Copy to Conform

GIBSON, DUNN & CRUTCHER LLP
SCOTT A. EDELMAN, SBN 116927
2029 Century Park East
Suite 4000
Los Angeles, California 90067

Telephone: (310) 552-8500
Facsimile: (310) 551-8741

Attorneys for Plaintiffs
LEONARD NORMAN COHEN and
LEONARD COHEN INVESTMENTS, LLC

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

AUG 15 2005

John A. Clarke, Executive Officer/Clerk
By ____________, Deputy
J. SUNGA

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

LEONARD NORMAN COHEN, an individual; LEONARD COHEN INVESTMENTS, LLC, a Delaware Limited Liability Company, Plaintiff, v. KELLEY A. LYNCH, an individual; RICHARD A. WESTIN, an individual; DOES 1 through 50, inclusive, Defendants.	**CASE NO.** BC338322 **COMPLAINT FOR:** **(1) BREACHES OF FIDUCIARY DUTY;** **(2) COMMON LAW FRAUD;** **(3) BREACH OF CONTRACT;** **(4) ACCOUNTING;** **(5) CONVERSION;** **(6) IMPOSITION OF CONSTRUCTIVE TRUST AND INJUNCTIVE RELIEF; AND** **(7) PROFESSIONAL NEGLIGENCE** **DEMAND FOR JURY TRIAL**

Plaintiffs Leonard Norman Cohen ("Cohen") and Leonard Cohen Investments, LLC ("LCI LLC") (individually or collectively, "Cohen" or "Plaintiff") for their complaint (the "Complaint") against Defendants Kelley A. Lynch, Richard A. Westin and Does 1-50 (collectively "Defendants") allege as follows:

SUMMARY OF THE COMPLAINT

1. Cohen is an accomplished poet, novelist, recording artist and musician with a successful career spanning nearly four decades. His first album "Songs of Leonard Cohen" was recorded in 1967, which was followed by thirteen more albums. Cohen's latest album, "Dear Heather" was released in 2004. His stature in the music industry is legendary. Many recording artists have recorded their own version of Cohen's songs in tribute and many artists consider Cohen an important influence in their musical careers. Cohen still enjoys substantial popularity and critical acclaim. His music and writings reach an extensive audience throughout North America, including his native Canada, as well as Europe and Asia.

2. This civil action is another case of a tragedy that has become all too familiar in the music industry – a business manager and professional advisers exploit an immensely talented artist's loyalty and trust through greed, self-dealing, concealment, knowing misrepresentation and reckless disregard for professional fiduciary duties. As a result of Defendants' misconduct, Cohen has lost millions of dollars, including most of his retirement savings.

3. Kelley Lynch was Cohen's business manager for approximately seventeen years until he fired her for cause in October 2004. Cohen fired Lynch upon his discovery that she had been siphoning monies from his personal bank and investment accounts substantially in excess of the 15% management compensation to which she was entitled. A preliminary analysis shows that Lynch has wrongfully taken approximately over $5 million of Cohen's earnings over approximately seven years. When confronted by Cohen, Lynch admitted to having taken "millions" because she had "got in over her head." However, Lynch has wrongfully refused and continues to wrongfully refuse Cohen's requests for an accounting.

4. Lynch gained control of Cohen's financial affairs through a long process of carefully cultivated trust. When Cohen's former business manager died in 1988, Cohen turned to Lynch because, as his former business manager's assistant, she had gained valuable institutional knowledge of Cohen's business affairs and intricate recording contracts. During the ensuing years, Cohen gained respect for her capability and developed an abiding trust. Cohen relied on Lynch to handle his business and financial affairs so that he could focus upon his recording career and his creative life.

5. In late 1994, after completing a successful tour following his album release in 1993, Cohen decided to spend some time at the Mount Baldy Zen Center in Los Angeles, California. Cohen remained there for nearly five years leading a life of rigorous religious discipline. Cohen left the Zen Center in January 1999.

6. After nearly thirty years in the music industry, Cohen could afford to take a few years off to lead a quiet spiritual life away from the mainstream. Given his modest lifestyle, Cohen reasonably expected royalties from his song copyrights and records should have been sufficient to support him during his retirement years. Cohen had three royalty producing assets:

- Leonard Cohen Stranger Music, Inc. ("LCSMI"), a music publishing company that owned the copyrights to his substantial song catalogue;
- Artist royalties ("Artist Royalties") payable pursuant to his Recording Agreement with Sony Music dated 1967, as amended;
- Writer's royalties ("Writer's Royalties") Cohen received from the public performance of his songs, payable pursuant to Cohen's Writer's Agreement with LCSMI, pursuant to which he earned the customary writer's share (50%) of mechanical and performance royalties.

7. During the Mount Baldy years, Cohen voluntarily elected to reduce his income by foregoing touring and new albums. Lynch did not accept a corresponding decline in her income. Instead, without Cohen's knowledge or consent, she began paying herself a greater portion of Cohen's royalties than she was entitled to receive.

8. Lynch also initiated a second strategy to supplement her income. She introduced Cohen to her friend Neal Greenberg, an investment advisor and founding principal of Agile Group, to propose that Cohen transfer his investments from Dean Witter (now Morgan Stanley) to Greenberg's firm. Greenberg introduced Cohen to Richard Westin, a tax professor and tax lawyer. Lynch then worked with Greenberg and Westin to begin plotting the sale of Cohen's income producing royalty assets for her own benefit and to Cohen's detriment.

9. With the help of Greenberg and Westin, and under the guise of "saving taxes" and "estate planning" for the benefit of Cohen's two children, she orchestrated the sale of Cohen's music publishing company in 1997 (the "1997 Sale") and his Artist Royalties in 2001 (the "2001 Sale") for a combined total of over $12 million, ostensibly to fund Cohen's retirement. Also, with the help of Greenberg and Westin, and the complex transactions invented by them, she retained control of almost all of the royalty sale proceeds.

10. Cohen believed that he had hired Westin and Greenberg to protect his retirement savings, but in fact, they burdened the sales with transactions costs in excess of $4 million, and they devised unnecessarily complex corporate structures that allowed Lynch to steal over $5 million for her own benefit without Cohen's knowledge or consent.

11. Lynch, Westin and Greenberg only belatedly informed Cohen of the transaction costs related to these sales. When the issue arose one year after the 2001 Sale, they concealed the full extent of the costs. They also failed to advise Cohen that Lynch controlled all of his retirement savings to such an extent that she could withdraw funds as she pleased from Cohen's accounts managed by Greenberg.

12. Cohen only learned that Lynch had converted almost all of his retirement savings for her own benefit when he was approached by an informant working in Lynch's management company known as Stranger Management. In mid-October 2004, the informant advised Cohen's daughter that Lynch had a complex scheme to hide the fact that she had misappropriated almost all of Cohen's retirement savings.

13. In response to the informant's allegations, Cohen began his own direct review of his financial affairs in October 2004. Upon discovery of irregularities in his bank accounts at City National Bank ("CNB"), he terminated Lynch and removed Lynch from any control of his accounts. Lynch initially feigned cooperation, while immediately attempting and ultimately succeeding in a last minute raid of accounts over which she had control.

14. Cohen also contacted Westin and Greenberg in the hope of verifying that the funds under Greenberg's management were still intact. Greenberg refused to discuss the accounts except to say that Westin had placed Cohen's retirement savings in a legal structure over which Lynch had complete control and to refer Cohen to Westin. When Cohen challenged Westin as to how this could have happened, Westin acknowledged that he had never fully explained the transaction to Cohen and then sent Cohen a belated written explanation. Cohen ultimately learned that of the $5 million under Greenberg's management, only $150,000 remained.

15. Only by the end of January 2005 did Cohen realize that Lynch's misappropriations of millions of dollars had been facilitated, and even enabled, by and through Westin's and Greenberg's negligently complicitous conduct. Once the communications among Greenberg, Lynch and Westin were examined, it became clear that, as Lynch was raiding Cohen's till, both Greenberg and Westin chose to disregard their respective professional fiduciary duties to Cohen. They both looked the other way, and in some cases covered up her actions, as Lynch took millions of dollars of Cohen's money.

16. Through the misrepresentations made by Defendants, Cohen believed that the 1997 Sale and the 2001 Sale were financially necessary. The fact is that Cohen's royalties were ample to support his modest lifestyle. Lynch concealed the amount of Cohen's royalties and her misappropriation of those royalties, thereby creating a sense of urgency to sell assets. The sales of Cohen's intellectual property assets were only required to facilitate Lynch's access to Cohen's funds and to generate large transactions fees for professionals.

17. By this lawsuit, Cohen seeks a full accounting from Lynch so that Cohen may determine the extent and magnitude of Lynch's misappropriation of Cohen's monies; the

restitution of the millions of dollars wrongfully taken from him by Lynch; and the return of Cohen's business and legal records wrongfully withheld from him by Lynch.

18. This lawsuit also seeks to hold Westin liable for his professional negligence in his representation of Cohen. Westin's nearly nine-year legal advisory relationship with Cohen was rife with undisclosed conflicting professional loyalties in Westin's simultaneous representation of Cohen, Lynch, and the various legal entities Westin formed on Cohen's behalf. Westin concurrently represented both Cohen and Lynch in several transactions without full disclosure or informed consent, when their respective interests as Artist and business manager in such transactions were clearly conflicted. These transactions were to the substantial detriment of one of Westin's clients, Cohen, and in substantial favor of his other concurrent client, Lynch. Westin also drafted corporate organizational documents that were favorable to Lynch's interests, rather than Cohen's, and gave Lynch extraordinary control over Cohen's assets in a retirement vehicle established for Cohen's benefit but inexplicably 99.5% owned by Lynch. Additionally, Westin, a tax professor, failed to monitor the financial conditions of the various corporate entities he formed for Cohen. By preparing and filing tax returns for Cohen's various corporate entities, Westin had actual knowledge of Lynch's misconduct and misappropriations. As Cohen's legal advisor, Westin had a duty to zealously guard and protect Cohen's interests, and by failing to inform Cohen of Lynch's misconduct, breached his duty to Cohen.

THE PARTIES

19. Plaintiff Leonard N. Cohen currently lives in Los Angeles, California.

20. Plaintiff Leonard Cohen Investments, LLC is a Delaware Limited Liability Company wholly owned by Leonard N. Cohen.

21. Defendant Richard A. Westin, Esq., a tax professor at the University of Kentucky, College of Law and a lawyer, is a resident of Kentucky. Westin is a member of the State Bars of California, Kentucky and Texas.

22. Defendant Kelley A. Lynch, Cohen's former business manager, is a resident of Los Angeles, California. Westin and Lynch are sometimes collectively referred to as "Defendants."

23. Defendants Does 1 through 50 are active participants at all times relevant acting as the employees, agents, officers, alter egos, successors in interest, partners or joint venturers of Defendants, and others whose identities are presently unknown to Plaintiff. Therefore, Plaintiff sues these Defendants by such fictitious names. Plaintiff will seek leave of the Court to amend this Complaint to allege their true names and capacities when ascertained. Each fictitiously-named Defendant aided, abetted, and conspired and participated with the named Defendants in the wrongful acts and course of conduct; otherwise caused the damages to be proven in this action; and is responsible in some manner for the acts, occurrences and events alleged in this Complaint.

JURISDICTION AND VENUE

24. The acts and transactions complained of herein occurred in substantial part in the County of Los Angeles.

25. Kelley A. Lynch is a resident of Los Angeles, California. Richard A. Westin is an attorney licensed to practice law in the State of California and for the relevant period provided legal services to Cohen and Lynch, both California residents. Additionally, during the course of his legal representation of Cohen, Westin attended meetings on Cohen's behalf in California.

FACTUAL BACKGROUND

Cohen First Meets Lynch

26. Cohen first met Kelley Lynch in approximately 1975, when Lynch was employed as an assistant to Cohen's former legal counsel, Martin Machat in New York. Machat was Cohen's attorney from approximately 1971 to 1988, until Machat's death.

Lynch Becomes Cohen's Business Manager and Selects Greenberg and Westin as Cohen's Financial and Legal Advisers

27. Upon the death of Machat, Lynch began working for Cohen as his personal assistant. Gradually, Lynch came to oversee more and more aspects of Cohen's career, including Cohen's financial affairs, fully assuming the role as Cohen's business manager.

28. There was no written management agreement between Cohen and Lynch, but rather an oral agreement whereby Lynch was paid 10% of Cohen's gross earnings until approximately 1997. In 1998, and continuing until Lynch's dismissal for cause by Cohen in October 2004, Cohen and Lynch agreed that Lynch's management fees were 15% of gross earnings. Lynch formalized the management relationship with Cohen by incorporating her management business d/b/a Stranger Management, Inc., a company believed to be wholly owned by Lynch.

29. Sometime in the early 1990's, Lynch's parents, John "Jack" and Joan Lynch moved from Pennsylvania to California. Lynch employed both of them at Stranger Management to assist her in management duties performed for Cohen in various capacities. John Lynch was employed as a bookkeeper and Cohen paid his salary of $360/week. Lynch's father maintained a general accounting ledger for Cohen's various accounts. He also prepared bank deposit slips when Cohen's royalty checks were received from the Society of Composers, Authors, and Music Publishers of Canada ("SOCAN") and wrote all Stranger Management checks. He also wrote checks drawn against Cohen's personal bank accounts at City National Bank to pay for Cohen's personal living expenses. Joan Lynch assisted in the day-to-day office tasks of Stranger Management. Additionally, Joan Lynch was listed as a contact person, along with Kelley Lynch at City National Bank, where Cohen kept his personal and business accounts, to initiate wire transfers as well as confirm their receipt into Cohen's accounts.

30. With Cohen at the Mount Baldy Zen Center and her parents handling all Cohen's bookkeeping, Lynch concealed from Cohen both the extent of his royalty income as well as her payment to herself of more than the 10% of Cohen's income to which she was

entitled. Through concealment and conversion, she created the impression that Cohen had inadequate income, and gave him the impression that he needed to sell assets.

31. In furtherance of her goal of taking total control of Cohen's finances, she introduced Cohen to Neal Greenberg, a money manager and her long time friend. Greenberg in turn introduced Lynch and Cohen to his tax lawyer, Richard Westin. Lynch and Greenberg convinced Cohen to move his investment portfolio from Dean Witter to Neal Greenberg's Colorado based firm. Lynch and Greenberg assured Cohen that Greenberg's investment strategy was much safer than the Dean Witter strategy of investing in publicly traded stocks and bonds.

1997 Sale of Music Publishing Assets Through Stock Sale of Leonard Cohen Stranger Music, Inc.

32. With advice from Greenberg and Westin, Lynch encouraged Cohen in 1996 to sell his music publishing to Sony. Cohen's extensive music publishing catalogue, as it existed in 1996, consisted of 127 songs, including "Suzanne", "Bird On a Wire" and "Hallelujah." Cohen held his copyrights to his song catalogue in Leonard Cohen Stranger Music, Inc. ("LCSMI"), a New York corporation formed in 1967 which was set up to hold Cohen's mechanical and performance royalty income derived from Cohen's copyrights. LCMSI was wholly owned by Cohen. In anticipation of the sale, additional shares of LCMSI were issued to the Cohen Family Charitable Remainder Trust (the "Cohen Family CRT"), the Sabbath Day Charitable Remainder Trust (the "Sabbath Day CRT") and the Mount Baldy Zen Center. Sony/ATV Music Publishing Acquisition, Inc. closed the purchase of LCSMI in July 1997 pursuant to a Stock Purchase Agreement (the "1997 Sale").

33. The sale of Cohen's copyrights in his song catalogue was a fairly straight forward transaction in that it involved an asset (copyrights) that qualified for capital gains treatment when sold.

34. Once the sale was completed in July 1997, Lynch received a large commission check on the sale proceeds.

35. The remaining 1997 Sale proceeds were used to fund two charitable remainder trusts, the Cohen Family CRT and the Sabbath Day CRT. Cohen also received proceeds from the sale as a LCSMI shareholder and also invested these funds with Greenberg. On closing of this sale, Greenberg and the Agile Group had the Cohen Family CRT, the Sabbath Day CRT, and all of Cohen's personal investment accounts under management.

<u>1998-2000 Failed Attempts to Structure a Sale of Artist Royalties and Other Copyrights as Stock Sale</u>

36. Notwithstanding her large commission on the 1997 Sale, Lynch continued her practice of concealing from Cohen the amount of royalties he was receiving. Lynch also continued to take monies at will without Cohen's knowledge or consent from his personal checking accounts, thereby furthering a false impression in Cohen's mind that he was always low on funds.

37. Also in 1997, Lynch started her own wholesale greeting card business, "Amazing Card Co," subsequently incorporated as Amazing Card Company, LLC, a California limited liability company, in August 2001. On information and belief, Lynch used the greeting card business as a cover to hide her wrongful conversion of Cohen's royalties and investments. This cover allowed her to claim that she paid for an ever more extravagant lifestyle with profits from her greeting card business. In fact, she was improperly withdrawing funds from Cohen's banking and investment accounts, well in excess of the 15% management fees which Cohen had by then agreed to pay.

38. Shortly after selling Cohen's music publishing company, forming her own greeting card business, and while Cohen was still on Mount Baldy, Lynch initiated a new project. She began to orchestrate the transfer of Cohen's remaining intellectual properties into a corporate entity for another possible stock sale.

39. Lynch again enlisted Westin and Greenberg to provide legal and financial planning for this sale. After Cohen's advisers debated the relative merits of forming corporations in various states, including Nevada, to expedite the transfer and the subsequent sale of assets, Westin recommended transferring all of Cohen's remaining intellectual

property assets to an already existing corporate entity. Westin suggested using Blue Mist Touring Company, Inc. ("Blue Mist"), a corporate entity wholly owned by Cohen. Blue Mist was formed in Delaware in March 1993.

40. The planned attempted transfer of the entirety of Cohen's intellectual properties into Blue Mist began in earnest in January 1998. At Lynch's behest, Westin drafted corporate minutes of a special meeting of the directors of Blue Mist "to accept a transfer of intellectual property from shareholder Leonard Cohen under IRC §118" and sent these draft minutes to Lynch noting on the fax coversheet "I am pushing like this because Neal [Greenberg] says you want the transfer done expeditiously." In May 1998, Lynch requested that Westin prepare the "transfer documents (assignments) and three separate sets of minutes" in anticipation of the transfer into Blue Mist and the subsequent sale through the sale of Blue Mist stock of ("Blue Mist Transaction") all of Cohen's intellectual property assets.

41. Without consulting Cohen, Westin complied with Lynch's request on June 1, 1998 by drafting and providing Lynch a Waiver of Notice for a Special Meeting, the minutes of a Special Meeting, and the proposed assignments for 1) the Writer's Share; 2) the Performer's share; and 3) copyrights to Cohen's eleven published books. Westin also provided Lynch a draft Stock Purchase Agreement.

42. During the course of the Blue Mist Transaction, Lynch asked if she could pay capital gains taxes on her commission. In furtherance of this end, and without adequate consultation with Cohen, Westin proposed that Lynch be issued a 15% interest in Blue Mist stock. In March of 1999, Westin cancelled Cohen's sole ownership of the total outstanding shares (five hundred (500) shares) in Blue Mist and issued Lynch seventy-five shares of Blue Mist, which represented a 15% equity interest. The corporate minutes for the stock issuance drafted by Westin indicate that Lynch's 75 shares were issued to Lynch "as compensation for her services to the Corporation, with great gratitude for her efforts."

43. Various attempts were made to assign and transfer Cohen's interests in his Writer's Royalties, Artist Royalties and Master Recordings of 1979, 1988, and 1993 Live Performances into Blue Mist. An "Assignment, Assumption and Consent Agreement" for

Cohen's Writer's Share of Performance Income received from SOCAN was signed by Cohen as Assignor and President of Blue Mist and dated December 29, 1999. Similarly, assignments were executed by Cohen for Artist's Record Royalty rights on December 29, 1999 and the Master Tapes of 1979, 1988, and 1993 Live Performances on December 28, 1998.

44. Apparently while Lynch and Westin were still working on their joint project of attempting to transfer Cohen's remaining intellectual property assets to Blue Mist, SOCAN refused to agree to pay Cohen's performance royalties to a company not wholly owned by a member artist. Accordingly, in furtherance of the plan to control all of Cohen's royalties, either Lynch or Westin suggested the formation of a new entity, Leonard Cohen Investments, LLC ("LCI LLC"). LCI LLC was formed as a sole member (with Cohen owning 100% interest) Delaware limited liability company on October 19, 1999. Once LCI LLC was formed, SOCAN was instructed to pay Cohen's performance royalties directly to LCI LLC.

45. In September 2000, Westin advised Lynch of the need to "know what the 'inventory' of Blue Mist is so far, meaning the assets it holds." Nearly a year after the assignments into Blue Mist were executed by Cohen, Westin drafted and faxed Lynch "Special Meeting Minutes of the Board of Directors of Blue Mist Touring, Inc." ostensibly approving these assignments into Blue Mist. Westin instructed Lynch to sign them and "insert in minutes in chronological order" [in the Blue Mist corporate binder]. These special meeting minutes drafted by Westin nearly a year after Cohen executed the assignments, purport to constitute valid corporate action of accepting the transfer of these properties into Blue Mist. Westin did not discuss these minutes with Cohen.

46. The proposed Blue Mist Transaction was never consummated and was ultimately abandoned after Sony advised Westin in mid-2000 that it would not proceed with the Artist's Royalty sale using Blue Mist as a vehicle for a stock purchase. Following this decision by Sony, Greenberg contacted Westin and insisted that Westin go back to the drawing board and devise an alternate structure for the Artist Royalty sale. Lynch, acting on the advice of Westin, conceded that the Blue Mist asset transfers were not valid.

47. Notwithstanding the abandonment of the Blue Mist Transaction, certain royalty revenues, as much as $250,000, were deposited into Blue Mist. Lynch never accounted to Cohen with respect to the $250,000 of "inadvertently" deposited royalties into Blue Mist. On information and belief, Lynch converted these royalties for her own benefit, fully aware that these royalties were Cohen's property.

48. Further, when the Blue Mist Transaction was abandoned, Westin did not properly rescind the assignment agreements before engaging in subsequent asset transfers and transactions involving the same musical properties. Westin failed to properly "unwind" the steps taken toward completion of the Blue Mist Transaction. As a result of Westin's failure, Lynch has asserted claims as to ownership of 15% of Cohen's remaining intellectual property assets.

<u>Private Annuity Transaction for Sale of Cohen's Artist Royalties</u>

49. At Greenberg and Lynch's urging, Westin devised a complex and unusual scheme and presented his initial proposal in a faxed memo addressed solely to Cohen on November 19, 2000. Westin's proposal called for Cohen to transfer his interest in his Artist Royalties to an entity (Westin initially proposed using a trust) in exchange for a private annuity, which would fund Cohen's retirement years. The entity would then sell the Artist Royalties to Sony, and the entity would receive the proceeds from the sale. The entity would then invest and use the sales proceeds to fund future annuity payments to Cohen. Westin asserted that Cohen would incur no tax liability on the sale of the Artist Royalties to Sony and that the sale would allow the tax free transfer of any remaining funds (after payment of the private annuity) to Cohen's children on his death. Cohen's primary concerns with Westin's proposal were that any plan Westin and Greenberg devised be both legal and safe. Cohen asked for a legal opinion from Westin, who delivered such an opinion.

50. Private annuities as an estate planning device are well established in the tax laws and allow the transfer of income producing assets from one generation to the next without incurring estate taxes.

51. Westin initially proposed to use this same principle in the transfer of Cohen's Artist Royalties from Cohen to his two adult children, Adam and Lorca. Westin proposed that Cohen transfer his Artist Royalties to a trust, the standard vehicle in such transactions, in return for a $4.89 million private annuity. Westin proposed as a next step that the trust sell the Artist Royalties to Sony for the discounted present value of $8 million. Westin's plan resulted in the payment of almost $3 million in transactions costs, including 15% of $8 million to Lynch as management fees and commissions, as well as legal and consulting fees. Westin's plan also resulted in significant income taxes related to a $1 million advance on the sale. The transactions costs and taxes were not explained to Cohen until long after the transaction was concluded.

52. Westin proposed that a trust be established for the benefit of Cohen with Cohen's children, Adam and Lorca, as the trustees. In Westin's November 19, 2000 letter addressed solely to Cohen, Westin proposes:

> You [Cohen] will sell the assets to a newly-formed company that Kelley [Lynch] will control and have 1% of, but which your children will have large stakes (totaling 99%) in…It is expected that your children will in a year's time or so contribute part of their interests in the company I described to a trust, which will give you further income.

With regard to Lynch's role, Westin's first proposal to Cohen provided that: "Kelley would be able to control how much money is actually distributed from the company to the children. You will be free to advise her on what your wishes are." Westin also cautioned: "A manager will have to be appointed to make sure that money in the company is well-managed in order that the company be able to make the payments called for by the private annuity." Also in this letter, Westin advised:

> Some caveats are in order. The structure is novel and must be put in place before a contract [for the Artist Royalty sale] is entered into or is a sure thing. Neal [Greenberg] and I think that the proposal works, but there are no guarantees.

53. In a subsequent letter addressed to both Lynch and Cohen dated December 4, 2000, less than three weeks after Westin had first proposed the Private Annuity Transaction concept to Cohen, Westin responded to e-mail inquiries, apparently from Lynch, that the Cohen children need not be beneficiaries and that the Private Annuity Transaction can exclude them. From Westin's initial correspondence to Cohen dated November 19, 2000 to Westin's later letter sent December 4, 2000 to both Cohen and Lynch (and there is no evidence that Cohen actually received this December 4, 2000 letter), Lynch's interest in this new entity increased dramatically and inexplicably to 99.5% from the 1% interest that Westin had first proposed to Cohen three weeks earlier.

54. Cohen was never informed by Westin that the structure implemented by Westin in December 2000 differed from Westin's initial November 2000 proposal to Cohen in two very significant ways. First, at Lynch's request, Westin made Lynch, Cohen's business manager, a 99.5% owner of the limited liability company (the "LLC") (with Cohen owning the remaining 0.5%) and wrote the two Cohen children, Adam and Lorca, out of the transaction altogether. Second, Westin elected to use a LLC to manage Cohen's assets rather than a trust.

55. In correspondence addressed solely to Lynch on December 6, 2000, Westin wrote: "I am assuming you and Leonard have decided to go ahead with the deal Neal [Greenberg] and I have proposed." In the same letter, Westin suggests next steps in proceeding with the Private Annuity Transaction, including drafting and sending Lynch an operating agreement for the new LLC and speaking with Ken [Cleveland – Cohen's former CPA] "to try to come up with a final sales price [for the Artist Royalties]." Westin also instructs Lynch to "sign the private annuity ASAP, even though the sales price number is blank."

56. In early December 2000, Westin obtained powers of attorney in the formation of Traditional Holdings LLC ("THLLC") from both Cohen, the Artist, and Lynch, the business manager.

57. Despite the fact that Cohen's and Lynch's interests were in actual conflict in the formation of THLLC, Westin never informed Cohen of his conflicting professional loyalties in representing both Cohen's and his business manager's (Lynch's) interests in the transaction. Westin never obtained the required informed written consent and waiver to represent both of them simultaneously.

58. After receiving the green light from Lynch to proceed, but without speaking with Cohen or obtaining confirmation that Cohen understood the proposed transaction, Westin drafted the corporate organizational documents of the proposed new entity, Traditional Holdings, LLC, including the Articles of Organization and the Operating Agreement. Westin filed the Articles of Organization of Traditional Holdings as a Kentucky limited liability company in December 2000.

59. In December 2000, Westin also drafted Cohen's Private Annuity Agreement and sent the agreement to Lynch for Cohen to sign. The Annuity Agreement, as drafted by Westin, provided for monthly payouts to begin on the "fifth month of the 11th year following the date this agreement is signed." The Annuity obligation therefore would not begin until 2011, when Cohen was 77 years old. Further, Cohen's Annuity Agreement provided that if Cohen should die before 2011, the payment obligation would terminate and that "no heir, legatee, creditor, or beneficiary of the estate of the Annuitant, nor the estate itself, shall have any rights whatsoever under this Agreement." By making Lynch the 99.5% shareholder of THLLC, instead of Cohen's children, Westin guaranteed that Lynch would own the $4.7 million in assets in THLLC outright if Cohen were to die before the annuity began paying out in 2011. Cohen's children would have no right to claim these funds despite being the beneficiaries of Cohen's estate under his will. Cohen had no knowledge that Westin's plan resulted in the disinheritance of his children. Lynch and Westin concealed this fact from Cohen simply by failing to explain how this complex transaction worked.

60. In April 2001, Sony Music International purchased Cohen's Artist Royalties from Traditional Holdings pursuant to an Artist Royalty Buyout Agreement dated April 18, 2001 ("Sony Buyout Agreement").

61. Sony purchased Cohen's Artist Royalties from THLLC for $8 million. Cohen netted, after transactions costs and taxes, approximately $4.7 million. Cohen's professional advisers, Greenberg and Westin, in promoting the sale, never disclosed to Cohen that nearly 33% of the sale proceeds would be spent on taxes and transactions costs, which, on information and belief as subject to final audit, included:

- $1.2 million paid to Lynch in 2001 as her 15% management commission;
- $350,000 in legal fees for negotiation of the sale on behalf of Cohen with Sony;
- $350,000 to consultants for providing the historical royalty analysis used in calculating the Artist Royalty sale price;
- $500,000 for federal income taxes and penalties due on Sony's $1 million advance paid on the sale in 1999;
- $100,000 to Westin for legal fees; and
- $200,000 for a failed transaction leading to the 2001 sale.

62. From the outset, Westin and Greenberg knew that the Private Annuity structure put Cohen's retirement money at great risk of loss through misappropriation by Lynch. Westin even acknowledged that "a manager will have to be appointed to make sure that money in the company is well-managed in order that the company be able to make payments called for by the private annuity." Cohen's professional investment and legal advisers, Greenberg and Westin, failed to disclose to Cohen the significant risks involved in the Private Annuity Transaction, including but not limited to:

(1) the abrupt shift in ownership of THLLC from Cohen's children to Lynch, who mysteriously and inexplicably obtained a 99.5% ownership interest instead of the Cohen children;

(2) the delayed (10 year) payout obligation of the annuity, which was not to begin paying Cohen an annuity income until the 5th month of the 11th year following the execution of the Private Annuity Agreement by Cohen, or until sometime in 2011, when Cohen would be 77 years old;

(3) the risks involved if Cohen were to die before the annuity obligation payout period began with Lynch as the 99.5% shareholder of THLLC; and the highly unusual role that Lynch, Cohen's business manager assumed in the transaction, which would expose Cohen to significant gift tax liability, if the IRS collapsed the structure due to Lynch's withdrawal of funds from THLLC for her own use and benefit.

(4) the absence of controls limiting Lynch's use of the funds and the legal effect of Lynch's 99.5% ownership of THLLC.

63. None of these risks was explained to Cohen before the transaction was consummated. Had Cohen been fully and accurately informed by his professional licensed advisers, Greenberg and Westin, Cohen would not have agreed to the transaction as it was implemented. Cohen at all times believed that the Private Annuity Transaction would be structured so that his children would be the beneficiaries of his estate and that the funds would be invested in safe securities designed for the long-term preservation of capital.

64. When Cohen began questioning the transactions costs associated with the Private Annuity Transaction in 2002, Westin, Greenberg and Lynch began a three month effort to rationalize the transaction and conceal the true costs and risks. As part of this self-serving strategy of concealment, Westin rationalized Lynch's involvement in the Private Annuity Transaction in a letter to Cohen dated March 6, 2002 by saying that:

> Kelley [Lynch] had to be brought in, and agreed to do so in order to help you, because you needed a third party's involvement so that the IRS does not view this transaction as your selling something to yourself. This third party should not be a relative of yours and therefore Kelley was selected.

65. Westin, Greenberg and Lynch concealed from Cohen the true extent of their support for Lynch. They congratulated one another on their joint efforts to "save taxes" and devise an excellent "estate planning" solution. They never told Cohen that the transactions costs on the deal were about equal to income taxes that would have been due on simple sale of the Artist Royalties to Sony. They also never told Cohen that their "estate planning"

vehicle for the benefit of Cohen's children effectively wrote the children out of the transaction. Westin did not explain the structure to Cohen until November 2004, after Lynch's malfeasance had been discovered.

66. Greenberg and Agile Group took the $4.7 million sale proceeds under management for Cohen shortly after Sony made the final payment in April 2001.

67. In December 2001, a year after filing the Articles of Organization for THLLC, Westin drafted a Management Agreement which appointed Lynch sole manager of THLLC. Westin's Management Agreement between Lynch and THLLC was sloppily drafted on an inappropriate form which appeared intended for use by managers of residential properties. The Agreement includes references to Manager "maintain[ing] the grounds of the Properties in accordance with standards acceptable to Owner, including cleaning, painting, plumbing, carpentry, and such other normal maintenance work" rather than musical properties.

68. Additionally, the Management Agreement contained inconsistent provisions regarding Lynch's compensation as Manager of THLLC. Paragraph 6, provides that Lynch's compensation is "$20,000 per month", while paragraph 15 provides that "Manager's Compensation is given as $20,000 per year, payable June 30 and December 31." Seizing on this inconsistency, Lynch now contends that these provisions entitled her to $240,000 per year in management compensation. Westin admitted to Cohen by e-mail in November 2004 that the Management Agreement was to provide Lynch only $20,000 per year.

Lynch Begins Stealing From THLLC

69. After being appointed sole manager of THLLC by virtue of Westin's Management Agreement in December 2001, Lynch, in furtherance of her desire for control over all of Cohen's financial assets, procured from Cohen a very broad Power of Attorney to act on Cohen's behalf in January 2002 ("Lynch POA"). Lynch promoted the idea of the POA to Cohen because Cohen was planning a three month trip to India. Lynch's POA was witnessed by Lynch's parents, John and Joan Lynch, then living in a three bedroom condo in Pacific Palisades, California, purchased by Lynch in 2001.

70. One month after the Lynch POA, Lynch and Greenberg executed a new investment advisory agreement, without notice to or consultation with Cohen. Lynch executed both an Investment Advisory and Financial Planning Agreement with Greenberg, which jointly listed "Kelley Lynch and Leonard Cohen" as "Client."

71. As a direct consequence of the power and authority that Westin gave Lynch through ownership and management of THLLC, Lynch began withdrawing funds in THLLC for her own benefit. She proceeded to tap Cohen's savings in THLLC through what she called and Westin approved as "shareholder loans." In 2002 she made a series of small loans that were approved by Westin and Greenberg but were unknown to Cohen.

72. Beginning in early 2003, Lynch's withdrawal requests from the THLLC account increased in both frequency and magnitude. In 2003, unbeknownst to Cohen, Lynch withdrew over $1.1 million from the THLLC investment account, averaging $88,000 per month. In 2004, Lynch continued to make extraordinary withdrawal requests of Agile from the THLLC account, and withdrew a total of nearly $1.3 million through the end of October 2004, averaging $108,000 per month.

73. All tolled, "shareholder loan" withdrawals dissipated the invested funds in the THLLC investment accounts from a starting value of $4.7 million in December 2001, to a little under $150,000 by October 2004. Cohen, in February 2002, withdrew $592,000 as a "shareholder loan" from the THLLC investment account for various real estate purchases Cohen made on behalf of his family. The majority of the remainder of the "shareholder loans" withdrawn from the THLLC investment accounts, approximately $3.5 million, was withdrawn by Lynch, without Cohen's knowledge or consent. Over nearly a three-year period, by withdrawing millions of undocumented "shareholder loans," Lynch changed the composition of 97% of the THLLC investment portfolio from profit-earning and interest bearing securities to valueless "shareholder loans" she made to herself.

74. Lynch even withdrew a $15,000 "shareholder loan" for her benefit from the THLLC investment account on October 27, 2004, after Cohen had instructed Agile unequivocally through e-mails sent October 21 and 22, 2004 that Lynch no longer

represented him as his business manager and not to respond to any of her instructions regarding his investment accounts.

75. Lynch also instructed Agile not to inform Cohen of the shareholder loans she was taking out. Throughout the period of Agile's management of the THLLC accounts, Greenberg and Agile sent Cohen monthly "portfolio performance" e-mails summarizing the withdrawals from the accounts and stating the value of Cohen's investment accounts.

76. Lynch conspired with Agile to mislead Cohen through specific instructions for Agile to delete any reference to her loans from the THLLC accounts in Agile's monthly e-mails sent to Cohen. In an e-mail to Greenberg from Lynch on January 23, 2003, Lynch advises Greenberg:

> I need to borrow $100,000 from TH as well. I made $28,000 from Leonard last year and when he is back [from traveling in India] we will negotiate something because he has basically retired. I know I have taken another loan this year and both of these must stay on the statements as Shareholders Loans and not be deducted when Leonard receives his e-mails…

Agile complied with Lynch's request to not report the shareholder loans taken by Lynch out of the THLLC investment accounts in the monthly "portfolio performance" e-mails sent to Cohen. As a result, monthly e-mail reports sent to Cohen by Agile at Lynch's instruction were grossly misleading because they included the full amount of Lynch's loans (without revealing the existence of those loans), even though the loans were unsecured and undocumented.

Agile Sends Cohen "Warning Letters" About Spending,
Are Intercepted by Lynch

77. After Lynch withdrew over $1.1 million from the THLLC investment account in 2003, Agile sent a "warning letter" to Cohen and Lynch on January 16, 2004 at Lynch's Stranger Management office address. The letter warned Cohen and Lynch that "you are spending too much money…at this point, you only have an estimated $2.1 MM left in capital

in Traditional Holdings LLC. The rest consists of loans to you and Kelley." Agile further warned:

> Considering how quickly you are spending money, I think you should consider your situation quite desperate...at the rate funds are being withdrawn, you will run out of money in a few years...The company [THLLC] would then be impaired, and your future annuity contract could be jeopardized.

78. Agile never called or e-mailed Cohen directly to follow-up whether Cohen had received these purported dire warnings despite the fact that Cohen had given Greenberg his home phone number and knew that he was reachable by e-mail even when traveling. Rather, Tim Barnett sent an e-mail to Lynch's AOL account (without a copy to Cohen) on February 3, 2004. In an e-mail with the subject line "Follow up to 1-16-04 letter," Barnett inquires of Lynch:

> Neal and I just wanted to make sure you and Leonard received Neal's letter of January 16, 2004. Please let us know if you would like to arrange a meeting to discuss things further with Leonard.

Lynch responded to Barnett by e-mail the same day, an hour later:

> Yes, the letter was received and it is clear.
>
> It was sent fedex so hopefully you have a record of its delivery...As of today, Leonard is traveling and I do not know when he will be back.

79. As Cohen was traveling out of the country, Cohen never received this January 2004 warning letter, nor did Lynch apprise him of its contents. Notably, Lynch insinuated in her response that Agile should keep a record of its FedEx delivery tracking number, so that Agile could prove later that a warning letter was sent.

80. Even despite Agile's warning in January 2004 to "make sure the loans from Traditional Holdings, LLC are properly documented", Lynch continued to withdraw progressively larger amounts from the THLLC investment account as shareholder loans made out to Lynch, without documentation and based upon her assurances to Agile that she would provide signed promissory notes later.

81. Cohen is informed and believes that from January 2004, after Agile sent the first warning letter, which Cohen never received, through June 2004, Lynch withdrew approximately $810,000 in fourteen "shareholder loans" from the THLLC account, thereby prompting a second stern warning letter about spending down the invested funds in the THLLC account. Agile sent such a letter on June 24, 2004, again addressed to Cohen at Lynch's Stranger Management business address reporting that: "you are currently down to $845,539 in Traditional Holdings…you are spending approximately $210,000 per month." Agile further stated:

> In our view, the way you [apparently Lynch] are directing us to do the financial statements is quite incorrect. Your assets consist of the value of the private annuity, not the value of assets in the company…We will continue to do the statements as you direct, but we want to start sending you a more correct set of statements.

Again, Lynch intercepted the letter and concealed it from Cohen.

82. While Lynch was Cohen's business manager, Lynch received on behalf of Cohen monthly "hardcopy" financial reports of Cohen's accounts managed by Agile. As Lynch received them at her Stranger Management business address, she never forwarded or discussed their contents with Cohen.

83. In late June 2004, three days after the second dire warning letter was sent, Lynch still had not provided Agile with signed promissory notes for any of the shareholder loans from THLLC, but still reassured Neal Greenberg in an e-mail dated June 28, 2004 that signed notes would be forthcoming:

> all loans for 2001 and 2002 will be repaid with the Sony advance. ALL loans for 2003 and 2004 will be repaid with the Publishing sale [Cohen's Writer's Royalty sale that was pending in 2004]. ALL loans have loan documents, interest rate [sic], and have STRONG legal documentation that they are loans…All loan docs have interest rate applied and the interest will be repaid. All loans are for five years and will be paid well in advance of the five years.

84. In the same e-mail, Lynch announced a new fraudulent scheme to conceal her improper loans from Cohen by replenishing funds from a new royalty sale transaction. Lynch advises Greenberg that the shareholder loans withdrawn from THLLC will be repaid with monies that Cohen expected to receive over the next few months, including the expected $7 million sale proceeds from the sale of Cohen's Writer's Royalties that Lynch had been negotiating with several potential buyers. Greenberg responded to Lynch's e-mail emphasizing the need to "keep things documented", but nevertheless continued to allow Lynch to make further undocumented shareholder loans out of the THLLC account until Lynch had dissipated the value in the account to less than $150,000 in October 2004, when Cohen discovered Lynch's misappropriations through an informant.

Westin Fails to Perform Basic Duties As Counsel to Traditional Holdings LLC and LC Investments LLC

85. When Westin formed THLLC, he assumed the responsibility of tax advisor and tax preparer for THLLC. THLLC was required to file federal and Kentucky state tax returns. Westin failed to reflect the "shareholder loans" to Lynch and the interest on those loans on THLLC federal returns. Westin never filed Kentucky state tax returns for THLLC. The Kentucky Secretary of State administratively dissolved THLLC on November 8, 2004 for failing to file annual reports for the years 2003 and 2004. In an e-mail to Cohen dated December 10, 2004, Westin informs Cohen of THLLC's administrative dissolution:

> Thanks to Kelley's neglect, TH was dissolved a month ago or so under KY because she did not send in a signed piece of paper I sent her. It is not a problem. I got the paperwork to reinstate it. I am mailing it to you today. I am sending a check ($15), a return envelope and a sheet of paper for you to sign. Once reinstated, it will be deemed to have existed for tax purposes. No need for any indigestion here.

Because Westin had not filed state tax returns for the years 2000-2004, however, THLLC could not obtain a Certificate of good Standing from the Kentucky Revenue Cabinet, which is required for reinstatement. By allowing THLLC to be administratively dissolved, THLLC remains in corporate "limbo", and until corporate tax returns are filed, it cannot be reinstated.

86. In a letter to Cohen drafted by Westin on March 6, 2002, Westin advised Cohen: "All monies that you take from Traditional Holdings until 2011 need to be documented as loans…It is important to have these 'loans' documented by notes." In addition to his failure to prepare shareholder loan documents for THLLC, the draft promissory notes that Westin did prepare and send to Lynch in May 2004 referenced "LC Investments, LLC, a Delaware LLC" as "Holder" of the notes, rather than Traditional Holdings, LLC.

87. Westin prepared LCI LLC's tax returns for the years 2001, 2002 and 2003. Schedule K of Form 1120 of the 2001 LCI LLC federal tax return, prepared and filed by Westin, indicated that the primary business activity of LCI LLC was to operate as a "royalty company – collects and disburses royalties." Out of a 2001 reported royalty income of $708,414, management fees to Lynch at Stranger Management, were reported as $459,088, which represents 65% of Cohen's royalties received from SOCAN and Sony/ATV into LCI LLC in 2001. Westin, by preparing and filing the tax return, knew that the percentage of Cohen's royalty income received by Lynch as "Management Co. Fees" far exceeded Lynch's 15% commission arrangement with Cohen and that such a percentage was unconscionable for management fees of an entity that merely received royalty income. Westin failed to take any action to advise Cohen, his client, of the excessive fees taken by Lynch.

88. In an e-mail to Cohen dated November 18, 2004, in which he describes the Private Annuity Transaction and the formation of THLLC, Westin noted: "I've owed you this for a while…The plan was to have you and Kelley [Lynch] put the regular interests in the LLC into a trust for the children starting next year. That would [have] take[n] her out of the picture."

89. Westin sent Cohen a short cursory e-mail "formalizing" his resignation as Cohen's attorney on April 23, 2005.

FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty Against Lynch and Westin)

90. Cohen repeats and realleges each of the allegations contained in paragraphs 1 through 89, inclusive, as if fully set forth herein.

91. Defendants, due to their position as Cohen's attorney and business manager with a power of attorney, acted as Plaintiffs' fiduciaries at all times herein mentioned. Moreover, the Defendants utilized their professional and personal relationship with Cohen to learn intimate details of Plaintiffs' physical, emotional, mental and financial condition. Defendants utilized their position of trust and confidence to obtain the rights to proceed on behalf of Cohen, control the assets of Cohen, as well as be responsible as the only vehicle of information relating to the condition of Cohen's assets. Further, the Defendants both individually and as a group accepted the compensated responsibility for advising Cohen in his best interest and not adverse to his interest and to do so honestly and without deception.

92. After establishing a trust and fiduciary relationship of the highest order with Cohen, the Defendants both negligently and intentionally breached that duty performing the acts herein alleged which has resulted in actual damage being suffered by Cohen.

93. Cohen is informed and believes and based thereupon allege that the Defendants breached and are breaching their fiduciary duties to Cohen as herein above alleged.

94. Cohen is informed and believes and thereon alleges that the Defendants concealed or suppressed material facts Defendants, as Cohen's fiduciaries, were ethically and legally required to disclose as herein above alleged.

95. Cohen is informed and believes and thereon alleges that as a proximate result of Defendants' breach of their fiduciary duty to Cohen, Cohen has suffered damages in an amount to be proven at trial.

96. Cohen is informed and believes and thereon alleges that Defendants, in breaching their fiduciary duty, acted willfully and maliciously and with oppression, fraud and malice, and with a conscious and reckless disregard for the rights of Cohen and with intent to inflict emotional distress upon Cohen. As a result of Defendants' willful and intentionally

tortious conduct, Cohen is entitled to an award of exemplary or punitive damages in an amount sufficient to make an example of and punish Defendants for their wrongful acts.

SECOND CAUSE OF ACTION

(Fraud Against Lynch for Misrepresentation and Non-Disclosure)

97. Cohen repeats and realleges each of the allegations contained in paragraphs 1 through 89, inclusive, as if fully set forth herein.

98. During Lynch's representation of Cohen as his business manager, Lynch consistently misrepresented to Cohen the amount of royalty income Cohen received. By Lynch's misrepresentation of Cohen's royalty income, Cohen was led to believe that his income from these royalty sources was significantly lower than it actually was. For example, Lynch failed to disclose and account to Cohen for approximately $250,000 in royalties that had been received into Blue Mist in 2001. Lynch also failed to notify Cohen that he had received a $91,000 Sony/ATV royalty check which had been deposited into a bank account at CNB associated with LCI LLC in October 2004. Additionally, Lynch failed to disclose to Cohen the numerous "shareholder loans" that she had been withdrawing from the THLLC investment accounts managed by Agile Group. Because Lynch failed to disclose these "loans" to Cohen and affirmatively instructed Agile Group not to disclose her loans to Cohen, Cohen was falsely led to believe that the value of his investment accounts in THLLC was substantially higher than it actually was.

99. Lynch's misrepresentations and omissions were made with the intent that Cohen rely upon them.

100. Each statement or representation was known to Lynch to be false or untrue when they were made to Cohen.

101. Cohen reasonably relied upon these misrepresentations made by Lynch.

102. Cohen has suffered losses in an amount to be proven at trial as a direct and proximate result of the misrepresentations and omissions of Lynch.

103. The actions of Lynch were made with malice, fraud or oppression justifying an award of exemplary and punitive damages.

THIRD CAUSE OF ACTION

(Breach of Oral Contract Against Lynch)

104. Cohen repeats and realleges each of the allegations contained in paragraphs 1 through 89, inclusive, as if fully set forth herein.

105. Lynch's compensation agreement with Cohen in her capacity as business manager was 10% of Cohen's gross earnings until approximately 1997. In 1998, and continuing until Lynch's dismissal for cause by Cohen in October 2004, Lynch's agreed upon management fees were 15% of gross earnings.

106. Lynch breached her oral employment agreement with Cohen by wrongfully converting monies and assets of Cohen, over which she had control, in excess of the amount she was entitled to under her oral employment agreement with Cohen.

FOURTH CAUSE OF ACTION

(Accounting Against Lynch)

107. Cohen repeats and realleges each of the allegations contained in paragraphs 1 through 89, inclusive, as if fully set forth herein.

108. In her role as Cohen's business manager, Lynch controlled the investment, possession and distribution of Cohen's funds, and all monies paid by Lynch to herself in excess of authorized management fees. She also controlled the books and records of many of Cohen's bank accounts, including those of THLLC and Blue Mist.

109. Lynch, as trustee and fiduciary, holds the property, money and records of Cohen and has failed and refused to provide an accounting of millions of dollars that Lynch paid to herself in excess of authorized management fees, and has refused to return to Cohen the books and records of which she retain possession.

110. Due to Cohen's exclusion from exercising any control of management over THLCC, Blue Mist and the other accounts containing Cohen's money, and due to Lynch's failure to disclose the fact, nature or extent of the "loans" she took from these accounts, and due to the complex nature of the accounts and contracts, it is impractical to ascertain a fixed sum which is owed to Plaintiffs beyond the amount claimed herein above. Accordingly, the

full amount owed and becoming due to Cohen can only be determined pursuant to a full and accurate accounting of the amounts improperly taken by Lynch.

FIFTH CAUSE OF ACTION

(Conversion Against Lynch)

111. Cohen repeats and realleges each of the allegations contained in paragraphs 1 through 89, inclusive, as if fully set forth herein.

112. Lynch as alleged herein above wrongfully took and converted to her possession Cohen's money and property from the THLLC, Blue Mist and other personal accounts of Cohen. Lynch separately, and in combination with Westin, used deceit and the position of trust to simply take Cohen's property and money. A full accounting and return of the money and property has been demanded by Cohen and was wrongfully refused by Lynch.

113. As a result, Cohen has suffered a loss in an amount to be proven at trial, but which will be in excess of $5 million.

SIXTH CAUSE OF ACTION

(Constructive Trust, Declaratory and Injunctive Relief Against Lynch and Does 1-50)

114. Cohen repeats and realleges each of the allegations contained in paragraphs 1 through 89, inclusive, as if fully set forth herein.

115. Cohen entrusted the management of his assets to Lynch and the relationship of trust as well as the fiduciary relationship established between Cohen and Lynch has been and continues to be breached by Lynch. Lynch holds the property of Cohen wrongfully taken and/or transferred as constructive trustee for the benefit of Cohen

116. Lynch now refuses to return to Cohen the money she has improperly taken, or the books and records relating to Cohen's assets, and refuses to render an accounting as to his property. Lynch further contends that she is the rightful owner of 99.5% of the assets of THLLC, that she had the right to take the "loans" she took, and that Cohen actually owes her money for services rendered, among other things.

117. Cohen seeks a declaration of the respective rights and responsibilities of the parties. Specifically, Cohen seeks a declaration that Lynch is liable to Cohen and must return that which she improperly took, that she is not the rightful owner of the assets of Cohen placed into THLLC or any other entities, that she did not have the right to take the "loans" she took, and that Cohen has no obligations or responsibilities to her.

118. Cohen also seeks a declaration of trust and injunctive relief that if Lynch in fact owns any interest in legal entities set up for the benefit of Cohen (such as THLCC or Blue Mist), she does so as a trustee for Cohen's equitable title, and that Lynch shall not convey any rights or assets to any third party so as to frustrate Plaintiff's equitable interest, and that Lynch be precluded from exercising her alleged rights in these legal entities, including any alleged rights to transfer, move, convey, loan, borrow or in any way exercise control over any funds or property received from Cohen. In the alternative, Cohen seeks an order causing the funds to be interpleaded into this Court until this Court orders otherwise following a full accounting and trial.

SEVENTH CAUSE OF ACTION

(Negligence Against Lynch and Westin)

119. Cohen repeats and realleges each of the allegations contained in paragraphs 1 through 89, inclusive, as if fully set forth herein.

120. Each Defendant was engaged by Cohen to perform professional services for Cohen. Westin was retained as an active member of the California Bar to protect the interests and property of Cohen, including providing proper advice and properly documenting any transaction. Westin was an active member of the California Bar from May 27, 1997 through December 31, 2002, after which he became inactive and therefore ineligible to actively practice law within this State. Lynch was retained to act as a professional business manager and to render services in that field including protecting the interests, property and reputation of Cohen for a commission of no less than 10% and no more than 15% and no other benefit to be conferred upon Lynch.

121. As alleged above, prior to October 2004, Cohen was completely unaware of the negligence of the Defendants, and each of them. Further that any knowledge, constructive or otherwise, did not cause the action to accrue due to continued representation on the subject of the negligence, as well as active concealment by the Defendants, until October 2004 as to Lynch and April 2005 as to Westin, when he resigned as Cohen's attorney.

122. The Defendants breached their duty of professional care by acting in a manner which is below the standard of care for each of the Defendants' respective professions practicing in the Los Angeles area. Each Defendant failed to perform proper investigation, research and render a proper opinion as to the necessity and prudence of the sales of the assets of Cohen. They failed to act in the best interests of Cohen and to the contrary acted in their own interest and adverse to Cohen. They failed to properly advise Cohen as to the structure of the intellectual property asset sales. They failed to properly document the structure of the intellectual property sales transactions they created, approved and recommended to Cohen. Westin failed to provide any oversight of or checks and balances as to Lynch's control over Cohen's assets. Defendants misled Cohen into believing that Traditional Holdings was owned and controlled 99% by Cohen's children, when Westin created a structure which vested 99.5% ownership in Lynch. Westin failed to create documents to protect or advise Cohen regarding protecting himself from, among others, Lynch. Lynch failed to protect the assets of Cohen and to the contrary simply took all of Cohen's assets she was able to reach.

123. Westin created a structure called "Blue Mist." Thereafter Westin failed or neglected to properly document and fully document the Blue Mist transactions or protect the assets of Cohen in the Blue Mist transaction.

124. Westin violated his duty of loyalty and the obligation to not represent conflicting interests without compliance with the California Rules of Professional Conduct by failing to disclose actual and potential conflicts of interest, advising the client to seek independent counsel, providing a written disclosure of the conflicts and obtaining an informed waiver of the conflicts from Cohen.

125. Westin prepared improper documents for the signature of Cohen without disclosing he had no experience in the advice and preparation of complex documents. Even simple documents were improperly prepared. For example, the Lynch Management Agreement uses a form of management agreement applicable to the management of real property, not intellectual property.

126. Westin failed to follow through and protect the assets of Cohen and the entities which Lynch and Westin created to hold the assets of Cohen.

127. Westin continued to practice law in California and represent Cohen without disclosing to Cohen that his license to practice law in California was inactive as of December 31, 2002.

128. As a result of the negligence of the Defendants, and each of them, the Defendants, when acting together are jointly and severally liable, and when acting alone, severally liable, for the damage proximately caused to Cohen in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Cohen prays for judgment against Defendants, and each of them, as follows:

AS TO THE FIRST CAUSE OF ACTION (BREACH OF FIDUCIARY DUTY):

1. For general damages in a sum of not less than $5,000,000 or an amount according to proof, together with interest thereon at the legal rate;
2. Exemplary and punitive damages in an amount according to proof at the time of trial;

AS TO THE SECOND CAUSE OF ACTION (FRAUD):

3. For general damages in a sum of not less than $5,000,000 or an amount according to proof, together with interest thereon at the legal rate;
4. Exemplary and punitive damages in an amount according to proof at the time of trial;

AS TO THE THIRD CAUSE OF ACTION (BREACH OF CONTRACT):

5. For general damages in a sum of not less than $5,000,000, or an amount according to proof, together with interest thereon at the legal rate;

AS TO THE FOURTH CAUSE OF ACTION (ACCOUNTING):

6. For an accounting to Cohen of all sums taken by Lynch and a return of the books and records to Cohen;

7. For payment over to Cohen of the amount due from Lynch as a result of the accounting;

AS TO THE FIFTH CAUSE OF ACTION (CONVERSION):

8. For general damages in a sum of not less than $5,000,000, or an amount according to proof, together with interest thereon at the legal rate;

AS TO THE SIXTH CAUSE OF ACTION (CONSTRUCTIVE TRUST, DECLARATORY AND INJUNCTIVE RELIEF):

9. For a declaration of the respective rights of the parties;

10. For the imposition of a constructive trust over the money, property and legal rights that Lynch contends she rightfully controls;

11. For temporary and permanent injunctive relief preventing Lynch from transferring or disbursing any funds relating to the monies or property which belongs to Cohen as well as any proceeds or commissions therefrom pending an accounting to determine Plaintiffs' entitlement to such other amount of these proceeds as the Court adjudges to be owed, and from modifying, changing, or destroying any records relating thereto.

AS TO THE SEVENTH CAUSE OF ACTION (NEGLIGENCE):

12. For general damages in a sum of not less than $1,250,000, or an amount according to proof, together with interest thereon at the legal rate;

AS TO ALL CLAIMS FOR RELIEF:

13. For all costs of suit incurred herein;

14. For reasonable attorneys' fees as may be provided by law;

15. For interest as may be provided by law; and

16. For such other and further relief, including without limitation injunctive relief, as the Court deem to be just and appropriate

DATED: August 15, 2005

GIBSON, DUNN & CRUTCHER LLP
SCOTT A. EDELMAN

By: Scott A. Edelman
Scott A. Edelman

Attorneys for Plaintiffs LEONARD NORMAN COHEN and LEONARD COHEN INVESTMENTS, LLC

20184333_1.DOC

Demand for Jury Trial

Plaintiffs LEONARD NORMAN COHEN and LEONARD COHEN INVESTMENTS, LLC demand a jury trial of the causes of action in their complaint.

DATED: August 15, 2005

GIBSON, DUNN & CRUTCHER LLP
SCOTT A. EDELMAN

By: Scott A. Edelman
Scott A. Edelman

Attorneys for Plaintiffs LEONARD NORMAN COHEN and LEONARD COHEN INVESTMENTS, LLC

20184333_1.DOC