts, though I will ultimately need verification that Fisher never was and/or no longer is liable on any of those debts by the end of the 60-day period. I look forward to hearing back from you about the no-non-compete clause, the tax issue,

Thanks,



**CODY HOESLY**

Attorney

121 SW Morrison St., Suite 700  
Portland, Oregon 97204  
O 503-222-4424 D 503-542-3109

[LVKLAW.COM](http://LVKLAW.COM)

Confidentiality Notice: This email may contain confidential and privileged information. The information in this email is intended for the addressee only. If you are not the addressee of this email, do not review, disclose, copy, store, forward or distribute it. If you have received this email and you are not the addressee, delete it and please contact the sender immediately, by return email or by telephone.

---

**From:** Cody Hoesly  
**Sent:** Monday, August 1, 2022 8:00 PM  
**To:** Michael Willes <michael.willes@tonkon.com>  
**Cc:** Claire Brown <claire.brown@tonkon.com>; Will Gent <will.gent@tonkon.com>; Amanda Drenner <amanda.drenner@tonkon.com>; Annette Kimmel <akimmel@lvklaw.com>  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Hi Michael,

Below are responses to the questions/requests you sent. I've also attached redlines to the proposed form of order; to the degree you disagree with the redlines, you can consider them my objections, but I think we should confer before you file anything with the court, because I think we can reach agreement on all or most all the changes. I am available tomorrow. I think most of the redlines are self-explanatory, but I'll add a few brief comments on some of them here.

First, regarding the closing date, I think the judge made clear his desire to have the buyout close quickly, and I don't see Operating Agreement Section 8.6.4 as giving Boyd discretion to choose the closing date

(only the time and place, as in “11:00 at First American”).

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Thanks,



**CODY HOESLY**

Attorney

121 SW Morrison St., Suite 700  
Portland, Oregon 97204  
O 503-222-4424 D 503-542-3109

[LVKLAW.COM](http://LVKLAW.COM)

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---

**From:** Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>  
**Sent:** Friday, July 29, 2022 2:43 PM  
**To:** Cody Hoesly <[choesly@lvklaw.com](mailto:choesly@lvklaw.com)>  
**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>  
**Subject:** Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Cody,

Here is the consolidated list of questions/requests that I have sent to Jovita:

- On paper, Ms. Fisher is still an employee of the company. Does she intend to resign, or would she prefer to have her employment terminated? *I'm still looking into that. I assume that, if Ms. Fisher requested it, Ms. Boyd would agree to termination without cause and/or to not contesting any application for unemployment benefits – please let me know if that's incorrect.*
- For purposes of her final pay check and benefits, does Ms. Fisher intend to propose a date certain

for her last date of employment? Yes, let's discuss in conjunction with the form of judgment, closing of sale, return of company property, etc. What is Ms. Boyd's preference in this regard?

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- Please disconnect all company-paid accounts, including Hulu – Nicole controls the accounts, not Ms. Fisher, so Nicole should be able to do this

Amanda will send the Word version of the proposed judgment. Feel free to reach out with any questions.

Thanks.

**Michael Willes | Tonkon Torp LLP**

Partner

888 SW Fifth Ave., Suite 1600

Portland, OR 97204

503.802.5737 direct

[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com) | [website](#) | [bio](#)

This message may contain confidential and privileged communications and privileged information. If you received this message in error, please delete it and notify me promptly.

**From:** [Will Gent](#)  
**To:** ["Cody Hoesly"](#); [Michael Willes](#)  
**Cc:** [Claire Brown](#); [Amanda Drenner](#); [Annette Kimmel](#); [Mark LeRoux](#); [Kate Roth](#)  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]  
**Date:** Wednesday, August 3, 2022 3:34:31 PM  
**Attachments:** [image001.png](#)

---

Hi Cody,

Thanks. but to address  
the other questions from yesterday:

- Last Day of Employment: Ms. Boyd proposes 8/15/22 as Ms. Fisher's last day of employment with TNC.
- Non-Compete: In lieu of the language you added to the judgment addressing the NCA, we propose the following:

*As agreed by the parties, the Operating Agreement does not contain an express non-competition term. As such, the Court declines to impose a non-competition agreement on Ms. Fisher as part of the transaction.*

- Tax: I promised you a written explanation of why we object to the language you inserted into the judgment regarding taxes, specifically as to filing an amended Company return. Here is that explanation from our tax lawyers, Kate Roth and Mark LeRoux, who I have copied on this email:

*We cannot backdate the actual sale of Ms. Fisher's interest in the Company to October 13, 2021. Because the actual sale did not occur last year, we also cannot amend the Company's 2021 tax return to reflect events that did not happen. We are using January 1, 2022 as the actual sale date and will treat the parties as if the sale occurred on October 13 by putting them in the same after-tax position had the sale actually occurred on that date. This requires grossing-up the purchase price to cover the retained earnings actually allocated to Ms. Fisher for the period of October 14 to December 31.*

*The Company has already filed its 2021 tax return, and Ms. Boyd and Ms. Fisher have received their respective Schedules K-1 for that tax year. Assuming for discussion that we could treat the sale as actually occurring on October 13, doing so would require amending the corporate return. We do not think that is the appropriate course of action since no sale actually occurred in 2021. From the Company's perspective, the administrative costs of amending the return would far outweigh the gross-up payment. Furthermore, Ms. Boyd and Ms. Fisher would also need to amend their respective personal returns, which would further increase the costs for both parties.*

With those clarifications, please advise whether the judgment is acceptable at your earliest convenience. If so, I'll circulate a final form for you to review before filing.

Thanks,  
Will

Will Gent | Tonkon Torp LLP

Attorney  
503.802.5767 direct  
[will.gent@tonkon.com](mailto:will.gent@tonkon.com)

---

**From:** Cody Hoesly <choesly@lvklaw.com>  
**Sent:** Tuesday, August 2, 2022 4:52 PM  
**To:** Michael Willes <michael.willes@tonkon.com>  
**Cc:** Claire Brown <claire.brown@tonkon.com>; Will Gent <will.gent@tonkon.com>; Amanda Drenner <amanda.drenner@tonkon.com>; Annette Kimmel <akimmel@lvklaw.com>  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Hi Will,

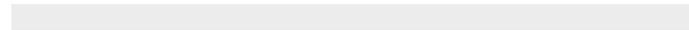
Good talking to you today. Fisher will drop off the equipment to the TNC office between 11:00 and 12:00 on Friday. You and I discussed that the last date of employment issue will be addressed later, but I can say that we can agree that the form of the separation can be termination without cause with no contesting Fisher's application for unemployment benefits. Also, on the form of judgment, it's okay to drop that parenthetical listing the debts, though I will ultimately need verification that Fisher never was and/or no longer is liable on any of those debts by the end of the 60-day period. I look forward to hearing back from you about the no-non-compete clause, the tax issue,

Thanks,



**CODY HOESLY**

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O 503-222-4424 D 503-542-3109

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**From:** Cody Hoesly  
**Sent:** Monday, August 1, 2022 8:00 PM  
**To:** Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>  
**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>; Annette Kimmel <[akimmel@lvklaw.com](mailto:akimmel@lvklaw.com)>  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

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**CODY HOESLY**

Attorney

121 SW Morrison St., Suite 700  
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Amanda will send the Word version of the proposed judgment. Feel free to reach out with any questions.

Thanks.

Michael Willes | Tonkon Torp LLP

Partner

888 SW Fifth Ave., Suite 1600

Portland, OR 97204

503.802.5737 direct

[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com) | [website](#) | [bio](#)

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**From:** [Will Gent](#)  
**To:** "[Cody Hoesly](#)"; [Michael Willes](#)  
**Cc:** [Claire Brown](#); [Amanda Drenner](#); [Annette Kimmel](#); [Mark LeRoux](#); [Kate Roth](#)  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]  
**Date:** Thursday, August 4, 2022 2:53:43 PM  
**Attachments:** [image001.png](#)

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Thanks,  
Will

Will Gent | Tonkon Torp LLP  
Attorney  
503.802.5767 direct  
[will.gent@tonkon.com](mailto:will.gent@tonkon.com)

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**Sent:** Wednesday, August 3, 2022 3:34 PM  
**To:** 'Cody Hoesly' <[choesly@lvklaw.com](mailto:choesly@lvklaw.com)>; Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>  
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- Last Day of Employment: Ms. Boyd proposes 8/15/22 as Ms. Fisher's last day of employment with TNC.
- Non-Compete: In lieu of the language you added to the judgment addressing the NCA, we propose the following:

*As agreed by the parties, the Operating Agreement does not contain an express non-competition term. As such, the Court declines to impose a non-competition agreement on Ms. Fisher as part of the transaction.*

- Tax: I promised you a written explanation of why we object to the language you inserted into the judgment regarding taxes, specifically as to filing an amended Company return. Here is that explanation from our tax lawyers, Kate Roth and Mark LeRoux, who I have copied on this email:

*We cannot backdate the actual sale of Ms. Fisher's interest in the Company to October 13, 2021. Because the actual sale did not occur last year, we also cannot amend the Company's 2021 tax return to reflect events that did not happen. We are using January 1, 2022 as the actual sale date*

*and will treat the parties as if the sale occurred on October 13 by putting them in the same after-tax position had the sale actually occurred on that date. This requires grossing-up the purchase price to cover the retained earnings actually allocated to Ms. Fisher for the period of October 14 to December 31.*

*The Company has already filed its 2021 tax return, and Ms. Boyd and Ms. Fisher have received their respective Schedules K-1 for that tax year. Assuming for discussion that we could treat the sale as actually occurring on October 13, doing so would require amending the corporate return. We do not think that is the appropriate course of action since no sale actually occurred in 2021. From the Company's perspective, the administrative costs of amending the return would far outweigh the gross-up payment. Furthermore, Ms. Boyd and Ms. Fisher would also need to amend their respective personal returns, which would further increase the costs for both parties.*

With those clarifications, please advise whether the judgment is acceptable at your earliest convenience. If so, I'll circulate a final form for you to review before filing.

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Hi Will,

Good talking to you today. Fisher will drop off the equipment to the TNC office between 11:00 and 12:00 on Friday. You and I discussed that the last date of employment issue will be addressed later, but I can say that we can agree that the form of the separation can be termination without cause with no contesting Fisher's application for unemployment benefits. Also, on the form of judgment, it's okay to drop that parenthetical listing the debts, though I will ultimately need verification that Fisher never was and/or no longer is liable on any of those debts by the end of the 60-day period. I look forward to hearing back from you about the no-non-compete clause, the tax issue,

Thanks,



**CODY HOESLY**

Attorney



121 SW Morrison St., Suite 700  
Portland, Oregon 97204  
O 503-222-4424 D 503-542-3109

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Partner

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**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]  
**Date:** Thursday, August 4, 2022 6:16:14 PM  
**Attachments:** [image001.png](#)

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Hi Will,

I believe Seacoast has what it needs from my client. I think the last day of employment should be the closing date, when ownership changes hands. For the non-compete part of the judgment, I'm fine with: *"The Operating Agreement does not contain a non-competition term. As such, the Court declines to impose a non-competition agreement on Ms. Fisher as part of the transaction."* I've run the tax issue by a tax person and will need to get back to you on that; I'll do so as soon as I can. I will be on vacation and at a conference next week but will do some work on Monday and Wednesday. I know you want to get the judgment submitted to the court, but I only got your explanation for the tax clause yesterday, and my understanding from trial is that your side told the court the return could be amended to achieve the retroactive buyout, so this is something I need to make sure we get right.

Thanks,



**CODY HOESLY**

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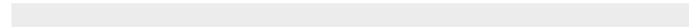
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- On paper, Ms. Fisher is still an employee of the company. Does she intend to resign, or would she prefer to have her employment terminated? *I'm still looking into that. I assume that, if Ms. Fisher requested it, Ms. Boyd would agree to termination without cause and/or to not contesting any application for unemployment benefits – please let me know if that's incorrect.*
- For purposes of her final pay check and benefits, does Ms. Fisher intend to propose a date certain for her last date of employment? *Yes, let's discuss in conjunction with the form of judgment, closing of sale, return of company property, etc. What is Ms. Boyd's preference in this regard?*
- Has Ms. Fisher filed her tax returns for 2021 yet? Has she paid her 2021 tax liability in full? These questions relate to the Court's questions about tax liabilities. *She is on extension.*
- Company property to return: *Ms. Fisher can make the return by this Friday – she can drop the items off at the office. Please let me know if that works on your end.*
  - MacBook Pro computers (there should be 2, one old one and one purchased in 2020), and all associated cords – *she'll return what she has*
  - Computer gaming monitor, stands and all associated cords – *she doesn't have any from the company; only the staff got one from the company*
  - External hard drives and back-ups and all associated cords – *she'll return what she has (e.g., old ones were discarded)*
  - All Keys: Albany, Main office, Annex A, Annex B – *she'll return what she has*
  - All drawer keys – *she left them all in the drawers*
  - All Town & Country Realty logo'd signage – *she doesn't have any*
  - All lockboxes – *she doesn't have any*
  - All Town & Country Realty marketing, training, and documents – *she left them all in the drawer*
- Please disconnect all company-paid accounts, including Hulu – *Nicole controls the accounts, not Ms. Fisher, so Nicole should be able to do this*

Amanda will send the Word version of the proposed judgment. Feel free to reach out with any questions.

Thanks.

**Michael Willes | Tonkon Torp LLP**

Partner

888 SW Fifth Ave., Suite 1600

Portland, OR 97204

503.802.5737 direct

[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com) | [website](#) | [bio](#)

This message may contain confidential and privileged communications and privileged information. If you received this message in error, please delete it and notify me promptly.

**From:** [Will Gent](#)  
**To:** ["Cody Hoesly"](#); [Michael Willes](#)  
**Cc:** [Claire Brown](#); [Amanda Drenner](#); [Annette Kimmel](#); [Mark LeRoux](#); [Kate Roth](#); [Jamie McCall](#); [Amanda Drenner](#)  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]  
**Date:** Friday, August 5, 2022 11:29:00 AM  
**Attachments:** [image001.png](#)  
[2022-07-xx General Judgment - General Judgment \(TT Revisions 2022-08-05\).pdf](#)  
[Trial Audio - Judge's Ruling.docx](#)  
[General Judgment \(TT Revisions 2022-08-05\).DOCX](#)

---

Cody,

I've attached a clean form of judgment, plus a redline tracking the changes we've conferred about (the changes track from Tonkon's initial form of judgment).

We intend to push this forward today: Judge Williams ruled from the bench on July 20, directing the parties to work through the form of judgment "as soon as possible"; we served our proposed judgment on Ms. Fisher on July 27; after you substituted in, we provided you with a copy of the proposed judgment on July 29; and we provided you with an explanation of our tax lawyers' analysis on the language in our proposed judgment on August 2 and 3. If you have any remaining objections after our conferrals, you will have an opportunity to be heard, but we have complied with our UTCR 5.100 obligations. Filing today is the most efficient path forward.

As to the tax issue, I've re-attached an AI transcript of Judge Williams' ruling. We did not make any representations to the court about an amended return, but requested that the judgment direct Ms. Boyd to cause the Company to pay Ms. Fisher the amount of any taxes on retained earnings. Judge Williams agreed and the judgment does exactly that.

We will file the judgment at 4:00 today. Please let us know before then whether we can do so unopposed, or whether you will independently file any remaining objection.

Thanks,  
Will

Will Gent | Tonkon Torp LLP  
Attorney  
503.802.5767 direct  
[will.gent@tonkon.com](mailto:will.gent@tonkon.com)

---

**From:** Cody Hoesly <[choesly@lvklaw.com](mailto:choesly@lvklaw.com)>  
**Sent:** Thursday, August 4, 2022 6:16 PM  
**To:** Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>; Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>  
**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>; Annette Kimmel <[akimmel@lvklaw.com](mailto:akimmel@lvklaw.com)>; Mark LeRoux <[mark.leroux@tonkon.com](mailto:mark.leroux@tonkon.com)>; Kate Roth <[kate.roth@tonkon.com](mailto:kate.roth@tonkon.com)>  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Hi Will,

I believe Seacoast has what it needs from my client. I think the last day of employment should be the closing date, when ownership changes hands. For the non-compete part of the judgment, I'm fine with: *"The Operating Agreement does not contain a non-competition term. As such, the Court declines to*

*impose a non-competition agreement on Ms. Fisher as part of the transaction.*" I've run the tax issue by a tax person and will need to get back to you on that; I'll do so as soon as I can. I will be on vacation and at a conference next week but will do some work on Monday and Wednesday. I know you want to get the judgment submitted to the court, but I only got your explanation for the tax clause yesterday, and my understanding from trial is that your side told the court the return could be amended to achieve the retroactive buyout, so this is something I need to make sure we get right.

Thanks,



**CODY HOESLY**

Attorney

121 SW Morrison St., Suite 700  
Portland, Oregon 97204  
O 503-222-4424 D 503-542-3109

[LVKLAW.COM](http://LVKLAW.COM)

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---

**From:** Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>  
**Sent:** Thursday, August 4, 2022 2:54 PM  
**To:** Cody Hoesly <[choesly@lvklaw.com](mailto:choesly@lvklaw.com)>; Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>  
**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>; Annette Kimmel <[akimmel@lvklaw.com](mailto:akimmel@lvklaw.com)>; Mark LeRoux <[mark.leroux@tonkon.com](mailto:mark.leroux@tonkon.com)>; Kate Roth <[kate.roth@tonkon.com](mailto:kate.roth@tonkon.com)>  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Cody,

Are these changes, together with the ones we discussed on Tuesday, sufficient to submit the judgment as unopposed?

Thanks,  
Will

Will Gent | Tonkon Torp LLP  
Attorney  
503.802.5767 direct  
[will.gent@tonkon.com](mailto:will.gent@tonkon.com)

---

**From:** Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>  
**Sent:** Wednesday, August 3, 2022 3:34 PM  
**To:** 'Cody Hoesly' <[choesly@lvklaw.com](mailto:choesly@lvklaw.com)>; Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>  
**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>; Annette Kimmel <[akimmel@lvklaw.com](mailto:akimmel@lvklaw.com)>; Mark LeRoux <[mark.leroux@tonkon.com](mailto:mark.leroux@tonkon.com)>; Kate Roth <[kate.roth@tonkon.com](mailto:kate.roth@tonkon.com)>  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Hi Cody,

Thanks.  
the other questions from yesterday:

but to address

- Last Day of Employment: Ms. Boyd proposes 8/15/22 as Ms. Fisher's last day of employment with TNC.
- Non-Compete: In lieu of the language you added to the judgment addressing the NCA, we propose the following:

*As agreed by the parties, the Operating Agreement does not contain an express non-competition term. As such, the Court declines to impose a non-competition agreement on Ms. Fisher as part of the transaction.*

- Tax: I promised you a written explanation of why we object to the language you inserted into the judgment regarding taxes, specifically as to filing an amended Company return. Here is that explanation from our tax lawyers, Kate Roth and Mark LeRoux, who I have copied on this email:

*We cannot backdate the actual sale of Ms. Fisher's interest in the Company to October 13, 2021. Because the actual sale did not occur last year, we also cannot amend the Company's 2021 tax return to reflect events that did not happen. We are using January 1, 2022 as the actual sale date and will treat the parties as if the sale occurred on October 13 by putting them in the same after-tax position had the sale actually occurred on that date. This requires grossing-up the purchase price to cover the retained earnings actually allocated to Ms. Fisher for the period of October 14 to December 31.*

*The Company has already filed its 2021 tax return, and Ms. Boyd and Ms. Fisher have received their respective Schedules K-1 for that tax year. Assuming for discussion that we could treat the sale as actually occurring on October 13, doing so would require amending the corporate return. We do not think that is the appropriate course of action since no sale actually occurred in 2021. From the Company's perspective, the administrative costs of amending the return would far outweigh the gross-up payment. Furthermore, Ms. Boyd and Ms. Fisher would also need to amend their respective personal returns, which would further increase the costs for both parties.*

With those clarifications, please advise whether the judgment is acceptable at your earliest convenience. If so, I'll circulate a final form for you to review before filing.

Thanks,  
Will

Will Gent | Tonkon Torp LLP  
Attorney  
503.802.5767 direct  
[will.gent@tonkon.com](mailto:will.gent@tonkon.com)

---

**From:** Cody Hoesly <[choesly@lvklaw.com](mailto:choesly@lvklaw.com)>

**Sent:** Tuesday, August 2, 2022 4:52 PM

**To:** Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>  
**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>; Annette Kimmel <[akimmel@lvklaw.com](mailto:akimmel@lvklaw.com)>  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Hi Will,

Good talking to you today. Fisher will drop off the equipment to the TNC office between 11:00 and 12:00 on Friday. You and I discussed that the last date of employment issue will be addressed later, but I can say that we can agree that the form of the separation can be termination without cause with no contesting Fisher's application for unemployment benefits. Also, on the form of judgment, it's okay to drop that parenthetical listing the debts, though I will ultimately need verification that Fisher never was and/or no longer is liable on any of those debts by the end of the 60-day period. I look forward to hearing back from you about the no-non-compete clause, the tax issue,

Thanks,



**CODY HOESLY**

Attorney

121 SW Morrison St., Suite 700  
Portland, Oregon 97204  
O 503-222-4424 D 503-542-3109

[LVKLAW.COM](http://LVKLAW.COM)

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---

**From:** Cody Hoesly  
**Sent:** Monday, August 1, 2022 8:00 PM  
**To:** Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>  
**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>; Annette Kimmel <[akimmel@lvklaw.com](mailto:akimmel@lvklaw.com)>  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Hi Michael,

Below are responses to the questions/requests you sent. I've also attached redlines to the proposed form of order; to the degree you disagree with the redlines, you can consider them my objections, but I think we should confer before you file anything with the court, because I think we can reach agreement on all or most all the changes. I am available tomorrow. I think most of the redlines are self-explanatory, but I'll add a few brief comments on some of them here.

First, regarding the closing date, I think the judge made clear his desire to have the buyout close quickly, and I don't see Operating Agreement Section 8.6.4 as giving Boyd discretion to choose the closing date (only the time and place, as in "11:00 at First American").

Second, on taxes, Fisher paid estimated taxes in April but hasn't filed a 2021 return yet – once we get an amended K-1 from the company (accounting for the 10/13/21 split) she will file her return and can determine what amount, if any, she owes or overpaid for the company's post-10/13/21 earnings.

Third, I didn't understand why there was a money award when there was no money awarded; if and when a supplemental judgment for attorney fees gets entered, then that judgment will have a money award.

Finally, the court's retention of jurisdiction pertains to more than just the specific performance claim, as I read the ruling, especially given the way you've structured the judgment as regards the other two substantive claims.

I also want to let you know that I plan to file a motion for clarification or reconsideration, arguing that Fisher should receive additional compensation for the October 2021 to July 2022 period (and potentially the July 2021 to October 2021 period as well). We can discuss that when we talk.

Thanks,



**CODY HOESLY**

Attorney

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Portland, Oregon 97204  
O 503-222-4424 D 503-542-3109

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---

**From:** Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>  
**Sent:** Friday, July 29, 2022 2:43 PM  
**To:** Cody Hoesly <[choesly@lvklaw.com](mailto:choesly@lvklaw.com)>  
**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>  
**Subject:** Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Cody,

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closing of sale, return of company property, etc. What is Ms. Boyd's preference in this regard?

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Thanks.

Michael Willes | Tonkon Torp LLP

Partner

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Portland, OR 97204

503.802.5737 direct

[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com) | [website](#) | [bio](#)

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1  
2  
3  
4 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
5 FOR THE COUNTY OF BENTON  
6

7 LISA MARIE BOYD, an individual,

8 Plaintiff,

9 v.

10 CATHERINE FISHER, an individual,

11 Defendant.  
12

Case No. 21CV38650

**GENERAL JUDGMENT ~~AND MONEY~~  
~~AWARD OF REASONABLE~~  
~~ATTORNEY FEES AND COSTS~~**

13 The above-captioned action came before the Court, the Honorable Locke Williams, for a  
14 bench trial on July 18, 2022 through July 20, 2022. Plaintiff-Counterclaim Defendant Lisa Marie  
15 Boyd was represented by Michael Willes and Will Gent of Tonkon Torp LLP.  
16 Defendant-Counterclaimant Catherine Fisher was represented by Jovita Wang of Richardson  
17 Wang LLP.

18 On July 20, 2022, after hearing the evidence and the arguments of counsel, the Court  
19 found, among other things, that: (1) Boyd is entitled to specific performance of the ISC Group,  
20 LLC (the "Company") deadlock buyout procedures set forth in the Company's Operating  
21 Agreement, a copy of which is attached hereto as Exhibit 1; (2) Boyd is entitled to a declaratory  
22 judgment declaring the parties' rights and obligations under the Operating Agreement's deadlock  
23 buyout provisions; (3) Fisher is not entitled to the specific performance she requested in the  
24 Answer and Affirmative Defenses and Counterclaims (the "Answer"); (4) Boyd did not breach the  
25 covenant of good faith and fair dealing alleged in the Answer; (5) Boyd did not breach the  
26

1 fiduciary duty owed to Fisher or the Company; and (6) Fisher is not entitled to the declaratory  
2 judgment she requested in the Answer.

3 **NOW, THEREFORE, IT IS ORDERED AND ADJUDGED:**

4 Consistent with the findings of fact and conclusions of law stated by the Court on the  
5 record following trial, on Boyd's First Claim for Relief, for specific performance, Boyd is entitled  
6 to specific performance as follows:

7 A. Boyd shall purchase Fisher's entire interests in the equity and assets of the  
8 Company for the sum of \$218,090.50, such purchase to be effective as of October 13, 2021.  
9 Under Section 8.6.4 of the Operating Agreement, the closing of the sale shall occur at a time and  
10 place to be designated by Boyd, and at closing, Boyd shall pay Fisher the sum of \$218,090.50,  
11 and Fisher shall convey, transfer, and assign to Boyd by assignment, bill of sale, and such other  
12 instruments of transfer as shall reasonably be required, all of Fisher's rights and interests in and  
13 to the Company and all its assets, and shall, to the extent requested by Boyd, cooperate to effect  
14 the smooth and efficient continuation of the Company's business. ~~Fisher~~ The closing shall  
15 ~~transfer all of her membership units and interests in the Company to Boyd on these terms~~ occur  
16 within seven days of entry of judgment;

17 B. Within 60 days of entry of judgment, Boyd shall cause Fisher to be removed from  
18 all liability on all personal guarantees of Company debt, or, alternatively, refinance such debt to  
19 remove any personal liability for Fisher;

20 C. To the extent that the Internal Revenue Service or Oregon Department of Revenue  
21 determine that Fisher has personal income tax liability for any earnings retained by the Company  
22 after October 13, 2021, Boyd shall cause the Company to promptly pay Fisher the amount of  
23 such tax liability, including to the extent the Company's payment of such tax liability is deemed  
24 income to Fisher, as well as interest at the statutory rate on all taxes paid by Fisher on account of  
25 such liability from the time Fisher paid those taxes until the time the Company reimburses her, to  
26

1 ensure that Fisher has zero tax impact from monies that were not distributed to her by the  
2 Company after October 13, 2021;

3 D. ~~This Court shall retain jurisdiction to resolve any dispute that arises in connection~~  
4 ~~with the specific performance ordered herein; and~~ The Operating Agreement does not contain a  
5 non-competition term. As such, the Court declines to impose a non-competition agreement on  
6 Fisher as part of the transaction; and

7 E. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
8 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

9 ~~///~~

10 On Boyd's Second Claim for Relief, for breach of contract, the Court finds that:

11 A. Fisher has breached the Operating Agreement by failing to transfer her interest in  
12 the Company pursuant to the deadlock buyout provisions of the Operating Agreement;

13 B. Fisher shall perform pursuant to the Court's order regarding transfer of her entire  
14 interests in the equity and assets of the Company, and Fisher shall cooperate with Boyd to effect  
15 the smooth and efficient continuation of the Company's business; and

16 C. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
17 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

18 On Boyd's Third Claim for Relief, for declaratory relief, the Court declares:

19 A. Fisher issued an effective Deadlock Notice under Section 8.6.1 of the Operating  
20 Agreement on June 4, 2021;

21 B. Fisher issued an effective Buyout Notice under Section 8.6.1 of the Operating  
22 Agreement on August 13, 2021, setting the Company's Total Asset Value at \$1,239,778;

23 C. Boyd issued an effective Election Notice under Section 8.6.2 of the Operating  
24 Agreement on September 10, 2021, electing to purchase Fisher's interest in the Company;

25

26

1 D. Under Sections 8.6.5, 8.10.1, and 10 of the Operating Agreement, the purchase  
2 price for a member's interest following a Deadlock Buyout is determined using the following  
3 mathematical formula, based on the application and distribution provisions of Section 10.2;

$$4 \quad \textit{Purchase Price} = (\textit{Total Asset Value} - \textit{Company Liabilities}) \times \textit{Membership} \\ 5 \quad \textit{Percentage} + \textit{Unreturned Capital Contribution}$$

6 E. Pursuant to the Operating Agreement, Boyd is entitled to purchase Fisher's  
7 fifty-percent interest in the Company for the sum of \$218,090.50, effective as of October 13,  
8 2021;

9 F. Under Section 8.6.4 of the Operating Agreement, the closing of the sale shall  
10 occur at a time and place to be designated by Boyd, and at ~~Closing~~closing, Boyd shall pay Fisher  
11 the sum of \$218,090.50, Fisher shall convey, transfer, and assign to Boyd by assignment, bill of  
12 sale, and such other instruments of transfer as shall reasonably be required, all of Fisher's rights  
13 and interests in and to the Company and all its assets, and ~~Fisher~~ shall, to the extent requested by  
14 Boyd, cooperate with Boyd to effect the smooth and efficient continuation of the Company's  
15 business;

16 G. Within 60 days of entry of judgment, Boyd shall cause Fisher to be removed from  
17 all liability on all personal guarantees of Company debt, or, alternatively, refinance such debt to  
18 remove any personal liability for Fisher;

19 H. To the extent that the Internal Revenue Service or Oregon Department of  
20 Revenue determine that Fisher has personal income tax liability for any earnings retained by the  
21 Company after October 13, 2021, Boyd shall cause the Company to pay Fisher the amount of  
22 such tax liability, including to the extent the Company's payment of such tax liability is deemed  
23 income to Fisher, as well as interest at the statutory rate on all taxes paid by Fisher on account of  
24 such liability from the time Fisher paid those taxes until the time the Company reimburses her, to  
25 ensure that Fisher has zero tax impact from monies that were not distributed to her by the  
26 Company after October 13, 2021;

1 I. The Operating Agreement does not contain a non-competition term. As such, the  
2 Court declines to impose a non-competition agreement on Fisher as part of the transaction; and

3 J. ~~G.~~ Boyd is entitled to recover her costs and reasonable attorney fees under Section  
4 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

5 On Boyd's Fourth Claim for Relief, for attorney fees and costs, the Court finds:

6 K. ~~H.~~ Boyd is entitled to recover her costs and reasonable attorney fees under Section  
7 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

8 ~~///~~

9 ~~///~~

10 ~~///~~

11 ~~///~~

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21 ~~///~~

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24 ~~///~~

25 ~~///~~

26 ~~///~~

**MONEY AWARD**

Judgment Creditor:	Lisa Marie Boyd 3378 SW Badger Pl. Corvallis, OR 97333  Michael Willes Will Gent Tonkon Torp LLP 888 SW 5th Ave. Suite 1500 Portland, OR 97239 503-221-1440
Judgment Debtor:	Catherine Fisher 3931 NW Clarence Cir Corvallis 97330  Year of birth: 1975  SSN: Unknown  Driver's License: Unknown  Jovita Wang Richardson Wang LLP 805 SW Broadway Suite 470 Portland, OR 97204 503-546-4631
Persons or Public Entities Entitled to Portion of Money Award:	None of which Judgment Creditor is aware.
Amount of Money Awarded:	To be determined pursuant to ORCP 68.
Pre Judgment Interest:	Not applicable.
Post Judgment Accrual:	9% per annum pursuant to ORS 82.010(2)(d).
Arrearages:	Not applicable.
Attorney Fees and Costs:	To be determined pursuant to ORCP 68.

1 The Court shall retain jurisdiction to resolve any dispute that arises in connection with the  
2 terms of this judgment.

3  
4 On Fisher's Counterclaims and Affirmative Defenses, it is **FURTHER ORDERED AND**  
5 **ADJUDGED THAT:**

6 A. ~~There being insufficient evidence of each of the following,~~ Fisher's Counterclaims  
7 for specific performance, breach of covenant of good faith and fair dealing, breach of fiduciary  
8 duty, declaratory relief, and request for unjust enrichment (pursuant to oral motion to amend) are  
9 dismissed with prejudice; and

10 B. ~~There being insufficient evidence of each of the following,~~ Fisher's Affirmative  
11 Defenses of failure to state a claim, unclean hands, no meeting of the minds, waiver/estoppel,  
12 lack of consideration/insufficient consideration, and mitigation are dismissed with prejudice.  
13

14  
15  
16  
17  
18  
19 Submitted this \_\_\_ day of July 2022 by:

20  
21 TONKON TORP LLP

22 By:

23 Michael Willes, OSB No. 141806

24 Will Gent, OSB No. 165254

25 Attorneys for Plaintiff  
26

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**UTCRC 5.100(2)**  
**CERTIFICATE OF READINESS**

This proposed order or judgment is ready for judicial signature because:

1.  Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.

2.  Each opposing party affected by this order or judgment has approved the order or judgment, as shown by signature on the document being submitted or by written confirmation of approval sent to me.

3.  A copy of this order or judgment was served on each party entitled to service and:

a.  No objection has been served on me.

b.  I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.

c.  After conferring about objections, [role and name of opposing party] agreed to independently file any remaining objection ~~with the court by [date], which predated my submission.~~

4.  The relief sought is against an opposing party who has been found in default.

5.  An order of default is being requested with this proposed judgment.

6.  Service is not required pursuant to UTCRC 5.100(3), or by statute, rule, or otherwise.

7.  This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by UTCRC 5.100(4).

DATED: July \_\_, 2022.

TONKON TORP LLP

By \_\_\_\_\_  
Michael Willes, OSB No. 141806  
Attorneys for Plaintiff

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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing ~~GENERAL JUDGMENT AND MONEY AWARD OF REASONABLE ATTORNEY FEES AND COSTS~~ on:

Cody Hoesly  
Larkins Vacura Kayser LLP  
121 SW Morrison Street, Suite 700  
Portland, OR 97204  
*choesly@lvklaw.com*  
Attorney for Defendant Catherine Fisher

- by electronic means through the Court's File & Serve system (if registered) on the date set forth below;
- by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each attorney's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below; and
- by causing a copy thereof to be emailed to said attorneys at each attorney's last-known email address on the date set forth below.

DATED: ~~July 29~~ August 2, 2022.

TONKON TORP LLP

By: \_\_\_\_\_  
Michael Willes, OSB No. 141806  
Will Gent, OSB No. 165254

Attorneys for Plaintiff

042474\00001\~~13886267~~ 13887308v31

Document comparison by Workshare Compare on Friday, August 5, 2022  
10:23:42 AM

Input:	
Document 1 ID	iManage://IMANAGE_WORK_SVR/PDX/13836267/3
Description	#13836267v3<PDX> - 2022-07-xx General Judgment
Document 2 ID	iManage://IMANAGE_WORK_SVR/PDX/13887308/1
Description	#13887308v1<PDX> - General Judgment (TT Revisions 2022-08-05)
Rendering set	Standard

Legend:	
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Statistics:	
	Count
Insertions	24
Deletions	62
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	88

# Trial Audio - Judge's Ruling

Fri, 7/22 5:29PM • 10:51

## SUMMARY KEYWORDS

provisions, fisher, buyout, operating agreement, resolve, court, taxes, ruling, distributed, claims, determined, order, testimony, plaintiffs, october, evidence, honor, company, non compete, removed

## SPEAKERS

Michael Willes, Judge Williams, Jovita Wang

### Michael Willes 00:00

her claims denied and dismissed. Thank you very much, Your Honor.

### Judge Williams 00:03

I like to thank both counsel and your clients for your presentation testimony evidence. And I am prepared to rule. Notwithstanding my accounting questions earlier, I think those can be addressed perhaps. I am going to grant plaintiffs claims and deny defendants claims and counterclaims and the affirmative defenses. I think that the operating agreement controls, this is a fairly simple interpretation of the operating agreement. And the you know, we've heard much testimony about the offers counteroffers Mr. Willis is absolutely correct that this is a transfer of ownership that is controlled by the operating agreement, this is not a negotiated transfer, and negotiated transfer may well have terms back and forth, including inclusion of provisions of non compete and so forth. That's not accounted for in the operating agreement. As you look at the buyout provisions under paragraph eight of the operating agreement 8.6.1 is the initiation after the deadlock notice that the initiating party is to state a, their total asset valuation. And it's Miss Fisher chose to use the value that was determined by by the Real Trend report. Beyond that the Real Trend report really has no significance in this is something that perhaps upon further consideration, is Fisher might have looked at that and thought, well, okay, 1.2 plus, we should add in 800, so I'm gonna make my total asset value offer at 2 million, rather than 1.2 million. But it clearly that is the starting point. As for the going through the deadlock provisions under 8.6.5, total asset value and proceeds zero, if they were applied and distributed in the manner provided in Section 8. Well, section 8 encompasses 8.1 through 8.10.2, I suppose. The only provision in paragraph 8 that speaks to distribution of proceeds from the sale is contained in 8.10.1. That is a provision that does primarily apply to member option buyout, under that provision, but it does state that after you've determined the value of the fair market value for a an option purchase. Then you distribute in the manner contemplated in Section 10. And then carries you over to Section 10, which is pretty straightforward and that's wind up provision and how the assets are to be distributed. So I find that the calculation or the formula that is applied by the plaintiff in the case is the formula that is provided for in the buyout provisions. And I agree with the amounts. In fact, I think the day prior and doing my own calculation after having reviewed and listen to testimony and having a better understanding of how the buyout provisions work, I came up with the exact same figures that the expert did the following day. The

218, well he came up with 217 because he didn't provide for the unreturned capital, I think his reasoning is sound, but since the parties have included that consistently, I would include that and find that the buyout is 218,090.50 What order that the this be effective October 13, 2021. And if it is determined that that the Internal Revenue Service or Oregon Department of Revenue is going to calculate the retained earnings and require and I guess, assign those two to Miss Fisher then the court will I'm going to retain jurisdiction to make sure that this gets resolved finally, and if that's an issue that's raised in the court, I'll take additional evidence on any taxes and any tax liabilities, I is I will not leave Miss Fisher paying taxes on income that she doesn't receive. So if that, if the IRS or Oregon Department of Revenue, don't accept the court's retroactive application to October 13, then we'll have to address that issue, my hope is that they do. I'm giving you my ruling from the bench because this is something that this needs to get resolved. And you have a lot of families depending upon Town and Country, and how this is going to be resolved. So I want to have you start working on this as soon as possible. There is nothing in the buyout provisions or in the operating agreement that would require the imposition of a noncompete. So the court is not ordering a non compete provision, be utilized. And as there was a distribution in July of 2021, and we're using an effective date, just shortly thereafter, of October 13, 2021. I don't think it's necessary to account for any retained funds that might have been, you know, accumulated during that brief period of time. So those I'm only concerned if they're going to determine that she is that the defendant Miss Fisher is responsible for paying taxes on distributed income for 2021 and 2022.

**Michael Willes** 06:47

Your Honor, if I, if I may, on on that ruling. If the the ruling could consist of the following, which is that Miss Boyd would be ordered to cause the company to pay the amount of taxes that is due through the date of Miss Fisher's departure then I think that that could resolve that issue.

**Judge Williams** 07:14

And that that would that we'll do that. That way the company is paying it Miss Fisher is not we will not have to take additional evidence and argument and keep that issue open.

**Michael Willes** 07:26

Yeah.

**Judge Williams** 07:28

I will require that that Ms. Fisher be removed from liability from all of her personal guarantees on any company debt. And if I will give the plaintiffs 60 days to have her removed. And if that is not by agreement of the lien holder or creditor than it'll need to refinance because it's one thing to indemnify it's another to have her taken off of that debt and have because she would have difficulty in future financing with that load still being considered her obligation, so 60 days from date of judgment to get that removed. I know, I have some other notes and thoughts. But,

**Jovita Wang** 08:24

Your Honor, if I can address briefly before I move on the taxes issue, I will need to check with the accountant because if the company does pay the taxes, it could be deemed income IRS. That's

**Judge Williams** 08:37

That's true.

**Michael Willes** 08:39

I what I would suggest is to the extent that it covers all of her taxes, so to the extent it becomes income, then you you pay you pay on pay.

**Judge Williams** 08:52

Yup. I'll leave it to counsel to wordsmith that. But the court's intent is that Miss Fisher has zero tax impact from monies that were not distributed to her. As to the various claims, I will be amending my ruling on the Motion for Summary Judgment. I do not find that there was any any unclean hands or that there was running out the clock. Now that I've heard additional evidence and have a better understanding of how this all played out, I do not find that Ms. Boyd acted in any in any improper manner. So I will modify my the wording of that letter judgment letter ruling. Attorneys fees will be left open under or ORCP 68. And Mr. Willis if you'll draft the proposed judgment.

**Michael Willes** 09:56

Yes your honor.

**Judge Williams** 09:58

And I do want to include in that leaving the court retaining jurisdiction to resolve any unresolved issues that may arise here. As a result of the of the wrap up.

**Michael Willes** 10:09

We will order the For The Record so that we can get every detail.

**Judge Williams** 10:15

And we will return exhibits. I'm not sure. Did you ever receive original exhibit books? Is I treated these as judge's copies? Because they didn't have original stickers on it. Is this the originals appear that witness copy? Yes. Okay. So we will, we will return those. I will keep my copies just in case there's something else that arises that I have to resolve. Otherwise we'll return the original exhibits. Alright, with that we're off record.

**Michael Willes** 10:46

Thank you, your honor.

**Jovita Wang** 10:47

Thank you, your honor.

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4 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
5 FOR THE COUNTY OF BENTON

6 LISA MARIE BOYD, an individual,

7 Plaintiff,

8 v.

9 CATHERINE FISHER, an individual,

10 Defendant.  
11

Case No. 21CV38650

**GENERAL JUDGMENT**

12  
13 The above-captioned action came before the Court, the Honorable Locke Williams, for a  
14 bench trial on July 18, 2022 through July 20, 2022. Plaintiff-Counterclaim Defendant Lisa  
15 Marie Boyd was represented by Michael Willes and Will Gent of Tonkon Torp LLP. Defendant-  
16 Counterclaimant Catherine Fisher was represented by Jovita Wang of Richardson Wang LLP.

17 On July 20, 2022, after hearing the evidence and the arguments of counsel, the Court  
18 found, among other things, that: (1) Boyd is entitled to specific performance of the ISC Group,  
19 LLC (the “Company”) deadlock buyout procedures set forth in the Company’s Operating  
20 Agreement, a copy of which is attached hereto as Exhibit 1; (2) Boyd is entitled to a declaratory  
21 judgment declaring the parties’ rights and obligations under the Operating Agreement’s deadlock  
22 buyout provisions; (3) Fisher is not entitled to the specific performance she requested in the  
23 Answer and Affirmative Defenses and Counterclaims (the “Answer”); (4) Boyd did not breach  
24 the covenant of good faith and fair dealing alleged in the Answer; (5) Boyd did not breach the  
25 fiduciary duty owed to Fisher or the Company; and (6) Fisher is not entitled to the declaratory  
26 judgment she requested in the Answer.

1           **NOW, THEREFORE, IT IS ORDERED AND ADJUDGED:**

2           Consistent with the findings of fact and conclusions of law stated by the Court on the  
3 record following trial, on Boyd's First Claim for Relief, for specific performance, Boyd is  
4 entitled to specific performance as follows:

5           A.       Boyd shall purchase Fisher's entire interests in the equity and assets of the  
6 Company for the sum of \$218,090.50, such purchase to be effective as of October 13, 2021.  
7 Under Section 8.6.4 of the Operating Agreement, the closing of the sale shall occur at a time and  
8 place to be designated by Boyd, and at closing, Boyd shall pay Fisher the sum of \$218,090.50,  
9 and Fisher shall convey, transfer, and assign to Boyd by assignment, bill of sale, and such other  
10 instruments of transfer as shall reasonably be required, all of Fisher's rights and interests in and  
11 to the Company and all its assets, and shall, to the extent requested by Boyd, cooperate to effect  
12 the smooth and efficient continuation of the Company's business. The closing shall occur within  
13 seven days of entry of judgment;

14           B.       Within 60 days of entry of judgment, Boyd shall cause Fisher to be removed from  
15 all liability on all personal guarantees of Company debt, or, alternatively, refinance such debt to  
16 remove any personal liability for Fisher;

17           C.       To the extent that the Internal Revenue Service or Oregon Department of Revenue  
18 determine that Fisher has personal income tax liability for any earnings retained by the Company  
19 after October 13, 2021, Boyd shall cause the Company to promptly pay Fisher the amount of  
20 such tax liability, including to the extent the Company's payment of such tax liability is deemed  
21 income to Fisher, as well as interest at the statutory rate on all taxes paid by Fisher on account of  
22 such liability from the time Fisher paid those taxes until the time the Company reimburses her, to  
23 ensure that Fisher has zero tax impact from monies that were not distributed to her by the  
24 Company after October 13, 2021;

25           D.       The Operating Agreement does not contain a non-competition term. As such, the  
26 Court declines to impose a non-competition agreement on Fisher as part of the transaction; and

1 E. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
2 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

3 On Boyd's Second Claim for Relief, for breach of contract, the Court finds that:

4 A. Fisher has breached the Operating Agreement by failing to transfer her interest in  
5 the Company pursuant to the deadlock buyout provisions of the Operating Agreement;

6 B. Fisher shall perform pursuant to the Court's order regarding transfer of her entire  
7 interests in the equity and assets of the Company, and Fisher shall cooperate with Boyd to effect  
8 the smooth and efficient continuation of the Company's business; and

9 C. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
10 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

11 On Boyd's Third Claim for Relief, for declaratory relief, the Court declares:

12 A. Fisher issued an effective Deadlock Notice under Section 8.6.1 of the Operating  
13 Agreement on June 4, 2021;

14 B. Fisher issued an effective Buyout Notice under Section 8.6.1 of the Operating  
15 Agreement on August 13, 2021, setting the Company's Total Asset Value at \$1,239,778;

16 C. Boyd issued an effective Election Notice under Section 8.6.2 of the Operating  
17 Agreement on September 10, 2021, electing to purchase Fisher's interest in the Company;

18 D. Under Sections 8.6.5, 8.10.1, and 10 of the Operating Agreement, the purchase  
19 price for a member's interest following a Deadlock Buyout is determined using the following  
20 mathematical formula, based on the application and distribution provisions of Section 10.2;

21 
$$\text{Purchase Price} = (\text{Total Asset Value} - \text{Company Liabilities}) \times$$

22 
$$\text{Membership Percentage} + \text{Unreturned Capital Contribution}$$

23 E. Pursuant to the Operating Agreement, Boyd is entitled to purchase Fisher's fifty-  
24 percent interest in the Company for the sum of \$218,090.50, effective as of October 13, 2021;

25 F. Under Section 8.6.4 of the Operating Agreement, the closing of the sale shall  
26 occur at a time and place to be designated by Boyd, and at closing, Boyd shall pay Fisher the

1 sum of \$218,090.50, Fisher shall convey, transfer, and assign to Boyd by assignment, bill of sale,  
2 and such other instruments of transfer as shall reasonably be required, all of Fisher's rights and  
3 interests in and to the Company and all its assets, and shall, to the extent requested by Boyd,  
4 cooperate with Boyd to effect the smooth and efficient continuation of the Company's business;

5 G. Within 60 days of entry of judgment, Boyd shall cause Fisher to be removed from  
6 all liability on all personal guarantees of Company debt, or, alternatively, refinance such debt to  
7 remove any personal liability for Fisher;

8 H. To the extent that the Internal Revenue Service or Oregon Department of  
9 Revenue determine that Fisher has personal income tax liability for any earnings retained by the  
10 Company after October 13, 2021, Boyd shall cause the Company to pay Fisher the amount of  
11 such tax liability, including to the extent the Company's payment of such tax liability is deemed  
12 income to Fisher, as well as interest at the statutory rate on all taxes paid by Fisher on account of  
13 such liability from the time Fisher paid those taxes until the time the Company reimburses her, to  
14 ensure that Fisher has zero tax impact from monies that were not distributed to her by the  
15 Company after October 13, 2021;

16 I. The Operating Agreement does not contain a non-competition term. As such, the  
17 Court declines to impose a non-competition agreement on Fisher as part of the transaction ; and

18 J. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
19 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

20 On Boyd's Fourth Claim for Relief, for attorney fees and costs, the Court finds:

21 K. Boyd is entitled to recover her costs and reasonable attorney fees under Section  
22 11.5 of the Operating Agreement, in an amount to be determined pursuant to ORCP 68.

23 The Court shall retain jurisdiction to resolve any dispute that arises in connection with the  
24 terms of this judgment.  
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1 On Fisher's Counterclaims and Affirmative Defenses, it is **FURTHER ORDERED**

2 **AND ADJUDGED THAT:**

3 A. Fisher's Counterclaims for specific performance, breach of covenant of good faith  
4 and fair dealing, breach of fiduciary duty, declaratory relief, and request for unjust enrichment  
5 (pursuant to oral motion to amend) are dismissed with prejudice; and

6 B. Fisher's Affirmative Defenses of failure to state a claim, unclean hands, no  
7 meeting of the minds, waiver/estoppel, lack of consideration/insufficient consideration, and  
8 mitigation are dismissed with prejudice.

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15 Submitted this \_\_ day of July 2022 by:

16 TONKON TORP LLP

17 By: \_\_\_\_\_  
18 Michael Willes, OSB No. 141806  
19 Will Gent, OSB No. 165254  
20 Attorneys for Plaintiff  
21  
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**UTCR 5.100(2)**  
**CERTIFICATE OF READINESS**

This proposed order or judgment is ready for judicial signature because:

1.  Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.
2.  Each opposing party affected by this order or judgment has approved the order or judgment, as shown by signature on the document being submitted or by written confirmation of approval sent to me.
3.  A copy of this order or judgment was served on each party entitled to service and:
  - a.  No objection has been served on me.
  - b.  I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
  - c.  After conferring about objections, [role and name of opposing party] agreed to independently file any remaining objection.
4.  The relief sought is against an opposing party who has been found in default.
5.  An order of default is being requested with this proposed judgment.
6.  Service is not required pursuant to UTCR 5.100(3), or by statute, rule, or otherwise.
7.  This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by UTCR 5.100(4).

DATED: July \_\_, 2022.

TONKON TORP LLP

By \_\_\_\_\_  
Michael Willes, OSB No. 141806  
Attorneys for Plaintiff

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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **GENERAL JUDGMENT** on:

Cody Hoesly  
Larkins Vacura Kayser LLP  
121 SW Morrison Street, Suite 700  
Portland, OR 97204  
*choesly@lvklaw.com*  
Attorney for Defendant Catherine Fisher

- by electronic means through the Court's File & Serve system (if registered) on the date set forth below;
- by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each attorney's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below; and
- by causing a copy thereof to be emailed to said attorneys at each attorney's last-known email address on the date set forth below.

DATED: August 5, 2022.

TONKON TORP LLP

By: \_\_\_\_\_  
Michael Willes, OSB No. 141806  
Will Gent, OSB No. 165254

Attorneys for Plaintiff

042474\00001\13887308v1

**From:** [Cody Hoesly](#)  
**To:** [Will Gent](#); [Michael Willes](#)  
**Cc:** [Claire Brown](#); [Amanda Drenner](#); [Annette Kimmel](#); [Mark LeRoux](#); [Kate Roth](#); [Jamie McCall](#); [Amanda Drenner](#)  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]  
**Date:** Friday, August 5, 2022 12:18:40 PM  
**Attachments:** [image001.png](#)

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Hi Will,

I'm running off to court for the afternoon. We're in agreement on the form of judgment as to all aspects except the tax issue. I've moved fast on getting up to speed on this matter and have been quick to respond to you. When we conferred on the 2<sup>nd</sup>, you told me you'd email me what your tax lawyers were saying. You did so late afternoon on the 3<sup>rd</sup>. I was able to put the question to my own tax person yesterday but haven't gotten a substantive response yet. I don't think filing the judgment today, 48 hours after you gave me your tax advice, is reasonable. Especially given what I understand was Michael's comments to the judge on Day 3 of trial in the afternoon at about 36:30 minutes into those proceedings, in which he indicated to the court that a judgment specifying a 2021 effective date would be followed by the IRS. If you won't give me a couple more business days to get back to you about the tax issue, and instead file the judgment today, then you'll have to state it's objected to on this issue and that I'd like until Monday the 15<sup>th</sup> to submit a competing form of judgment before the judge decides which form to sign. Now, it may be that my tax person says your tax clause and plan is fine – I just don't know enough to say one way or the other at this point, despite my diligence.



**CODY HOESLY**

Attorney

121 SW Morrison St., Suite 700  
Portland, Oregon 97204  
O 503-222-4424 D 503-542-3109

[LVKLAW.COM](http://LVKLAW.COM)

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---

**From:** Will Gent <will.gent@tonkon.com>  
**Sent:** Friday, August 5, 2022 11:29 AM  
**To:** Cody Hoesly <choesly@lvklaw.com>; Michael Willes <michael.willes@tonkon.com>  
**Cc:** Claire Brown <claire.brown@tonkon.com>; Amanda Drenner <amanda.drenner@tonkon.com>; Annette Kimmel <akimmel@lvklaw.com>; Mark LeRoux <mark.leroux@tonkon.com>; Kate Roth <kate.roth@tonkon.com>; Jamie McCall <jamie.mccall@tonkon.com>; Amanda Drenner <amanda.drenner@tonkon.com>  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Cody,

I've attached a clean form of judgment, plus a redline tracking the changes we've conferred about (the changes track from Tonkon's initial form of judgment).

We intend to push this forward today: Judge Williams ruled from the bench on July 20, directing the parties to work through the form of judgment “as soon as possible”; we served our proposed judgment on Ms. Fisher on July 27; after you substituted in, we provided you with a copy of the proposed judgment on July 29; and we provided you with an explanation of our tax lawyers’ analysis on the language in our proposed judgment on August 2 and 3. If you have any remaining objections after our conferrals, you will have an opportunity to be heard, but we have complied with our UTCR 5.100 obligations. Filing today is the most efficient path forward.

As to the tax issue, I’ve re-attached an AI transcript of Judge Williams’ ruling. We did not make any representations to the court about an amended return, but requested that the judgment direct Ms. Boyd to cause the Company to pay Ms. Fisher the amount of any taxes on retained earnings. Judge Williams agreed and the judgment does exactly that.

We will file the judgment at 4:00 today. Please let us know before then whether we can do so unopposed, or whether you will independently file any remaining objection.

Thanks,  
Will

**Will Gent | Tonkon Torp LLP**

Attorney  
503.802.5767 direct  
[will.gent@tonkon.com](mailto:will.gent@tonkon.com)

---

**From:** Cody Hoesly <[choesly@lvklaw.com](mailto:choesly@lvklaw.com)>  
**Sent:** Thursday, August 4, 2022 6:16 PM  
**To:** Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>; Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>  
**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>; Annette Kimmel <[akimmel@lvklaw.com](mailto:akimmel@lvklaw.com)>; Mark LeRoux <[mark.leroux@tonkon.com](mailto:mark.leroux@tonkon.com)>; Kate Roth <[kate.roth@tonkon.com](mailto:kate.roth@tonkon.com)>  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Hi Will,

I believe Seacoast has what it needs from my client. I think the last day of employment should be the closing date, when ownership changes hands. For the non-compete part of the judgment, I’m fine with: *“The Operating Agreement does not contain a non-competition term. As such, the Court declines to impose a non-competition agreement on Ms. Fisher as part of the transaction.”* I’ve run the tax issue by a tax person and will need to get back to you on that; I’ll do so as soon as I can. I will be on vacation and at a conference next week but will do some work on Monday and Wednesday. I know you want to get the judgment submitted to the court, but I only got your explanation for the tax clause yesterday, and my understanding from trial is that your side told the court the return could be amended to achieve the retroactive buyout, so this is something I need to make sure we get right.

Thanks,

**CODY HOESLY**

Attorney

---

121 SW Morrison St., Suite 700  
Portland, Oregon 97204  
O 503-222-4424 D 503-542-3109

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---

**From:** Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>  
**Sent:** Thursday, August 4, 2022 2:54 PM  
**To:** Cody Hoesly <[choesly@lvklaw.com](mailto:choesly@lvklaw.com)>; Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>  
**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>; Annette Kimmel <[akimmel@lvklaw.com](mailto:akimmel@lvklaw.com)>; Mark LeRoux <[mark.leroux@tonkon.com](mailto:mark.leroux@tonkon.com)>; Kate Roth <[kate.roth@tonkon.com](mailto:kate.roth@tonkon.com)>  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Cody,

Are these changes, together with the ones we discussed on Tuesday, sufficient to submit the judgment as unopposed?

Thanks,  
Will

**Will Gent | Tonkon Torp LLP**

Attorney  
503.802.5767 direct  
[will.gent@tonkon.com](mailto:will.gent@tonkon.com)

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**From:** Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>  
**Sent:** Wednesday, August 3, 2022 3:34 PM  
**To:** 'Cody Hoesly' <[choesly@lvklaw.com](mailto:choesly@lvklaw.com)>; Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>  
**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>; Annette Kimmel <[akimmel@lvklaw.com](mailto:akimmel@lvklaw.com)>; Mark LeRoux <[mark.leroux@tonkon.com](mailto:mark.leroux@tonkon.com)>; Kate Roth <[kate.roth@tonkon.com](mailto:kate.roth@tonkon.com)>  
**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Hi Cody,

Thanks.  
the other questions from yesterday:

but to address

- Last Day of Employment: Ms. Boyd proposes 8/15/22 as Ms. Fisher's last day of employment with TNC.

- Non-Compete: In lieu of the language you added to the judgment addressing the NCA, we propose the following:

*As agreed by the parties, the Operating Agreement does not contain an express non-competition term. As such, the Court declines to impose a non-competition agreement on Ms. Fisher as part of the transaction.*

- Tax: I promised you a written explanation of why we object to the language you inserted into the judgment regarding taxes, specifically as to filing an amended Company return. Here is that explanation from our tax lawyers, Kate Roth and Mark LeRoux, who I have copied on this email:

*We cannot backdate the actual sale of Ms. Fisher's interest in the Company to October 13, 2021. Because the actual sale did not occur last year, we also cannot amend the Company's 2021 tax return to reflect events that did not happen. We are using January 1, 2022 as the actual sale date and will treat the parties as if the sale occurred on October 13 by putting them in the same after-tax position had the sale actually occurred on that date. This requires grossing-up the purchase price to cover the retained earnings actually allocated to Ms. Fisher for the period of October 14 to December 31.*

*The Company has already filed its 2021 tax return, and Ms. Boyd and Ms. Fisher have received their respective Schedules K-1 for that tax year. Assuming for discussion that we could treat the sale as actually occurring on October 13, doing so would require amending the corporate return. We do not think that is the appropriate course of action since no sale actually occurred in 2021. From the Company's perspective, the administrative costs of amending the return would far outweigh the gross-up payment. Furthermore, Ms. Boyd and Ms. Fisher would also need to amend their respective personal returns, which would further increase the costs for both parties.*

With those clarifications, please advise whether the judgment is acceptable at your earliest convenience. If so, I'll circulate a final form for you to review before filing.

Thanks,  
Will

**Will Gent | Tonkon Torp LLP**

Attorney

503.802.5767 direct

[will.gent@tonkon.com](mailto:will.gent@tonkon.com)

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**From:** Cody Hoesly <[choesly@lvklaw.com](mailto:choesly@lvklaw.com)>

**Sent:** Tuesday, August 2, 2022 4:52 PM

**To:** Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>

**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>; Annette Kimmel <[akimmel@lvklaw.com](mailto:akimmel@lvklaw.com)>

**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Hi Will,

Good talking to you today. Fisher will drop off the equipment to the TNC office between 11:00 and 12:00

on Friday. You and I discussed that the last date of employment issue will be addressed later, but I can say that we can agree that the form of the separation can be termination without cause with no contesting Fisher's application for unemployment benefits. Also, on the form of judgment, it's okay to drop that parenthetical listing the debts, though I will ultimately need verification that Fisher never was and/or no longer is liable on any of those debts by the end of the 60-day period. I look forward to hearing back from you about the no-non-compete clause, the tax issue,

Thanks,



**CODY HOESLY**

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**From:** Cody Hoesly

**Sent:** Monday, August 1, 2022 8:00 PM

**To:** Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>

**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>; Annette Kimmel <[akimmel@lvklaw.com](mailto:akimmel@lvklaw.com)>

**Subject:** RE: Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Hi Michael,

Below are responses to the questions/requests you sent. I've also attached redlines to the proposed form of order; to the degree you disagree with the redlines, you can consider them my objections, but I think we should confer before you file anything with the court, because I think we can reach agreement on all or most all the changes. I am available tomorrow. I think most of the redlines are self-explanatory, but I'll add a few brief comments on some of them here.

First, regarding the closing date, I think the judge made clear his desire to have the buyout close quickly, and I don't see Operating Agreement Section 8.6.4 as giving Boyd discretion to choose the closing date (only the time and place, as in "11:00 at First American").

Second, on taxes, Fisher paid estimated taxes in April but hasn't filed a 2021 return yet – once we get an amended K-1 from the company (accounting for the 10/13/21 split) she will file her return and can determine what amount, if any, she owes or overpaid for the company's post-10/13/21 earnings.

Third, I didn't understand why there was a money award when there was no money awarded; if and when a supplemental judgment for attorney fees gets entered, then that judgment will have a money award.

Finally, the court's retention of jurisdiction pertains to more than just the specific performance claim, as I read the ruling, especially given the way you've structured the judgment as regards the other two substantive claims.

I also want to let you know that I plan to file a motion for clarification or reconsideration, arguing that Fisher should receive additional compensation for the October 2021 to July 2022 period (and potentially the July 2021 to October 2021 period as well). We can discuss that when we talk.

Thanks,



**CODY HOESLY**

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**From:** Michael Willes <[michael.willes@tonkon.com](mailto:michael.willes@tonkon.com)>  
**Sent:** Friday, July 29, 2022 2:43 PM  
**To:** Cody Hoesly <[choesly@lvklaw.com](mailto:choesly@lvklaw.com)>  
**Cc:** Claire Brown <[claire.brown@tonkon.com](mailto:claire.brown@tonkon.com)>; Will Gent <[will.gent@tonkon.com](mailto:will.gent@tonkon.com)>; Amanda Drenner <[amanda.drenner@tonkon.com](mailto:amanda.drenner@tonkon.com)>  
**Subject:** Boyd v. Fisher: Consolidated List of Requests [IWOV-PDX.FID1287879]

Cody,

Here is the consolidated list of questions/requests that I have sent to Jovita:

- On paper, Ms. Fisher is still an employee of the company. Does she intend to resign, or would she prefer to have her employment terminated? *I'm still looking into that. I assume that, if Ms. Fisher requested it, Ms. Boyd would agree to termination without cause and/or to not contesting any application for unemployment benefits – please let me know if that's incorrect.*
- For purposes of her final pay check and benefits, does Ms. Fisher intend to propose a date certain for her last date of employment? *Yes, let's discuss in conjunction with the form of judgment, closing of sale, return of company property, etc. What is Ms. Boyd's preference in this regard?*
- Has Ms. Fisher filed her tax returns for 2021 yet? Has she paid her 2021 tax liability in full? These questions relate to the Court's questions about tax liabilities. *She is on extension.*
- Company property to return: *Ms. Fisher can make the return by this Friday – she can drop the items off at the office. Please let me know if that works on your end.*
  - MacBook Pro computers (there should be 2, one old one and one purchased in 2020), and all associated cords – *she'll return what she has*
  - Computer gaming monitor, stands and all associated cords – *she doesn't have any from the*

- company; only the staff got one from the company
- External hard drives and back-ups and all associated cords – she'll return what she has (e.g., old ones were discarded)
- All Keys: Albany, Main office, Annex A, Annex B – she'll return what she has
- All drawer keys – she left them all in the drawers
- All Town & Country Realty logo'd signage – she doesn't have any
- All lockboxes – she doesn't have any
- All Town & Country Realty marketing, training, and documents – she left them all in the drawer
- Please disconnect all company-paid accounts, including Hulu – Nicole controls the accounts, not Ms. Fisher, so Nicole should be able to do this

Amanda will send the Word version of the proposed judgment. Feel free to reach out with any questions.

Thanks.

**Michael Willes | Tonkon Torp LLP**

Partner

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