

Defendant, William Lomas (“**Lomas**”) in the amount of \$1,029,000 for breach of his non-solicitation obligations.¹

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. The Allegations of the Contemplated Counterclaim Complaint

This case involves a dispute between the remaining members of PWM – Burns, Loftus, and Pratt-Heaney – and Lomas in connection with Lomas’ withdrawal from PWM. Although Lomas’ Amended Complaint tells a story about how he has been the victim of a plot by his former colleagues, nothing could be farther from the truth.

After working together for many years at Merrill Lynch, Burns, Loftus, Pratt-Heaney, and Lomas (collectively, the “**Principals**”) decided to strike out on their own and establish their own independent investment advisory business in 2008 (the “**Business**”). (See Draft Counterclaim Complaint (“DCC”) ¶ 11, a copy of which is attached hereto as Exhibit A).² While the Business has experienced enormous success over the past eight years, that success has been in spite of the obstacles and challenges created by Lomas. (*Id.*). Almost since the inception of the Business, William Lomas has not only failed to materially contribute to the development and growth of PWM and the registered investment adviser it manages, LLBH Private Wealth

¹ Defendants’ motion to strike certain counts of Plaintiff’s Amended Complaint is pending before the Court. Because the filing of a responsive pleading to the Amended Complaint risks waiving the arguments raised in the motion to strike, Defendants cannot yet file their contemplated Answer and Counterclaims.

² Defendants intend to file the Draft Answer and Counterclaims, or a pleading substantially similar thereto, as soon as the Court issues a decision on the pending Motion to Strike.

Management, LLC (“**LLBH**”), but he has actively caused harm to the Business by failing to develop himself as an advisor, by his frequent absenteeism, by his failure to originate any meaningful Business since 2013 despite an express promise and representation to the other Principals that he would do so, and by causing unnecessary delays in the implementation of wealth management strategies, which negatively impacted PWM’s bottom line. (*Id.*).

Lomas’ withdrawal was undertaken as part of scheme to obtain the most favorable payout to himself while inflicting maximum economic damage upon PWM and the remaining members so that Lomas could finance his down-time while he lets his non-compete expire. The timing of Lomas’ withdrawal from PWM is nothing but an attempt to continue his free-ride on the other Principals’ hard work and was designed to intentionally harm the other Principals of PWM.

When the Principals struck out on their own, they partnered with Focus Financial Partners LLC (“**Focus**”), who provided them with financial and operational support. (DCC ¶ 13). It had always been assumed that Focus – if asked – would be willing to make a market and buy a withdrawing Principal’s equity. (*Id.*). But the Principals learned otherwise at a meeting on October 13, 2014 – the day Lomas dated his withdrawal notice. (*Id.*). One of the other Principals, Pratt-Heaney, had been looking to cash in a portion of his equity. (*Id.*). At a meeting with Burns, Loftus, and Lomas on October 13, 2014, Jeff Fuhrman, the CFO/COO of LLBH told them that Focus was unwilling to buy a portion of Pratt-Heaney’s equity. (*Id.*). Focus’ position and determination that they would not make a market and would not buy Pratt-Heaney’s or any

withdrawing Principals equity had enormous economic implications for PWM and the Principals. (*Id.*). Whereas the economics of a Focus buy-out of a Principal's equity would, other things being equal, not cause PWM or the remaining Principals any material economic harm, if PWM and the remaining Principals had to self-finance a buy-out, the remaining Principals would suffer an extraordinary financial hardship, potentially driving PWM into insolvency or forcing it to unwind altogether. (*Id.*).

At the meeting on October 13, 2014, when it was learned that Focus would not buy a portion of Pratt-Heaney's equity, all of the Principals knew they had a problem, but none believed there to be an imminent problem because, as far as the Principals knew of each other's plans, none of them intended to retire in the near-term and the Principals has been actively engaged in revising the PWM limited liability company ("LLC") agreement since July 2014. (DCC ¶ 14). When Burns and Loftus asked Lomas about whether he planned to retire in the near-term, Lomas deceived them to their faces and told them he had no intention of retiring any time soon. Lomas left the office early that day and, either on his own or with the help of attorney, drafted his withdrawal notice, which was dated October 13, 2014. (*Id.*). The next morning, on October 14, 2014, Lomas tendered his notice to the other Principals. (*Id.*).

Fuhrman and Loftus attempted to discuss the situation with Lomas in the ensuing days and weeks and tried to work out a fair deal with him that would not result in an economic hardship for the remaining Principals and the potential implosion of the Business. (DCC ¶ 15).

But Lomas refused to have any discussions. (*Id.*).

Discussions had been underway since at least July 2014 to amend the valuation provisions of PWM's LLC agreement in order for the valuation provisions to track the changes to the compensation formula that the Principals had unanimously agreed upon in May 2014. (DCC ¶ 16). In light of Lomas' refusal to discuss the terms of his withdrawal, the remaining Principals undertook to conclude the process of revising and amending the PWM LLC agreement. (*Id.*).

Article VII of the PWM LLC agreement that the Principals entered into in 2009 (the "2009 PWM Agreement") authorizes changes to the LLC agreement upon a 65% majority vote. (DCC ¶ 17). An amended agreement was prepared by PWM's counsel and put to a vote in December 2014. (*Id.*). Burns, Loftus, and Pratt-Heaney – representing a 75% majority – voted in favor of adopting the new LLC agreement, which became effective January 1, 2015 (the "2015 PWM Agreement"), two weeks before the effective date of Lomas' withdrawal. (*Id.*).

B. Lomas' On-Going Efforts to Solicit Defendants' Clients

Both the 2015 PWM Agreement as well as the 2009 PWM Agreement contain valid and enforceable non-solicitation covenants. (*See* 2015 PWM Agreement § 7.8(c); 2009 PWM Agreement § 8.9(c)).

Several months after the effective date of Lomas' withdrawal, Confidential Client No. 1 withdrew nearly all of his assets – approximately \$17 million – in May 2015. Confidential

Client No. 1 recently told Pratt-Heaney that Lomas had taken him to dinner and that the two watched an NCAA basketball game in March 2016. Confidential Client No. 1 also told Pratt-Heaney that he and Lomas played golf together in April 2016 (and that, apparently, Lomas gave Confidential Client No. 1 home-made pickles). (DCC ¶ 67).

Confidential Client No. 2 withdrew all of his assets – approximately \$25 million – from LLBH in August 2015. (*Id.* ¶ 68).

The only reasonable inference is that Lomas is attempting to solicit clients. Lomas' scheme appears to entail a concerted effort to keep various relationships warm until his non-compete covenant expires in 2017. (*Id.* ¶ 71).

Upon information and belief, Lomas has been and continues to initiate contact with Confidential Client Nos. 1 and 2 for the purpose of encouraging these clients to discontinue, change, or reduce such their existing business relationship with PWM. (*Id.* ¶ 69).

Upon information and belief, Lomas has been and continues to initiate contact with other clients of LLBH and/or PWM for the purpose of encouraging these clients to discontinue, change, or reduce such their existing Business relationship with PWM. (*Id.* ¶ 70).

C. The Counterclaim Plaintiffs' Set Off Rights and Contemplated Causes of Action

The remaining Principals will be seeking damages and set offs, including attorneys' fees, against the purchase price of Lomas' equity by virtue of: (i) his breach of the implied covenant of good faith and fair dealing, (ii) his negligent performance of his duties, (iii) his

breach of his obligations to cooperate in the transition of clients, (iv) for the fraud he perpetrated against the other Principals when he falsely promised them he would grow the Business, (v) his breach of the non-solicitation covenants, (vi) his breaches of his fiduciary duties to PWM, (vii) his breach of his fiduciary duties to the remaining Principals, and (viii) for punitive damages for his willful and wanton misconduct. (DCC ¶¶ 72-138).

D. Plaintiff's Application for a Prejudgment Remedy

On or about June 26, 2015, Plaintiff filed his complaint and applied for a prejudgment remedy in the amount of \$4,159,791.25. Pursuant to a stipulation in open court, on September 21, 2015, the Court entered a prejudgment remedy order directing the Defendants to make a series of payments as follows:

(A) directly to Lomas: (i) \$631,306.99 on October 15, 2015, (ii) 757,568.39 on October 15, 2016, (iii) 726,003.04 on October 15, 2017, (iv) 694,437.69 on October 15, 2018, and (v) \$662,872.34 on October 15, 2019 (the “**Direct Payments**”); and

(B) into escrow: (i) \$325,444.99 by December 15, 2015, (ii) \$274,625.10 by October 15, 2016 (payable in monthly installments over the preceding 11 months); (iii) \$255,707.70 by October 15, 2017 (payable in monthly installments over the preceding 11 months); (iv) \$237,355.55 by October 15, 2018 (payable in monthly installments over the preceding 11 months); and (v) \$219,003.41 by October 15,

2019 (payable in monthly installments over the preceding 11 months) (the “Escrow Payments”).

(See Ex. B to Application).

One of the disputes between the Parties is whether the 2009 PWM Agreement or 2015 PWM Agreement controls the valuation of Lomas’ interest in PWM. Lomas contends the 2009 PWM Agreement controls the valuation of his interest whereas the Defendants contend that the 2015 PWM Agreement controls the valuation of his interest.

The calculation of the Direct Payments are based upon PWM’s estimate of what Lomas’ equity interest is worth under the 2015 PWM Agreement. The Escrow Payments represent what Lomas contends is the difference between what he is owed if the 2009 PWM Agreement is controlling.

The stipulation in open Court did not resolve, nor purport to resolve, any of the substantive disputes between the parties.

E. Defendants’ Right to Defer Payments to Lomas

On May 27, 2016, PWM and the Individual Defendants, through their attorneys, sent a letter to Lomas, through his attorney (the “Deferral Notice”) notifying him that PWM and the Individual Defendants were invoking their rights under the 2015 PWM Agreement to defer all further payments in 2016 to Lomas because payment of the aggregate amount of Direct Payments and Escrow Payments (the “Aggregate Payments”) would create a Compensation

Shortfall greater than 25%. (*See* Ex. C to Motion). In fact, the remaining Members except to experience a Compensation Shortfall of 50% this year relative to the aggregate of the three fiscal years – 2012, 2013, and 2014 – preceding the effective date of Lomas’ withdrawal on January 14, 2015. (*See* Ex. C).

* * *

For the reasons set forth below, the Defendants and (soon-to-be) Counterclaim Plaintiffs respectfully request that the Court vacate the prejudgment remedy in force against them and impose a prejudgment remedy against Lomas in the amount of \$1,029,000 as there is probable cause to find that Lomas has breached the non-solicitation covenants contained in the 2015 PWM Agreement.

ARGUMENT

I. The Court Should Vacate the Prejudgment Remedy On the Defendants

Gen. Stat. § 52-278k provides that “[t]he court may, upon motion and after hearing, at any time modify or vacate any prejudgment remedy granted or issued under this chapter upon the presentation of evidence which would have justified such court in modifying or denying such prejudgment remedy under the standards applicable at an initial hearing.” (emphasis added).

General Statute § 52-278d(a) also “explicitly requires the trial court to take into account any defenses, counterclaims or set-offs when determining probable cause.” *Cohen v. Meyers*, No. MMXCV115008047S, 2012 WL 4377824, at *2 (Conn. Super. Ct. 2012) (citation omitted).

A. Defendants Have Duly Invoked Their Right to Defer Payment to Lomas

Consideration of possible affirmative defenses is “significant because a valid defense has the ability to defeat a finding of probable cause.” *Cohen*, 2012 WL 4377824, at *2. Defendants will interpose a defense to the Amended Complaint based upon Section 7.7(a) of the 2015 PWM Agreement. (*see* Draft Ans. ¶ 73 [11th Aff. Def.]). Section 7.7(a) of the 2015 PWM Agreement provides in pertinent part:

* * * it is specifically agreed that, notwithstanding any such obligation(s) of the Company or the remaining Members, however evidenced, the Company or the remaining Members may, upon their sole discretion, defer (or reduce the amount of) any such installment payments during a period of “Compensation Shortfall” (herein defined). * * * For purposes hereof, a “Compensation Shortfall” shall mean a decline in the Company’s financial performance for any fiscal year(s), such that the amount of compensation from the Company paid to non-selling Members is more than twenty-five percent (25%) less than the average compensation paid by the Company (or its predecessor) to the non-selling Members during the three (3) fiscal year period (hereinafter, “Base Period”) immediately preceding the occurrence of the event which resulted in the Company’s obligation to make such installment payments.³

Defendants sent the Deferral Notice on May 27, 2016 invoking their rights under Section 7.7(a) on May 27, 2016. (*See* Ex. C). These deferral rights are exercisable by the remaining Members in their “sole discretion.” As detailed in the Deferral Notice, the Fuhrman Affidavit,

³ **N.B.**: It is irrelevant to this issue whether the 2009 PWM Agreement or the 2015 PWM Agreement is operative as the 2009 PWM Agreement contains a materially identical provision. *See* 2009 PWM Agreement § 8.12(a).

and the exhibit thereto, taking into account the expected Management Fee and expenses for PWM in 2016, including payment of the Direct Payment and Escrow Payment (the “Aggregate Payments”) for 2016 will result in a Compensation Shortfall in 2016 to the remaining Members that is more than 25% less than the average compensation paid by PWM to the non-selling Members during the Base Period. (Fuhrman Aff. ¶¶ 3-7).

Section 7.7(a) defines the Base Period as the three fiscal year period immediately preceding the occurrence of the event which resulted in PWM’s obligation to make such installment payments. The event which resulted in the Company’s obligation to make such payments to Lomas was the effective date of Lomas’ withdrawal from PWM, which occurred on January 14, 2015. Therefore, the three fiscal year period immediately preceding the effective date of Lomas’ withdrawal are 2012, 2013, and 2014.

As the analysis attached to the Deferral Noticed detailed, the Compensation Shortfall for the remaining Members is expected to be 50% when compared with the Base Period for 2016. (Indeed, last year it was higher and the Compensation Shortfall was 58%.) (Fuhrman Aff. ¶ 7).

Because Defendants have duly invoked this contractual right and fully intend to plead it as an affirmative defense, the prejudgment remedy imposed must be vacated. Defendants have the right to defer payment and not incur out-of-pocket payments under the operating agreement if they expect or anticipate a Compensation Shortfall. As the Defendants expect a Compensation

Shortfall in 2016 if they continue to make the Aggregate Payments, the prejudgment remedy imposed upon Defendants should be vacated.

B. The Defendants Are Contractually Entitled to Set Offs Against the Purchase Price of Lomas' Equity Interest

Additionally, the prejudgment remedy imposed upon Defendants must be vacated because Defendants have counterclaims and contractual set off rights against the Plaintiff. Under both the 2015 and 2009 PWM Agreements, both PWM and the Individual Defendants are contractually entitled to:

set off against any installment payments pursuant to its purchase of Interests under this Agreement an amount equal to all costs, expenses (including attorneys' fees) and damages incurred as a result of (i) a breach by the Member of this Section 7.8 or any other section of this Agreement, (ii) the negligence, gross negligence or willful misconduct of the Member, or (iii) any provision of any non-competition, confidentiality and/or non-solicitation agreement to which the Member is a party.

(See 2015 PWM Agreement § 7.8(d); accord 2009 PWM Agreement § 8.9(d)).

Defendants are entitled to set off the their costs, attorneys' fees, and damages caused by Lomas in connection with their contemplated counterclaims for: (i) breach of the implied covenant of good faith and fair dealing; (ii) Lomas' negligent performance of his duties; (iii) Lomas' breach of his obligations to employ good faith efforts in the transitioning of clients; (iv) Lomas' fraud via false promise; (v) Lomas' breach of the non-solicitation covenants; (vi)

Lomas' breach of his fiduciary duties; and (vii) punitive damages for Lomas' willful and wanton misconduct.⁴

Additionally, if Lomas is found liable in connection with any of these causes of action – even for a nominal amount – the Defendants are contractually entitled to recover their costs and attorneys' fees.

II. Counterclaim Plaintiffs Are Entitled to a Prejudgment Remedy On Their Claim for Breach of the Non-Solicitation Covenant.

The Counterclaim Complaint will plead a count for the breach of the non-solicitation covenants by Lomas. (See DCC ¶¶ 103-13). The 2015 PWM Agreement (as well as the 2009 PWM Agreement) contain valid and enforceable non-solicitation covenants. Specifically, Section 7.8(c) of the 2015 PWM Agreement provides:

For two years after the Member's withdrawal, the Member shall not in any function or capacity, whether for his or her own account or the account of any other person or entity (other than the Company), directly or indirectly, solicit the sale of, market or sell products or services similar to those sold or provided by the Company to any person or entity who is a customer or client of the Company at any time during the term of this Agreement (the "Clients"). As used in this Agreement, "solicit" means the initiation, whether directly or indirectly, of any contact or communication of any kind whatsoever, for the express or implicit purpose of inviting, encouraging or requesting a Client to: (i) transfer assets to any person or entity other than the Company; (ii) obtain investment advisory or similar related

⁴ Counterclaim Plaintiffs causes of action for breach of fiduciary duties and for willful and wanton misconduct are subject to reconsideration upon the Court's adjudication of Defendants' motion to strike.

services from any person or entity other than the Company; or (iii) otherwise discontinue, change, or reduce such Client's existing business relationship with the Company.⁵

“The term ‘solicit’ as used in this Agreement also includes any mail including, e-mail message, or other verbal or written communication that is sent directly or indirectly to one or more Clients informing them: (i) that the Company is no longer providing any or all services, (ii) that the Company plans to no longer provide any or all services, (iii) that the Member is or will be no longer associated with the Company, or (iv) how to contact the Member in the event that the Member is no longer associated with the Company.” (See 2015 PMW Agreement § 8.7(c); accord 2009 PWM Agreement § 8.9(c)).

Not long after the effective date of Lomas’ withdrawal on January 14, 2015, one client withdrew a substantial portion of his assets and another client withdrew all of his assets.

Confidential Client No. 1 withdrew nearly all of his assets – approximately \$15.5 million – in May 2015. (Fuhrman Aff. ¶ 8). Confidential Client No. 1 recently told Pratt-Heaney that Lomas had taken him to dinner and that the two watched an NCAA basketball game in March 2016. (Pratt-Heaney Aff. ¶ 3). Confidential Client No. 1 also told Pratt-Heaney that he and Lomas played golf together in April 2016 (and that, apparently, Lomas gave Confidential Client No. 1 home-made pickles). (Pratt-Heaney Aff. ¶ 4).

⁵ Section 8.9(c) of the 2009 PWM Agreement, as amended, contains materially identical provisions prohibiting solicitation.

Confidential Client No. 2 withdrew all of his assets – approximately \$25.5 million – from LLBH in August 2015. (Fuhrman Aff. ¶ 8).

The only reasonable inference is that Lomas is attempting to solicit clients – by keeping various relationships warm until his non-compete covenant expires in 2017.

The net assets withdrawn is approximately \$40 million.⁶

As detailed in the affidavit of Jeff Fuhrman, a “fair estimate of the average annual advisory fees on \$40 million of assets under management is 70 basis points. Thus, the estimated average annual advisory fee to LLBH is \$280,000 (= \$40,000,000 x .0070).” (Fuhrman Aff. ¶ 11).

“LLBH’s earnings before partner compensation (“EBPC”) margin on fees is roughly 70%, meaning that after expenses are deducted, the EBPC would equal approximately \$196,000 (= \$280,000 x 0.7).” (*Id.* ¶ 12).

“PWM is entitled under the Management Agreement to 52.5% of LLBH’s EBPC, meaning that of the \$196,000 of the net fees, PWM would expect to receive \$102,900 per annum (= \$196,000 x .525).” (*Id.* ¶ 13).

“The value of the \$102,900 per annum is to be valued by using generally accepted accounting principles. The yearly fee of \$102,900 that PWM would expect to receive from \$40 million in assets under management is accounted for as a customer list and is, therefore, assumed

⁶ Confidential Client No. 1 subsequently returned approximately \$1.5 million to LLBH. (Fuhrman Aff. ¶ 8).

to have a 10 year life (event though the fee could conceivably be paid on the assets in perpetuity). $\$102,900/\text{annum} \times 10 \text{ years} = \$1,029,000$. Thus, the estimated damages for the withdrawal of \$40 million in billable assets is \$1,029,000.” (*Id.* ¶ 14).

The Counterclaim Plaintiffs have shown probable cause both as to liability and as to the amount of damages. Therefore, the Counterclaim Plaintiffs’ request for a prejudgment remedy should be granted.

CONCLUSION

Based upon the foregoing, Defendants respectfully request that:

(1) the prejudgment remedy imposed upon them be vacated in its entirety and that all money previously paid into escrow be returned to the Defendants; and

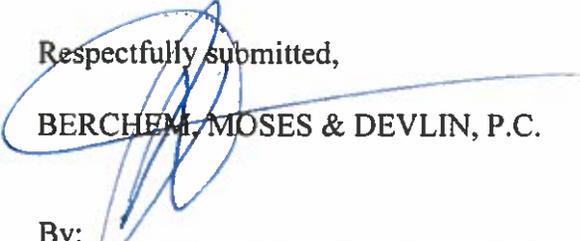
(2) that to secure a future judgment, the Counterclaim Plaintiffs seek an order from this Court directing that the following prejudgment remedy be granted to secure the sum of \$1,029,000:

- a. To attach any personal property or assets in which the Counterclaim Defendant holds an interest, as is now known or may hereafter be discovered pursuant to the accompanying motion for disclosure of assets.
- b. To garnish any banks or other financial institutions in which the Counterclaim Defendant maintains accounts, as is now known or may hereafter be discovered pursuant to the accompanying motion for disclosure of assets.

- c. To attach any other real or personal property or assets in which the Counterclaim Defendant holds an interest, as is now known or may hereafter be discovered pursuant to the accompanying motion for disclosure of assets.
- d. Any other and further relief as the Court deems just and proper.

The Counterclaim Plaintiffs request that the Court hold a hearing at which Counterclaim Defendant is required to show cause why the prejudgment remedies requested herein should not be granted.

Respectfully submitted,


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*Attorneys for the Defendants/
(soon-to-be) Counterclaim Plaintiffs*

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, postage prepaid, on the date hereon to:

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Richard J. Buturla

EXHIBIT A

DOCKET NO.: FST CF 15-5014808-S) SUPERIOR COURT
)
WILLIAM A. LOMAS,) JUDICIAL DISTRICT OF
) STAMFORD/NORWALK
Plaintiffs,)
) AT STAMFORD
versus)
)
PARTNER WEALTH MANAGEMENT, LLC)
KEVIN G. BURNS, JAMES PRATT-HEANEY,) JUNE , 2016
AND WILLIAM P. LOFTUS)
)
Defendants.)

) ANSWER AND
) COUNTERCLAIMS
PARTNER WEALTH MANAGEMENT, LLC,)
KEVIN G. BURNS, JAMES PRATT-HEANEY,)
AND WILLIAM P. LOFTUS,)
)
Counterclaim Plaintiffs,)
)
versus)
)
WILLIAM A. LOMAS,)
)
Counterclaim Defendant.)

ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

Parties

1. Admit, except deny knowledge or information sufficient to form a belief as to the truth of the allegation concerning Lomas' residence.
2. Admit.
3. Admit.
4. Admit.
5. Admit, but deny the subordinate clause – “which is the legally binding operating agreement of [Partner Wealth Management, LLC] PWM.” The PWM Limited Liability

Company Agreement dated November 30, 2009 (the “**2009 PWM Agreement**”), was duly amended on May 1, 2014 (the “**2014 Amendment**”) and a new PWM LLC agreement was duly voted on and approved by Members holding at least 65% of the Percentage Interests on or about December 26, 2014, which became effective January 1, 2015 (the “**2015 PMW Agreement**”).

Jurisdiction and Venue

6. The allegations contained in paragraph 6 state legal conclusions to which no responsive pleading is required. To the extent a response is required, the allegation is denied.

7. The allegations contained in paragraph 7 state legal conclusions to which no responsive pleading is required. To the extent a response is required, the allegation is denied.

8. The allegations contained in paragraph 8 state legal conclusions to which no responsive pleading is required. To the extent a response is required, the allegation is denied.

9. The allegations contained in paragraph 9 state legal conclusions to which no responsive pleading is required. To the extent a response is required, the allegation is denied.

Factual Background

10. The allegations contained in paragraph 10 state legal conclusions to which no responsive pleading is required. To the extent a response is required, the allegation is denied.

11. Denied, except admit that LLBH Private Wealth Management LLC (“**LLBH**” or “**LLBH Private**”) is a registered investment adviser and that PWM, via that certain Management Agreement dated December 1, 2009, provides services to LLBH pursuant to the terms and provisions of the Management Agreement, including wealth management, investment advisory, financial management, insurance and similar services.

12. With respect to the allegations contained in the first sentence of paragraph 12: admit that Kevin Burns, James Pratt-Heaney, William Loftus, and William Lomas (collectively,

the “**Principals**”) purchased an entity called White Oak Advisors, LLC; deny knowledge and information sufficient to form a belief as to the law White Oak was organized and existing under; deny that the members “purchased” PWM. With respect to the allegations contained in the second sentence of paragraph 12: admit. With respect to the allegations contained in the third sentence of paragraph 13: admit, except deny knowledge and information sufficient to form a belief as to whether LLBH Group Private Wealth Management, LLC (“**LLBH Group**”) provided broker-dealer services.

13. Admit, except deny that the document attached as Exhibit C is a true and accurate copy of the Asset Purchase Agreement dated December 1, 2009 by and between the parties thereto and deny that Focus Financial Partners LLC (“**Focus**”) is a member of LLBH Private.

14. Admit.

15. The allegations contained in paragraph 15 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

16. The allegations contained in paragraph 16 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

17. Admit.

18. Defendants do not have sufficient information or knowledge upon which to form a belief and therefore leaves the Plaintiff to his proof.

19. Defendants do not have sufficient information or knowledge upon which to form a belief and therefore leaves the Plaintiff to his proof.

20. Defendants do not have sufficient information or knowledge upon which to form

a belief and therefore leaves the Plaintiff to his proof.

21. Defendants do not have sufficient information or knowledge upon which to form a belief and therefore leaves the Plaintiff to his proof.

22. Defendants do not have sufficient information or knowledge upon which to form a belief and therefore leaves the Plaintiff to his proof.

23. Defendants do not have sufficient information or knowledge upon which to form a belief and therefore leaves the Plaintiff to his proof.

24. Defendants do not have sufficient information or knowledge upon which to form a belief and therefore leaves the Plaintiff to his proof.

25. Defendants do not have sufficient information or knowledge upon which to form a belief and therefore leaves the Plaintiff to his proof.

26. Deny knowledge and information sufficient to form a belief as to the truth of the allegation contained in paragraph 26.

27. Deny knowledge and information sufficient to form a belief as to the truth of the allegation contained in paragraph 27.

28. Deny knowledge and information sufficient to form a belief as to the truth of the allegation contained in paragraph 28.

29. Deny knowledge and information sufficient to form a belief as to the truth of the allegation contained in paragraph 29.

First Count

1-29. Defendants hereby incorporate by reference their responses to paragraph 1-29 of the Amended Complaint.

30. The allegations contained in paragraph 30 state conclusions of law to which no

responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

31. The allegations contained in paragraph 31 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

32. The allegations contained in paragraph 32 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

Second Count

- 1-32. [Adjudication on Motion to Strike Pending]
- 33. [Adjudication on Motion to Strike Pending]
- 34. [Adjudication on Motion to Strike Pending]
- 35. [Adjudication on Motion to Strike Pending]
- 36. [Adjudication on Motion to Strike Pending]
- 37. [Adjudication on Motion to Strike Pending]
- 38. [Adjudication on Motion to Strike Pending]
- 39. [Adjudication on Motion to Strike Pending]
- 40. [Adjudication on Motion to Strike Pending]
- 41. [Adjudication on Motion to Strike Pending]
- 42. [Adjudication on Motion to Strike Pending]
- 43. [Adjudication on Motion to Strike Pending]
- 44. [Adjudication on Motion to Strike Pending]
- 45. [Adjudication on Motion to Strike Pending]

- 46. [Adjudication on Motion to Strike Pending]
- 47. [Adjudication on Motion to Strike Pending]
- 48. [Adjudication on Motion to Strike Pending]
- 49. [Adjudication on Motion to Strike Pending]

Third Count

- 1-49. [Adjudication on Motion to Strike Pending]
- 50. [Adjudication on Motion to Strike Pending]
- 51. [Adjudication on Motion to Strike Pending]
- 52. [Adjudication on Motion to Strike Pending]
- 53. [Adjudication on Motion to Strike Pending]
- 54. [Adjudication on Motion to Strike Pending]

Fourth Count

- 1-54. [Adjudication on Motion to Strike Pending]
- 55. [Adjudication on Motion to Strike Pending]
- 56. [Adjudication on Motion to Strike Pending]
- 57. [Adjudication on Motion to Strike Pending]

Fifth Count

- 1-57. [Adjudication on Motion to Strike Pending]
- 58. [Adjudication on Motion to Strike Pending]
- 59. [Adjudication on Motion to Strike Pending]

Sixth Count

- 1-59. [Adjudication on Motion to Strike Pending]
- 60. [Adjudication on Motion to Strike Pending]

Seventh Count

1-61. Defendants hereby incorporate by reference their responses to paragraphs 1-61 of the Amended Complaint.

61. The allegations contained in paragraph 61 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

62. The allegations contained in paragraph 62 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

63. The Amended Complaint fails to state any causes of action.

Second Affirmative Defense

64. Plaintiff's breach of his contractual and/or fiduciary duties relieved the defendants of any duty or obligation to tender performance.

Third Affirmative Defense

65. The relief sought by the Plaintiff is barred by the doctrine of waiver.

Fourth Affirmative Defense

66. The relief sought by the Plaintiff is barred by equitable estoppel.

Fifth Affirmative Defense

67. The relief sought by the Plaintiff is barred by the doctrine of unclean hands.

Sixth Affirmative Defense

68. The relief sought by the Plaintiff is barred by the doctrine of equitable setoff.

Seventh Affirmative Defense

69. The relief sought by the Plaintiff is barred by contractual setoff.

Eighth Affirmative Defense

70. The relief sought by the Plaintiff is barred because the purported damages sustained by the Plaintiff were caused by a third party and not the Defendants.

Ninth Affirmative Defense

71. The relief sought by the Plaintiff is barred because the damages allegedly sustained by Plaintiff were caused by Plaintiff's own conduct.

Tenth Affirmative Defense

72. The relief sought by the Plaintiff is barred because none of the Defendants owe any fiduciary duties to Plaintiff.

Eleventh Affirmative Defense

73. The relief sought by the Plaintiff is deferrable at the sole discretion of the Defendants pursuant to Section 7.7(a) of the 2015 PWM Agreement and/or Section 8.12(a) of the 2009 PWM Agreement.

Twelfth Affirmative Defense

74. The defendants are entitled to recoupment.

Thirteenth Affirmative Defense

75. The buy-out provisions upon which Plaintiff relies are unenforceable because they would result in a forfeiture to Defendants.

COUNTERCLAIM COMPLAINT

1. Counterclaim Plaintiffs, Partner Wealth Management, LLC (“**PWM**”), Kevin G. Burns (“**Burns**”), James Pratt-Heaney (“**Pratt-Heaney**”), and William P. Loftus (“**Loftus**”), by and through their undersigned counsel, Gerard Fox Law P.C. and Berchem Moses & Devlin, P.C., as and for their Counterclaims against Counterclaim Defendant William A. Lomas (“**Lomas**”) allege as follows:

THE PARTIES AND RELEVANT NON-PARTIES

2. Counterclaim Plaintiff PWM is a limited liability company existing and organized under the laws of the state of Connecticut and has its principal place of business located at 33 Riverside Avenue, Westport, Connecticut 06880.

3. Counterclaim Plaintiff Burns is an individual residing in Westport, Connecticut. Burns is a member and officer of PWM.

4. Counterclaim Plaintiff Pratt-Heaney is an individual residing in Weston, Connecticut. Pratt-Heaney is a member and officer of PWM.

5. Counterclaim Plaintiff Loftus is an individual residing in Westport, Connecticut. Loftus is a member and officer of PWM.

6. Counterclaim Defendant Lomas is an individual residing in Weston, Connecticut. Lomas noticed his intent to withdraw as a member of PWM on October 13, 2014. The effective date of Lomas’ withdrawal as a member of PWM was January 14, 2015. Prior to the effective date of his withdrawal, Lomas was also an officer of PWM.

7. Burns, Loftus, Pratt-Heaney, and Lomas are collectively referred to herein as either the “**Principals**” or the “**Members**.”

8. Non-Party LLBH Private Wealth Management, LLC (“**LLBH**” or “**LLBH**”

Private”) is a registered investment advisor (“RIA”). Burns, Pratt-Heaney, and Loftus are officers of LLBH. Prior to his withdrawal from PWM, Lomas was also an officer of LLBH.

9. PWM is the manager of LLBH.

10. Non-Party Focus Financial Partners LLC (“Focus”) is the 100% indirect owner of LLBH and is, upon information and belief, a limited liability company organized and existing under the laws of the State of Delaware and has its principal place of business at 909 Third Avenue, New York, New York 10022.

FACTUAL BACKGROUND

Preliminary Statement

11. After working together for many years at Merrill Lynch, Burns, Loftus, Pratt-Heaney, and Lomas decided to strike out on their own and establish their own independent investment advisory business in 2008 (the “Business”).¹ While the Business has experienced enormous success over the past eight years, that success has been in spite of the obstacles and challenges created by Lomas. Lomas has not only failed to materially contribute to the development and growth of PWM and the RIA it manages, LLBH, but he has actively caused harm to the Business by failing to develop himself as an advisor, by his frequent absenteeism, by his failure to originate any meaningful Business since 2013 despite an express promise and representation to the other Principals that he would do so, and by causing unnecessary delays in the implementation of wealth management strategies, which negatively impacted PWM’s bottom line.

12. Although Lomas alleges in his Complaint that he is the victim of a scheme, nothing could be farther from the truth. Indeed, Lomas’ withdrawal from PWM is nothing but an

¹ Because of the structure of the relationships between LLBH, PWM, and the Principals, the Counterclaim Complaint will collectively refer their business enterprise as the “Business.”

attempt to continue his free-ride on the other Members' hard work and was designed to intentionally harm the other Principals of PWM.

13. When the Principals struck out on their own, they partnered with Focus Financial, who provided them with financial and operational support. It had always been assumed that Focus – if asked – would be willing to make a market and buy a withdrawing Principal's equity. But the Principals learned otherwise at a meeting on October 13, 2014 – the day Lomas dated his withdrawal notice. One of the other Principals, Pratt-Heaney, had been looking to cash in a portion of his equity. At a meeting with Burns, Loftus, and Lomas on October 13, 2014, Jeff Fuhrman, the CFO/COO of LLBH told them that Focus was unwilling to buy a portion of Pratt-Heaney's equity. Focus' position and determination that they would not make a market and would not buy Pratt-Heaney's or any withdrawing Principals equity had enormous economic implications for PWM and the Principals. Whereas the economics of a Focus buy-out of a Principal's equity would, other things being equal, not cause PWM or the remaining Principals any material economic harm, if PWM and the remaining Principals had to self-finance a buy-out, the remaining Principals would suffer an extraordinary financial hardship, potentially driving PWM into insolvency or forcing it to unwind altogether.

14. At the meeting on October 13, 2014, when it was learned that Focus would not buy a portion of Pratt-Heaney's equity, all of the Principals knew they had a problem, but none believed there to be an imminent problem because, as far as the Principals knew of each other's plans, none of them intended to retire in the near-term and the Principals has been actively engaged in revising the PWM limited liability company ("LLC") agreement since July 2014. When Burns and Loftus asked Lomas about whether he planned to retire in the near-term, Lomas deceived them to their faces and told them he had no intention of retiring any time soon. Lomas

left the office early that day and, either on his own or with the help of attorney, drafted his withdrawal notice, which was dated October 13, 2014. The next morning, on October 14, 2014, Lomas tendered his notice to the other Principals.

15. Although momentarily stunned by the notice, Fuhrman and Loftus attempted to discuss the situation with Lomas in the ensuing days and weeks and tried to work out a deal with him that would not result in an economic hardship for the remaining Principals and the potential implosion of the Business. But Lomas refused to have any discussions.

16. Discussions had been underway since at least July 2014 to amend the valuation provisions of PWM's LLC agreement in order for the valuation provisions to track the changes to the compensation formula that the Principals had unanimously agreed upon in May 2014. In light of Lomas' intransigence, the remaining Principals undertook to conclude the process of revising and amending the PWM LLC agreement.

17. Article VII of the PWM LLC agreement authorizes changes to the LLC agreement upon a 65% majority vote. An amended agreement was prepared by PWM's counsel and put to a vote. Burns, Loftus, and Pratt-Heaney – representing a 75% majority – voted in favor of adopting the new LLC agreement, which became effective January 1, 2015, two weeks before the effective date of Lomas' withdrawal.

18. The remaining Principals are seeking to protect the Business they have toiled to build – and which Lomas has actively damaged. They seek a judgment against Lomas setting off against the purchase price of Lomas' equity the damage he has caused to the Business by virtue of: (i) his breach of the implied covenant of good faith and fair dealing; (ii) his negligent performance of his duties; (iii) his breach of his obligations to cooperate in the transition of clients; (iv) for the fraud he perpetrated against the other Principals when he falsely promised

them he would develop business; (v) his breach of the non-solicitation covenants; (vi) his breaches of his fiduciary duties to PWM; (vii) his breach of his fiduciary duties to the remaining Principals; and (viii) for punitive damages for his willful and wanton misconduct. Counterclaim Plaintiffs also seek costs and attorneys' fees in connection with the foregoing, which they are contractually entitled to. And Counterclaim Plaintiffs also seek a preliminary and permanent injunction restraining Lomas from continuing to solicit their clients and declaratory judgment that the valuation of Lomas' equity is governed by the PWM LLC agreement that the principals voted on and which became effective January 1, 2015.

The Formation of PWM and PWM's Management Fee

19. In October 2008, the Principals left Merrill Lynch and established an RIA called LLBH Group Private Wealth Management, LLC ("**LLBH Group**"). In order to make a real go of realizing their goal of operating an independent RIA, LLBH Group and its Principals sought financial backing and operational resources. They approached Focus because Focus specializes in helping teams of advisers break away from so-called "wirehouses," like Merrill Lynch, to become independent RIAs.

20. In connection with approaching Focus, in late November and early December 2009, the Principals entered into three agreements:

- a. an Asset Purchase Agreement between, on the one hand, Focus and LLBH Private, an acquisition vehicle created and controlled by Focus, and, on the other hand, LLBH Group and the Principals dated December 1, 2009 (the "**APA**");
- b. the PWM Limited Liability Company Agreement between the Principals dated November 30, 2009 (the "**2009 PWM Agreement**"); and
- c. a Management Agreement between, on the one hand, Focus and LLBH Private

and, on the other hand, PWM and the Principals dated December 1, 2009 (the “**Management Agreement**”).

21. Under the APA, Focus, through its subsidiary, LLBH Private, acquired all of the assets of LLBH Group – including accounts receivables, client and customer lists, and intellectual property. Focus paid consideration to the Principals in the form of cash and equity in Focus.

22. Concurrently with the APA, the Principals established PWM.

23. And concurrently with the APA and the 2009 PWM Agreement, PWM and the Principals entered into the Management Agreement with LLBH and Focus whereby PWM became the manager of LLBH and became contractually entitled to a management fee, which is a percentage of the fees earned for the management of LLBH’s clients’ assets (the “**Management Fee**”).

24. PWM’s only asset is the Management Fee that it is entitled to from LLBH pursuant to the Management Agreement. Thus, the Principals’ compensation and the valuation of PWM itself are all inextricably intertwined with the Management Fee.

Lomas’ Continuous Failure to Perform, LLBH’s Engagement of FA Insight, And Lomas’ First Attempt to Leave PWM

25. When the Principals left Merrill Lynch and struck out on their own in late 2008, they had a relatively clear idea of the roles that each would perform at the newly created independent RIA. In addition to client generation, Pratt-Heaney was to devote a portion of his time to the functional roles of Chief Operating Officer and Chief Investment Officer, Burns and Loftus were to devote a portion of their time to other executive operational roles, and Lomas was to devote a portion of his to time to the Chief Financial Officer role and running the planning process. Lomas, however, failed to adequately perform his operations role and his efforts at

business generation substantially stagnated over time.

26. The planning process is an important aspect of the Business because LLBH's Business is based upon planning. The Principals had developed a rigorous multi-step process for auditing existing and new clients' net worth and determining a specialized and customized wealth management plan for each existing and new client. The planning process is a recurring process. Depending on the client and their needs, the process occurs annually or quarterly for a client. Indeed, this is an essential part of the value proposition the Principals offer their clients and is summed up by LLBH's trademarked tagline: "Wall Street Experience Meets Hometown Care." Although Lomas scarcely originated any Business, by virtue of his role in leading the planning process, Lomas was able to ingratiate himself into the lead adviser role for several accounts solely by virtue of the frequency of contact he had with the client during the planning process – notwithstanding the fact that the client had been originated by one of the other Principals.

27. Despite this advantage, within a year or two of establishing the Business, Lomas informed the other Principals that he no longer wanted to manage the planning process and instead wanted to develop business. As it turns out, Lomas did not want to do much of anything – neither planning nor business development. Although he ceased managing the planning process, which was turned over to Mike Kazakewich, Lomas hardly originated any business.

28. Although, for example, Lomas would routinely stop by Loftus' office and talk about how he "needed to get out there," Lomas began to work less and less. By 2011 or 2012, Lomas was taking extended hunting or fishing trips while the other Principals diligently worked to build the Business. And when he was in the office, he would sit in his office watching youtube videos or mope about the office thereby destroying employee morale. He did not

manage the planning process and he did not originate business in any meaningful way. Despite contributing little and actively harming the Business, he still continued to collect his extraordinarily generous salary.

29. Indeed, Lomas had repeatedly encouraged the other Principals not to work just like him – and proposed a scheme whereby they all take a two year vacation and wait for their non-competes and non-solicitation covenants with Focus to expire and then re-start Business. By all of his conduct since he tendered his withdrawal notice, Lomas is in fact carrying out the very scheme he dreamed up in 2013, when he sought to withdraw the first time from the Business. (See ¶¶ 35-39, *infra*).

30. Not only was Lomas physically checked-out of his job, he was also mentally checked-out as well. His performance was simply abysmal by any metric. The business of wealth management requires wealth managers to continually improve themselves by educating themselves and keeping abreast of relevant market trends and new financial products and services. This does not mean attending continuing education classes, as Lomas was required to do to maintain various certifications. It means professional growth by improving one's advisory skill set, sophistication, and client acumen. But Lomas did not improve his skills, sophistication, or acumen. For example, in late 2013 or early 2014 Lomas approached Loftus about co-authoring an article in order for Lomas to help market himself and raise his profile. But when Lomas showed a draft of the article to Loftus, Loftus told him that he would not put his name to the article as it was rudimentary and poorly reasoned and that Loftus would lose credibility with his clients and in the marketplace.

31. Lomas' abysmal performance was compounded by the fact that he could and would delay the adoption of a management products and new investment strategies. This is the

because the Principals have discretion over client accounts and how they are allocated. They are also fiduciaries. Thus, all Principals must understand a strategy or product before it can be implemented on portfolio-wide basis. For example, LLBH, through PWM, set up several very successful investment fund for its clients. But Lomas did not understand how these products worked and repeatedly asked the other Principals to explain them to him. Indeed, at one point, one of the general partners for one of the funds complained to Loftus about Lomas' lack of knowledge of the product. Lomas' performance became so far removed from what was expected of him that he became a detriment and liability in client meetings. Lomas' failure to develop himself and failure to keep abreast of new products and strategies resulted in unnecessary delays in PWM's setting and selecting certain asset management strategies for LLBH's clients. These delays caused the Management Fee to be lower than it should have been in multiple years.

32. By early 2013, Lomas no doubt sensed that he simply could not perform at the level expected of him by PWM. And his failure to perform was about to be brought into stark relief by LLBH's engagement of FA Insight.

33. On or about January 21, 2013, LLBH engaged a third-party consultant called FA Insight – indeed, Lomas signed the engagement letter – to address, among other things, compensation disparities. FA Insight specializes in working with RIAs to help them conduct long-term strategic business planning. FA Insight's mission included, among other things, the development and delivery of a comprehensive set of compensation recommendations, the development and delivery of a multi-year financial model illustrating the recommended compensation plan for each position within the Business, and the development and delivery of a multi-year organizational plan for the Business.

34. One of the critical issues for the Principals was that the compensation structure

that was then in place did not give any weight to a Principal's performance or lack thereof in connection with growing LLBH's Business, which directly effected the Management Fee payable to PWM. The fundamental problem was that compensation was based on a very simple formula: the Management Fee divided by four. But that formula had been established in 2009 on the good faith assumption and expectation that each of the Principals would be contributing equally to the growth of the business and its cash flow. With Lomas doing his best to avoid work, there was increasing frustration with there being an equal distribution of the Management Fee.

35. Lomas knew that FA Insight had been hired to help PWM rationalize the compensation structure and he knew that he had never performed in the manner expected of him. In March 2013, Lomas told the other Principals he wanted to withdraw from PWM. Discussions between Lomas and other Principals began in earnest.

36. Indeed, so in earnest were these discussions that Lomas is completely absent from any of FA Insight's long-range models for LLBH. In an April 25, 2013 report, FA Insight stated: "As of the date of this report, the partnership team is in the process of determining the payout structure for Bill Lomas following his decision to depart LLBH. As was the case in the initial recommendations reports, it has been assumed that Bill will not play a role within the future of LLBH organizational structure."

37. The other Principals offered to pay Lomas per the formula set forth in the 2009 PWM Agreement – or 25% of five times (5x) the Management Fee earned in the prior full calendar year (2012), with half payable immediately and the other half payable over the next five years. In other words, so eager were the other Principals to have Lomas exit at this time, that they were willing to pay him half up front, even though the 2009 PWM Agreement only required

installment payments over a five year period.

38. But Lomas was greedy and demanded that he be paid 5.4x the Management Fee and refused to accept PWM's buy-out offer per the provisions set forth in the 2009 PWM Agreement.

39. On or about April 29, 2013, Lomas indicated he wanted to remain at PWM. The other Principals were unsure what to do when negotiations broke down and Lomas reversed course. Lomas' performance had been so spectacularly below grade, the other Principals certainly could have terminated him for cause under Section 8.10 of the 2009 PWM Agreement.

40. No doubt sensing this possibility, Lomas hatched a scheme to mislead the other Principals and represented to them that if he were permitted to stay he would re-commit himself to the growth of the Business. Lomas had, at one point in his career, developed business. But his contribution to the Business had become minimal and he was contributing only his stagnant book of legacy clients. The other Principals believed that Lomas meant what he said and that he would contribute to the growth of the Business.

41. Lomas feigned doing work for a few weeks thereafter and then resumed his pattern of frequent absenteeism, watching youtube videos in his office when he was at the office, causing undue delays that were a drag on growth and morale while still collecting his extraordinarily generous salary – which was still a quarter of the Management Fee.

42. As FA Insight observed in an April 5, 2013 memorandum, the value of an advisory firm is “a function of the firm's ability to generate, sustain and grow profit or cash flow into the future.” In 2013 and 2014, Lomas delivered a trivial amount of growth: he originated a trivial amount of assets to manage and any growth allocable to him was simply a function of managing his legacy clients in an up-market. While the other Principals were working to grow

their books, Lomas continued to collect his generous salary despite having a book that was stagnant.

43. Lomas caused further damage to PWM and the Principals when, in 2013, he refused to be bought out on the terms set forth in the 2009 PWM Agreement. FA Insight had nearly completed or completely finished its work when the negotiations had broken down over Lomas' withdrawing, meaning that PWM had just spent tens of thousands of dollars for FA Insight to develop a long-term strategic plan reorganizing LLBH that did not include a person who now claimed he was finally ready to materially contribute to the growth of the Business.

44. The planning process had long since been transitioned to Mike Kazakewich. And Lomas could not add any value – if he ever did at all – by taking on an operations role. One of FA Insight's key strategic recommendations was for LLBH to hire someone to serve as COO – someone who would not have any responsibility for originating business but who would be solely focused on operations in order to free up the Principals to focus on business origination and development. Thus, the only role for Lomas if he stayed was business development. Lomas knew this and that is why he falsely promised the Principals that he would commit himself to business development.

The Principals Agree to Change the Compensation Structure and Begin Discussions to Change the Valuation Provisions of the Operating Agreement

45. One of the other key recommendations of FA Insight was that the compensation structure for the Principals needed to be changed in order to recognize and give due weight to each Principal's performance and their individual contribution to the growth of the Business. With Jeff Fuhrman's arrival at LLBH in or around July 2013, the Principals and Fuhrman began a series of extensive discussions about how compensation should be structured.

46. On May 1, 2014, the Principals all executed an amendment to the 2009 PWM

Agreement (the “**2014 Amendment**”). Under the 2014 Amendment, the Principals changed the allocation and distribution of net income to give weight to performance. (See 2014 Amendment § 5.2). All of the Principals, including Lomas – acting in accordance with Article VII of the 2009 PWM Agreement, which requires a 65% majority to make changes – voted in favor of adopting the 2014 Amendment.

47. It had always been understood that the Principals’ compensation and the valuation of PWM were two sides of the same coin because both compensation and valuation are keyed off of the Management Fee, PWM’s only asset. Thus, all of the Principals understood that compensation and valuation were inextricably linked. It was always understood that the valuation provisions in the 2009 PWM Agreement, as amended, would be changed to match the changes in the compensation formula set forth in the 2014 Amendment. Thus, even before the 2014 Amendment had been agreed upon, in an email to the Principals on April 8, 2014, circulating a draft of the 2014 Amendment, Fuhrman stated: “While there are many things which I think are quite important to change in the Operating Agreement, with this [the 2014 Amendment] so close to being completed, my preference is to deal with those separately. In fact, once this is executed, please allow me to suggest that we set a tight schedule by which we adhere to work our way through it.”

48. And so, shortly after the 2014 Amendment had been adopted, the Executive Committee – comprised of the Principals and Fuhrman – began discussing changes to the operating agreement, including changes to the valuation provisions. A Power Point presentation prepared by Fuhrman for the July 14, 2014 Executive Committee Meeting (the “**July 2014 Power Point**”), provided an extensive analysis of proposed changes to the PWM operating agreement, including changing the valuation provisions, and a schedule to discuss and adopt the

changes. The basic concepts were presented at the July 2014 Executive Committee Meeting; substantive discussions would take place over the ensuing month and at the next Executive Committee Meeting scheduled for August 11, 2014; and the amendments to the operating agreement would be finalized and approved by the September 2014 Executive Committee Meeting.

Lomas' Bad Faith Resignation

49. Against the backdrop of these on-going discussions to further amend the operating agreement and its valuation provisions, in September 2014, Pratt-Heaney became interested in cashing out some of his equity in PWM. Unlike Lomas, he was not looking to withdraw from PWM, but only to realize on some of the value of his equity in PWM.

50. One of the reasons that the Principals had partnered with Focus was their collective belief that Focus would afford them an exit strategy from the Business. That is to say, all of the Principals had assumed since the beginning of the relationship with Focus that Focus would be a ready, willing, and able buyer of the equity of any Principal who wanted to withdraw.

51. But in October 2014, the Principals learned otherwise. The Principals (not including Pratt-Heaney), along with LLBH's CFO/COO, Jeff Fuhrman, all met on October 13, 2014 – the day Lomas' withdrawal notice is dated. At that meeting, Fuhrman reported that Focus was not willing to make a market and buy a portion of Pratt-Heaney's equity in PWM. According to everyone present at the meeting, upon hearing this news, Lomas' face turned white. Burns and Loftus asked Lomas why he seemed so concerned and asked him point-blank if he planned to retire in the near-term. Lomas again misled Burns and Loftus and told them only that he intended to retire "someday." Lomas left the office early that day and, either on his own or with the help of an attorney, drafted his withdrawal notice dated that same day. On October 14,

2014, he tendered his withdrawal notice to the other Principals.

52. With Focus unwilling to make a market for the equity in PWM, a perverse kind of reverse musical chairs was created whereby the first Principal without a seat was the winner. A problem that was only compounded by the fact that Lomas had dramatically underperformed for years. While a purchase by Focus of a withdrawing Principal's equity would, other things being equal, not have devastating economic consequences for PWM and the remaining Principals, if PWM and the remaining Principals had to self-finance a buy-out of a withdrawing principal's equity, the remaining Principals' economic interests would be substantially and materially harmed. This is due to the fact that the valuation of PWM – which is based off of the Management Fee – is in pre-tax dollars, whereas the purchase money in a PWM financed buy-out must use post-tax and after-expense dollars derived from the same Management Fee, which, upon being distributed, is taxed as ordinary income. In other words, under a PWM financed scenario, the remaining Principals would need to earn roughly two dollars for every dollar to be paid to a withdrawing Principal. Lomas knew this because Fuhrman's July 2014 Power Point Presentation expressly pointed this problem out. The problem was further compounded by the fact that even if PWM and the remaining Principals did not have to contend with the negative economics of the tax issue, they would essentially be purchasing Lomas' equity at a wholly unjustified premium, paying Lomas as if he had contributed an equal 25% to the performance of PWM, when in fact he had produced substantially less than 25% to PWM's performance.

53. Lomas also knew from the July 2014 Power Point Presentation that his performance was substantially below that of the other Principals. In fact, when Fuhrman presented an updated performance analysis at the beginning of October 2014, Lomas' performance was even worse than in July 2014. Lomas knew that changes to the PWM LLC

agreement were imminent – as changes to the PWM LLC agreement had been contemplated since at least April 2014, when the Principals were changing the compensation formula. And so Lomas maliciously attempted to time his withdrawal to maximize his own withdrawal payout to the detriment of the other Principals. Indeed, none of the other Principals – all of whom had outperformed Lomas – would have a valuation of their interest at, or even near, what Lomas thinks he is now entitled to.

54. Upon learning that Focus was unwilling to make a market for a portion of Pratt-Heaney's equity, Lomas – to the detriment of the other Principals – rushed for the exit. He had been free-riding on the other Principals' hard work for years and had no intention of helping to fund a purchase of a portion of Pratt-Heaney's equity. Lomas knew, as he had known when he misled the other Principals' in mid-2013, that he did not have and never had any intention of generating business and would not risk one or all of the other Principals retiring first.

The 2015 PWM Agreement

55. The Principals had long intended to overhaul the 2009 PWM Agreement, including its valuation provision. The first step in the process was to change the compensation provisions, which they did – and which everyone agreed to – in May 2014 by way of the 2014 Amendment. While Lomas' withdrawal notice on October 13, 2014, caught the other Principals by surprise, it meant that changes to the operating agreement that the Principals had been discussing at Executive Committee meetings since at least July 2014 and, which they had initially planned to complete by September 2014, would finally need to occur sooner rather than later.

56. As Lomas was well aware, Article VII of the 2009 PWM Agreement contains the following provision: “The Management Committee may, with the approval of Members holding

at least sixty-five percent (65%) of the Percentage Interests, amend any provision of this Agreement.” In other words, all Members have a vote, but none has a veto, as to changes to the 2009 PWM Agreement.

57. Fuhrman had been discussing an overhaul of the 2009 PWM Agreement with PWM’s counsel since at least July 2014. In or around November 2014, Fuhrman directed PWM’s counsel to circulate a draft amended and restated operating agreement to the Principals. A meeting was held with PWM’s counsel, Fuhrman, and the Principals on December 18, 2014 to discuss the proposed amended and restated operating agreement.

58. The proposed amended and restated PWM operating agreement contained numerous changes to the 2009 PWM Agreement. Among the proposed changes, all of which had been discussed at various Executive Committee meetings, were changes to the valuation provisions such that the amended and restated PWM operating agreement would track and refer to the compensation provisions set forth in the 2014 Amendment.

59. Under the 2009 PWM Agreement, as amended, Section 8.8 provided for a valuation of PWM according to a simple formula: 5x the Management Fee.

60. Consistent with the 2014 Amendment, the 2015 PWM Agreement changed the valuation formula to track and comport with the new compensation structure established by the 2014 Amendment – which first introduced the concept of the Base Interest and Performance Interest and which all of the Principals had agreed to. Thus, Section 7.5(b) of the 2015 PWM Agreement provides the following valuation method for a withdrawing Principal:

If the Company repurchases a Member’s Interest as a result of: * * * (v) the Member’s voluntary withdrawal pursuant to Section 6.2(e); * * * the purchase price of the Member’s Interests will be valued as follows:

The purchase price of the Member’s Base Interest shall equal the product of:
(i) four; and (ii) the aggregate amount that would be distributable to the

Member under Section 5.2(a)(i), (ii), (iii) and (iv)[²] for the Valuation Period (if such distributions had been made).

The purchase price of the Member's Performance Interest shall equal the product of: **(i) six; and (ii) the aggregate amount that would be distributable to the Member under Section 5.2(a)(v) and (vi)[³] for the Valuation Period (if such distributions had been made),** provided, however, the purchase price shall be reduced if on the eighteen (18) month anniversary of the end of the original Valuation Period, the purchase price of the Member's Performance Interest calculated for a Valuation Period ending on the eighteen (18) month anniversary of the original Valuation Period is less than ninety percent (90%) of the original purchase price. In that event, the purchase price of the Member's Performance Interest shall be reduced by the difference between ninety percent (90%) of the original purchase price and the purchase price calculated for the Valuation Period ending on the second anniversary of the original Valuation Period.

61. On or about December 26, 2014, the Principals voted on whether to adopt the proposed amended and restated agreement. The Members holding at least 65% of the Percentage Interests – Loftus, Burns, and Pratt-Heaney, who together control 75% of the Percentage

² Sections 5.2(a)(i)-(iv) of the 2015 PWM Agreement, provide as follows:

(i) First, to the Members in proportion to, and to the extent of, the excess, if any, of the cumulative amount of Net Loss previously allocated to each Member pursuant to Section 5.2(d) over the cumulative amount of Net Income previously allocated to each such Member pursuant to this Section 5.2(a)(i);

(ii) Second, to each Member holding a Base Interest (including any Base Interest subject to repurchase because of the retirement of a Member under Section 6.2(c), a base guaranteed payment of \$250,000;

(iii) Third, to each Member in accordance with his Base Interest until an aggregate amount equal to the Base Amount, plus or minus twenty percent (20%) of the amount that Net Income otherwise included in the Base Amount has either been increased or reduced from the Net Income of the immediately preceding fiscal year, has been allocated and distributed to each Member;

(iv) Fourth, to each Member, an aggregate amount equal to the Individual Base Amount, less the decrease in Net Income arising from Existing Client Fees included in the Member's Individual Base Amount over the preceding fiscal year, if any;

³ Sections 5.2(a)(v)-(vi) of the 2015 PWM Agreement provide as follows:

(v) Fifth, to each Member, the Net Income in excess of the amounts allocated and distributed above that the Company received from a New Client or an Existing Client allocated to the Member, in a ratio among all Members receiving allocations and distributions of Net Income under this Section 5.2(a)(v) equal to (i) the sum of the New Client Fees and the Existing Client Fees credited to the Member, (ii) over the sum of the Aggregate Client Fees; and

(vi) Sixth, to the Members in accordance with their Base Interest.

Interests – all voted in favor of adopting the proposed amended and restated PWM operating agreement, which became effective January 1, 2015 (the “**2015 PWM Agreement**”). Lomas refused to endorse these changes. Regardless of whether Lomas’ vote is characterized as an abstention or a nay, he lost the vote. As a consequence of losing the vote, the 2015 PWM Agreement came into force on January 1, 2015 and is the operative agreement between the Principals with respect to the valuation of Lomas’ – or any other Principals’ – equity in PWM.

Lomas’ Conduct After Noticing His Withdrawal

62. Although Lomas had an on-going obligation under Section 7.8 of the 2015 PWM Agreement to “employ any and all good faith efforts to assist the remaining Members and the Company in retain for the Company his or her assigned clients and Business contacts for which he or she was responsible while a Member of the Company,”⁴ Lomas failed to do this. Indeed, he attempted to deliberately derail transitional meetings with clients. While the other Principals were pushing to make a quick announcement to clients, so that the transition would be as smooth and seamless as possible, Lomas refused to cooperate. In fact, Lomas deliberately attempted to frustrate the other Principals’ efforts at an orderly transition.

63. PWM has worked hard to cultivate a certain kind of culture that conveys gravitas. One element of that culture is that the Principals and all male staff are expected to wear suits and ties. After he gave notice, Lomas failed to dress appropriately for transitional client meetings.

64. Lomas also projected a dour mood in client meetings that hindered PWM’s efforts to smoothly transition clients. Some clients openly wondered whether or not Lomas was dying or being forced out.

65. In one telling example, Lomas accompanied Pratt-Heaney and Mike Kazakewich

⁴ *Accord* Section 8.9 of the 2009 PWM Agreement, as amended.

to Florida in order to have transition meetings with several clients. Lomas showed up unshaven and slovenly dressed, refused to go in the same car as the other two thereby creating the perception of discord, and conveyed a dour and depressed tone to clients during these transitional meetings.

Lomas' On-Going Attempts to Solicit Clients Subsequent to Withdrawing

66. Since withdrawing from PWM, Lomas has contacted at least several of PWM's clients, including some of the firm's largest clients. And some of these clients have either drawn down funds under management or else completely withdrawn as clients of PWM.

67. Confidential Client No. 1⁵ withdrew nearly all of his assets – approximately \$15.5 million – in May 2015. Confidential Client No. 1 told Pratt-Heaney that Lomas had taken him to dinner and that the two had watched an NCAA basketball game in March 2016. Confidential Client No. 1 also told Pratt-Heaney that he and Lomas played golf together in April 2016 (and that Lomas, apparently, gave Confidential Client No. 1 home-made pickles).

68. Confidential Client No. 2 withdrew all of his assets – approximately \$25 million – from LLBH in August 2015.

69. Upon information and belief, Lomas has been and continues to initiate contact with Confidential Client Nos. 1 and 2 for the purpose of encouraging these clients to discontinue, change, or reduce such their existing Business relationship with PWM and/or LLBH.

70. Upon information and belief, Lomas has been and continues to initiate contact with other clients of LLBH and PWM for the purpose of encouraging these clients to discontinue, change, or reduce such their existing Business relationship with PWM and/or LLBH.

⁵ PWM and the Principals owe fiduciary duties to LLBH's clients. For that reason, any clients of LLBH are referred to by the convention of "Confidential Client No. __."

71. Lomas' goal appears to be to keep various relationships warm, while he waits for his non-compete to expire.

FIRST COUNT
(Breach of Contract – Set Off, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Attorneys' Fees)

72. Lomas was a party to the 2009 PWM Agreement until it was superseded and replaced by the 2015 PWM Agreement, at which point, Lomas became a party to the 2015 PWM Agreement as of its effective date of January 1, 2015.

73. Under Connecticut law, an implied covenant of good faith and fair dealing is implied into every agreement. Good faith performance is required in the performance of all contracts. The concept of good faith emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party. Lomas acted in bad faith and failed to perform as required and expected of him under the 2009 and 2015 PWM Agreements.

74. It was understood and expected when PWM was formed in 2009 that each of the Principals would contribute in a meaningful and material way to the growth of the Business. An equity interest in PWM was not and was never intended to be a passive investment for any of the Principals. Instead, each of the Principals was expected to create value by growing the assets under LLBH's management, and thereby growing the Management Fee, which is PWM's only asset.

75. None of the Principals made any capital contribution to PWM. Rather, each Principal received substantial consideration in the form of cash and equity in Focus from Focus and, in exchange, PWM received a contractual right to the Management Fee generated by its successful growth of LLBH's assets under management. But that contractual right to the Management Fee and the Management Fee itself were dependent upon each of the Principals

contributing to the growth of LLBH's assets under management.

76. Lomas sought to free-ride on the other Principals hard work. Lomas did not manage the planning process despite that being his agreed upon role at the inception of the Business.

77. Lomas sought to transition to business development after refusing to manage the planning process and giving up the CFO function, but Lomas barely originated any business in 2013 and 2014.

78. Lomas spent an extraordinary amount of time away from the office on vacation or else watching youtube videos in his office when he was physically present at work. All the while Lomas was collecting a salary that he did not earn.

79. Lomas failed to develop himself as an adviser – he did not keep current on developments in the wealth management industry thereby causing unnecessary delays in PWM's setting and selecting certain asset management strategies. The delays caused by Lomas resulted in the Management Fee being lower than it otherwise would have been in multiple years.

80. By all of his conduct, Lomas breached the implied covenant of good faith and fair dealing. Lomas had an obligation to contribute to the development of the Business and certainly an obligation not to actively hinder its growth. By his conduct, Lomas damaged PWM's Business.

81. Furthermore, PWM and the remaining Principals are contractually entitled to set off against the purchase price of Lomas' equity in PWM: (a) any damage caused by Lomas to PWM whether by breach of the PWM Agreements, negligence, gross negligence, or willful misconduct; and (b) all costs and expenses, including attorneys' fees.

82. Section 7.8(d) of the 2015 PWM Agreement provides:

The Company or the remaining Members shall be entitled to set off against any installment payments pursuant to its purchase of Interests under this Agreement an amount equal to all costs, expenses (including attorneys' fees) and damages incurred as a result of (i) a breach by the Member of this Section 7.8 or any other section of this Agreement, (ii) the negligence, gross negligence or willful misconduct of the Member, or (iii) any provision of any non-competition, confidentiality and/or non-solicitation agreement to which the Member is a party. All Members shall, not later than the date of execution and delivery hereof, execute the Company's Non-Competition Agreement or equivalent thereof. The rights of set off as set forth herein shall be in addition to any and all remedies available to the Company or the remaining Members under law or resulting from the Member's violation of any agreement with the Company.

83. Similarly, Section 8.9(d) of the 2009 PWM Agreement, as amended, similarly provides:

The Company or the remaining Members shall be entitled to set off against any installment payments pursuant to its purchase of Interests under this Agreement in an amount equal to all costs, expenses (including attorneys' fees) and damages incurred as a result of (a) a breach by the Member of this Section 8.9 or any other section of this Agreement, (b) the negligence, gross negligence or willful misconduct of the Member, or (c) any provision of any non-competition, confidentiality and/or non-solicitation agreement to which the Member is a party. All Members shall, not later than the date of execution and delivery hereof, execute the Company's Non-Competition Agreement or equivalent thereof. The rights of set off as set forth herein shall be in addition to any and all remedies available to the Company or the remaining Members under law or resulting from the Member's violation of any agreement with the Company.

84. Lomas has acted in bad faith and breached the implied covenant of good faith and fair dealing. PWM has been damaged by Lomas' failure to perform and by his failure to develop himself as an adviser. PWM is entitled to damages in an amount to be determined at trial, but believed to be no less than \$3,000,000. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement and Section 8.9(d) of the 2009 PWM Agreement, PWM is also entitled to recover all of its costs and attorneys' fees in connection with this action.

SECOND COUNT
**(Breach of Contract – Set Off, Negligent Performance of Duties,
and Attorneys’ Fees)**

85. As noted above, Section 7.8(d) of the 2015 PWM Agreement and Section 8.9(d) of the 2009 PWM Agreement grant PWM and the remaining Members the right to set off against any payment due to Lomas all costs, expenses (including attorneys’ fees), and damages attributable to Lomas’ negligence.

86. Lomas owed a duty of care to PWM, Burns, Pratt-Heaney, and Loftus in connection with the performance of his duties as a wealth manager and as an officer and member of PWM.

87. Lomas breached his duty of care that was owed to PWM, Burns, Pratt-Heaney, and Loftus.

88. Lomas contributed virtually nothing to the growth of PWM’s Management Fee in 2013 and 2014. Lomas did not manage the planning process. And Lomas barely originated any business in 2013 and 2014. Lomas spent an extraordinary amount of time away from the office on vacation or else watching youtube videos in his office when he was physically present at work. All the while Lomas was collecting a salary that he did not earn.

89. Lomas failed to develop himself as an adviser – he did not keep current on developments in the wealth management industry thereby causing unnecessary delays in PWM’s setting and selecting certain asset management strategies. The delays caused by Lomas resulted in the Management Fee being lower than it otherwise would have been in multiple years.

90. By his negligence, PWM and the other Principals were damaged in an amount to be determined at trial, but believed to be not less than \$3,000,000. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement and Section 8.9(d) of the 2009 PWM Agreement,

PWM is also entitled to recover all of its costs and attorneys' fees in connection with this action.

THIRD COUNT

(Breach of Contract – Set Off, Breach of the Obligation to Employ Good Faith Efforts in Connection with Transitioning Clients, and Attorneys' Fees)

91. Counterclaim Plaintiffs incorporate by reference the allegations set forth in paragraphs 58 – 61. As detailed in those allegations, Lomas had a duty to use good faith efforts to work with PWM and the other Principals in ensuring that any clients that Lomas serviced remained with PWM.

92. Lomas breached this obligation by refusing to cooperate with the other Principals who desired and determined that it was best for the business that Lomas' departure be announced quickly, by failing to be presentable during numerous transitional meetings, and by deliberately assuming a dour and depressed tone during numerous transitional meetings.

93. As a result of Lomas' breach of this obligation, PWM and the other Principals have been damaged in an amount to be determined at trial, but believed to be no less than \$1,000,000. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement and Section 8.9(d) of the 2009 PWM Agreement, PWM is also entitled to recover all of its costs and attorneys' fees in connection with this action.

FOURTH COUNT

(Fraud by False Promise and Attorneys' Fees)

94. In March 2013, Lomas informed the other Principals that he intended to withdraw from the Business. As a result, the other Principals began good faith negotiations with Lomas to buy-out his equity in PWM.

95. The other Principals were eager for Lomas to withdraw as he had not been meaningfully contributing to the growth of the Business, was living off a stagnant book of legacy clients, and was damaging the Business through his continued and repeated failures to perform as

expected of him. Indeed, FA Insight's reports to the Principals concerning the long-term strategic development and organizational structure of the Business did not include Lomas.

96. Although PWM offered to buy out Lomas according to the formula in the 2009 PWM Agreement, Lomas refused and insisted on being paid out at a higher multiple than provided for by the 2009 PWM Agreement.

97. Although the other Principals could have terminated Lomas for cause for his non-performance under Section 8.10 of the 2009 PWM Agreement, Lomas promised and represented to the other Principals in mid-2013 that he would recommit himself to growing the Business. But Lomas never intended to keep these promises and he knew that the representations were false when made.

98. Lomas feigned doing business development work for a few weeks. But after a few weeks, Lomas' scheme became clear: he had no intention of originating business and intended to continue to free ride on the hard work of the other Principals.

99. Under Connecticut law, a promise to do something in the future with the present intention not to undertake the promised action is actionable fraud.

100. PWM and the other Principals reasonably relied upon Lomas' false promise and did not, at that time, exercise their right under Section 8.10 of the 2009 PWM Agreement to terminate him and/or expel him from PWM. Their reliance was reasonable because at one point in time, when they had first gone out on their own, Lomas was committed to growing the Business. The other Principals believed that Lomas was committing to grow his book as he had done years ago. But Lomas failed to do this and knew he had no intention of doing this when he made the representations and promises. His real goal was to avoid being forced out and bought-out at a valuation that was based on the 2012 Management Fee. Lomas was counting on the

other Principals continuing to grow their books and then to cash out after they had put in more hard work to growing the Business.

101. By virtue of Lomas' false promises and representations, PWM and the other Principals suffered damages. They continued to pay Lomas his exceedingly generous salary for doing effectively nothing thereby causing them damage. And Lomas' failure to develop himself as an adviser, which unduly delayed PWM's implementation of certain wealth management strategies that would have grown the Management Fee, caused further damage to PWM and the other Principals.

102. By virtue of Lomas' false promises and representations, PWM and the other Principals have been damaged in an amount to be determined at trial, but believed to be no less than \$3,000,000. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement and Section 8.9(d) of the 2009 PWM Agreement, because of Lomas' willful misconduct, PWM is also entitled to recover all of its costs and attorneys' fees in connection with this action.

FIFTH COUNT

(Breach of Contract – Breach of the Non-Solicitation Covenant and Attorneys' Fees)

103. The 2015 PWM Agreement (as well as the 2009 PWM Agreement) contain valid and enforceable non-solicitation covenants.

104. Specifically, Section 7.8(c) of the 2015 PWM Agreement provides:

For two years after the Member's withdrawal, the Member shall not in any function or capacity, whether for his or her own account or the account of any other person or entity (other than the Company), directly or indirectly, solicit the sale of, market or sell products or services similar to those sold or provided by the Company to any person or entity who is a customer or client of the Company at any time during the term of this Agreement (the "Clients"). As used in this Agreement, "solicit" means the initiation, whether directly or indirectly, of any contact or communication of any kind whatsoever, for the express or implicit purpose of inviting, encouraging or requesting a Client to: (i) transfer assets to any person or entity other than the Company; (ii) obtain investment advisory or similar related services

from any person or entity other than the Company; or (iii) otherwise discontinue, change, or reduce such Client's existing business relationship with the Company.⁶

105. “The term ‘solicit’ as used in this Agreement also includes any mail including, e-mail message, or other verbal or written communication that is sent directly or indirectly to one or more Clients informing them: (i) that the Company is no longer providing any or all services, (ii) that the Company plans to no longer provide any or all services, (iii) that the Member is or will be no longer associated with the Company, or (iv) how to contact the Member in the event that the Member is no longer associated with the Company.” (See 2015 PMW Agreement § 8.7(c)).

106. Not long after the effective date of Lomas’ withdrawal on January 14, 2015, one client withdrew a substantial portion of his assets and another client withdrew all of his assets.

107. Confidential Client No. 1⁷ withdrew nearly all of his assets – approximately \$15.5 million – in May 2015. Confidential Client No. 1 told Pratt-Heaney that Lomas had taken him to dinner and that the two had watched an NCAA basketball game in March 2016. Confidential Client No. 1 also told Pratt-Heaney that he and Lomas played golf together in April 2016 (and that Lomas, apparently, gave Confidential Client No. 1 home-made pickles).

108. Confidential Client No. 2 withdrew all of his assets – approximately \$25 million – from LLBH in August 2015.

109. The only reasonable inference is that Lomas is attempting to solicit clients – by keeping various relationships warm until his non-compete covenant expires in 2017.

⁶ Section 8.9(c) of the 2009 PWM Agreement, as amended, contains materially identical provisions prohibiting solicitation.

⁷ PWM and the Principals owe fiduciary duties to LLBH’s clients. For that reason, any clients of LLBH are referred to by the convention of “Confidential Client No. _.”

110. Upon information and belief, Lomas has been and continues to initiate contact with Confidential Client Nos. 1 and 2 for the purpose of encouraging these clients to discontinue, change, or reduce such their existing business relationship with PWM and/or LLBH.

111. Upon information and belief, Lomas has been and continues to initiate contact with other clients of LLBH and/or PWM for the purpose of encouraging these clients to discontinue, change, or reduce such their existing business relationship with PWM and LLBH.

112. PWM has been damaged by Lomas' unlawful solicitation of LLBH/PWM clients in an amount to be determined at trial, but believed to be not less than \$5,000,000.

113. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement, PWM is entitled to set off any losses in connection with Lomas' unlawful solicitation of LLBH/PWM clients and is also entitled to recover its costs and attorneys' fees in connection with this action.

SIXTH COUNT
(Breach of Fiduciary Duty to PWM and Attorney's Fees)

114. Lomas, as an officer of PWM, owed PWM a fiduciary duty.

115. By his failure to develop himself as an advisor, his frequent absenteeism, failure to perform as expected of him, and his causing undue delays in PWM's adoption of wealth management strategies, Lomas breached his fiduciary duties to PWM.

116. PWM has suffered damages in an amount to be determined at trial, but believed to be not less than \$3,000,000.

117. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement, PWM is entitled to set off any losses in connection with Lomas' breach of his fiduciary duties and is also entitled to recover its costs and attorneys' fees in connection with this action.

SEVENTH COUNT
(Breach of Fiduciary Duty to the Principals and Attorney's Fees)

118. Lomas owes the same fiduciary duties to Burns, Loftus, and Pratt-Heaney that he alleges they owe him in his Amended Complaint.

119. Lomas knew that PWM and the other Principals had long been contemplating changes to the valuation provisions of the PWM Agreement in order to reflect the new compensation structure set forth in the 2014 Amendment.

120. Lomas, like all of the Principals, had assumed that Focus would buy-out of any withdrawing Principals' equity.

121. When Lomas learned that any buy-out of a withdrawing Principal's equity would need to be financed by the remaining Principals, Lomas put his own self-interest ahead of the fiduciary obligation he owed to the other Principals.

122. Lomas deceived the other Principals at the October 13, 2014 meeting and told them he had no intention of withdrawing any time in the near-term. And then, after he tendered his withdrawal, knowing full well the dire economic consequences that such a withdrawal would cause without Focus willing to make a market in PWM's equity, Lomas refused to negotiate in good faith with the remaining Principals.

123. As a result of Lomas' conduct, which breached his fiduciary duties to the other Members of PWM, Burns, Loftus, and Pratt-Heaney have suffered damages in an amount to be determined at trial, but believed to be not less than \$3,000,000.

124. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement, PWM is entitled to set off any losses in connection with Lomas' breach of his fiduciary duties and is also entitled to recover its costs and attorneys' fees in connection with this action.

EIGHTH COUNT
(Willful and Wanton Misconduct and Attorney's Fees)

125. Lomas' actions, as detailed herein, were designed to serve his own self-interest at the expense of the of PWM's and the other Principals' economic and financial well-being.

126. Lomas' conduct represents a substantial departure from, and a violation of, well-accepted standards of good faith, fair dealing, and fair play upon which members in a limited liability company, including Burns, Loftus, and Pratt-Heaney, are entitled to rely.

127. Lomas' course of conduct resulted from an intended course of action, carefully planned and designed with evil motive, malicious intent and/or reckless indifference to the rights of Burns, Loftus, and Pratt-Heaney and the harm such actions would cause them.

128. Lomas acted outrageously and maliciously towards Burns, Loftus, and Pratt-Heaney with willful disregard for their rights, and with the intention of causing them severe economic and financial loss.

129. Burns, Loftus, and Pratt-Heaney have suffered damages in amount to be determined at trial, but believed to be no less than \$3,000,000.

130. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement, PWM is entitled to set off any losses in connection with Lomas' willful misconduct and is also entitled to recover its costs and attorneys' fees in connection with this action.

NINTH COUNT
(Preliminary and Permanent Injunction and Attorney's Fees)

131. Counterclaim Plaintiffs incorporate by referenced the allegations set forth in paragraphs 66-71 and 103-113 regarding Lomas' efforts to solicit PWM's clients in violation of the non-solicitation covenants contained in the 2009 and 2015 PWM Agreements.

132. Upon information and belief, Lomas continues to attempt to solicit PWM's and

the remaining Principals' clients.

133. Counterclaim Plaintiffs will suffer irreparable injury if Lomas is not enjoined and restrained from soliciting Counterclaim Plaintiffs' clients.

134. Counterclaim Plaintiffs have no adequate remedy at law.

135. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement, PWM is entitled to recover its costs and attorneys' fees in connection with the enforcement of the non-solicitation covenants.

136. Additionally, Counterclaim Plaintiffs are entitled to an equitable extension of the non-solicitation covenant for an equivalent amount of time as Lomas has been in breach of the covenant.

TENTH COUNT
(Declaratory Judgment)

137. As detailed above, the Principals of PWM, pursuant to Article VII of the 2009 PWM Agreement, as amended, duly voted in favor of the 2015 PWM Agreement, with at least 65% of the Percentage Interests voting in favor of the 2015 PWM Agreement, which became effective on January 1, 2015.

138. Pursuant to Conn. Gen. Stat. § 52-29, a real, actual, bona fide, substantial, and justiciable controversy exists between the parties to this lawsuit, which requires a judicial declaration that:

- a. the 2015 PWM Agreement is the currently operative LLC agreement of PWM;
- b. the 2015 PWM Agreement became effective January 1, 2015;
- c. the 2015 PWM Agreement was the operative LLC agreement of PWM at the time Lomas' withdrawal became effective, on January 14, 2015; and
- d. that the valuation of Lomas' interest in PWM is governed and controlled by the

2015 PWM Agreement.

PRAYER FOR RELIEF

WHEREFORE, the Counterclaim Plaintiffs, Partner Wealth Management, LLC, Kevin G. Burns, William P. Loftus, and James Pratt-Heaney, respectfully pray that judgment be entered in their favor against Counterclaim Defendant, William Lomas, for the following relief:

1. Compensatory damages on Counts 1-7 in excess of \$15,000, exclusive of interest and costs;
2. Punitive damages on Count 8 for Counterclaim Defendant's willful and wanton conduct;
3. A preliminary and permanent injunction on Count 9, enjoining and restraining Counterclaim Defendant from soliciting Counterclaim Plaintiffs' clients;
4. Pre-judgment interest pursuant to Conn. Gen. Stat. § 37-3a;
5. Post-judgment interest pursuant to Conn. Gen. Stat. §37-3aj;
6. Attorneys' fees pursuant to Section 7.8(d) of the 2015 PWM Agreement and/or Section 9.8(d) of the 2009 PWM Agreement, as amended;
7. Costs and expenses pursuant to Section 7.8(d) of the 2015 PWM Agreement and/or Section 9.8(d) of the 2009 PWM Agreement, as amended;
8. Pursuant to Conn. Gen. Stat. § 52-29, in connection with Count 10, an order declaring that the 2015 PWM Agreement is the operative LLC agreement of PWM, became the operative agreement on January 1, 2015, was the operative LLC agreement of PWM at the time Lomas' withdrawal became effective, on January 14, 2015; and that the valuation of Lomas' interest in PWM is governed and controlled by the 2015 PWM Agreement; and
9. All other legal or equitable relief that the Court may deem just and proper.

COUNTERCLAIM PLAINTIFFS HEREBY DEMAND A TRIAL

BY JURY ON ALL CLAIMS SO TRIABLE

DEFENDANTS/COUNTERCLAIM PLAINTIFFS
PARTNER WEALTH MANAGEMENT, LLC,
KEVIN G. BURNS, WILLIAM P. LOFTUS, AND
JAMES PRATT-HEANEY

By:

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CERTIFICATE PURSUANT TO PRACTICE BOOK § 17-56(b)

In connection with Counterclaim Plaintiffs' Count for Declaratory Judgment, Counterclaim Plaintiffs' hereby certify that all interested persons have been joined as parties to the action or have been given reasonable notice thereof.

GERARD FOX LAW P.C.

By:

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EXHIBIT B

NO: FST-CV15-5014808S : SUPERIOR COURT
LOMAS, WILLIAM A. : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
PARTNER WEALTH MANAGEMENT, LLC : SEPTEMBER 21, 2015

BEFORE THE HONORABLE DONNA NELSON-HELLER, JUDGE

A P P E A R A N C E S:

Representing the Plaintiff:

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Stamford, CT 06905

Recorded/Transcribed By:
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123 Hoyt Street - 3rd Floor
Stamford, CT 06905

1 THE COURT: All right. And we have an agreement.
2 Thank you. And this is the Lomas and Partner Wealth
3 Management, LLC matter.

4 ATTY. LAGASSE: Yes, Your Honor.

5 THE COURT: So if everyone would identify
6 themselves for the record.

7 ATTY. RECHEN: Thomas Rechen for the plaintiff,
8 William Lomas. With me, Your Honor, is my associate,
9 Brittany Killian.

10 ATTY. KILLIAN: Good morning, Your Honor.

11 THE COURT: Thank you. Good morning.

12 ATTY. KOVACK: Good morning, Your Honor. Mark
13 Kovack from Berchem, Moses and Devlin as local
14 counsel for the defendants.

15 THE COURT: Thank you.

16 ATTY. LAGASSE: David Lagasse, Mintz Levin for the
17 defendants, Partner Wealth Management. And here
18 today is Mr. William Loftus, Mr. Kevin Burns and Mr.
19 James Pratt-Heany, the individual defendants.

20 THE COURT: Thank you.

21 ATTY. RECHEN: Your Honor, I should also point out
22 that my client is here as well, the plaintiff,
23 William Lomas.

24 THE COURT: Thank you.

25 All right. So who would like to tell me about
26 your agreement?

27 ATTY. LAGASSE: Your Honor, the pleasure falls to

1 me.

2 THE COURT: Thank you.

3 ATTY. LAGASSE: Your Honor, in resolution of the
4 plaintiff's application for PJR, the parties have
5 entered into the following agreement.

6 Defendant, Partner Wealth Management, will pay
7 plaintiff, Bill Lomas, every October 15th, for the
8 amount due to repurchase his membership interest as
9 calculated under the 2015 Limited Liability Company
10 agreement.

11 Those payments are as follows:

12 October 15th, 2015, \$631,306.99. On October 15th,
13 2016, \$757,568.39. On October 15th, 2017,
14 \$726,003.04. On October 15th, 2018, \$694,437.69.
15 And October 15th, 2019, \$662,872.34.

16 THE COURT: Thank you.

17 ATTY. LAGASSE: The -- I'll --

18 THE COURT: I'm sorry, there's more. Okay.

19 ATTY. LAGASSE: There will be a lot more, Your
20 Honor.

21 THE COURT: All right. That's fine. Thank you.

22 ATTY. LAGASSE: Defendant, Partner Wealth
23 Management will fund an escrow account with a bank,
24 or other agreeable escrow agent, with payments made
25 as follows. Which payments will represent the
26 approximate sums in dispute which is the difference
27 between the sums paid, or payable under the 2015

1 Limited Liability Company agreement, and the sums
2 alleged by plaintiff to be due under the 2009 Limited
3 Liability Company agreement.

4 So by December 15th, 2015, the sum of \$124,793.73
5 representing six months of interest on principle
6 alleged by plaintiff to be due during the first year
7 under the 2019 agreement.

8 ATTY. RECHEN: Two thousand nine.

9 ATTY. LAGASSE: I'm sorry, 2009 agreement. It
10 would be impressive if we had a 2019 agreement.

11 In addition by -- by December 15th, 2015, an
12 additional \$200,651.26 in principle.

13 THE COURT: Could I have those numbers again?
14 Just the interest is a hundred twenty-four thousand -
15 -

16 ATTY. LAGASSE: Seven ninety-three and --

17 THE COURT: Seven --

18 ATTY. LAGASSE: seventy-three cents.

19 THE COURT: Okay. And the --

20 ATTY. LAGASSE: Principle is \$200,651.26.

21 THE COURT: Two hundred thousand six hundred
22 fifty-one dollars and twenty --

23 ATTY. LAGASSE: six cents.

24 THE COURT: Twenty-six cents, thank you. All
25 right.

26 ATTY. LAGASSE: Okay. Beginning on November 15th,
27 2015, and continuing on the 15th of the month for the

1 eleven successive months thereafter, each equal
2 monthly installment of principle and interest
3 totaling by October 15th, 2016, \$274,625.10. That is
4 composed of \$200,651.26 principle, plus \$73,408.58
5 interest.

6 Beginning on November 15th, 2016, and continuing
7 on the 15th of the month for eleven successive months
8 thereafter, equal monthly installments of principle
9 and interest totaling by October 15th, 2017,
10 \$255,707.70. That is comprised of \$200,651.26 of
11 principle, plus \$55,056.44 in interest.

12 Beginning on November 15th, 2017, and continuing
13 on the 15th of the month for eleven successive months
14 thereafter, equal monthly installments of principle
15 and interest totaling by October 15, 2018,
16 \$237,355.55. That is comprised of \$200,651.26 in
17 principle, plus \$36,704.29 in interest.

18 Beginning on November 15, 2018, and continuing on
19 the 15th of the month for eleven successive months
20 thereafter, equal monthly installments of principle
21 and interest totaling by October 15th, 2019,
22 \$219,003.41. That is comprised of \$200,651.26
23 principle, plus \$18,352.15 interest.

24 To the extent that Partners Wealth Management
25 fails to pay any sums to plaintiff or into the escrow
26 account as requires by this agreement and order,
27 payments will be made by the individual defendants,

1 James Pratt-Heany, Kevin Burns and William Loftus who
2 have -- they will have joint and several liability
3 for making the required payments.

4 The escrow will remain in place until the earlier
5 of the date of final judgment is entered in this
6 case, or the parties settle the case and the case is
7 dismissed with prejudice. Any amounts remaining in
8 the escrow account following the satisfaction of all
9 amounts due to Mr. Lomas, whether paid to satisfy a
10 judgment or in settlement, will revert to defendant,
11 Partner Wealth Management and the individual
12 defendants.

13 Plaintiff, Bill Lomas, and his attorneys, will
14 have full information and confirmation rights with
15 respect to the status of the escrow account.
16 Including, but not limited to all sums paid into the
17 escrow account.

18 The agreement and order will be without prejudice
19 and will not impair any of the parties' rights to
20 argue that a party is entitled to pay a different
21 repurchase price than the amounts paid and escrowed
22 under the settlement agreement.

23 And we are asking Your Honor to enter an order of
24 the Court in lieu of hearing of the plaintiff's
25 prejudgment remedy obligation.

26 THE COURT: Thank you. Thank you.

27 Anything you'd like to add, counsel?

1 ATTY. RECHEN: No, Your Honor. That is our
2 agreement.

3 THE COURT: Okay. All right.

4 What I would ask, because we do have the
5 individual defendants who are agreeing to jointly and
6 severally liable. And I know we've got folks
7 somewhat spread around the courtroom.

8 ATTY. LAGASSE: Yes, Your Honor.

9 THE COURT: But Attorney Lagasse, if you would
10 just inquire of your clients. And folks, I'm just
11 going to need you to come up near a mic somewhere.
12 That they have heard the agreement and they agree to
13 the terms of the agreement.

14 ATTY. LAGASSE: Yes, Your Honor.

15 THE COURT: Thank you.

16 ATTY. LAGASSE: Is this mic on?

17 THE COURT: This one is fine. And why don't we
18 put everybody under oath. Just ask our Monitor, but
19 I will allow you stand together. Thank you.

20 THE CLERK: Please raise your right hands.

21 Do you solemnly swear or solemnly and sincerely
22 affirm as the case may be that the evidence you shall
23 give concerning this case shall be the truth, the
24 whole truth and nothing but the truth so help you God
25 or upon penalty of perjury?

26 MR. LOFTUS: I do.

27 MR. BURNS: I do.

1 MR. PRATT-HEANY: I do.

2 THE CLERK: Please state your name individually
3 and your address for the record.

4 MR. BURNS: Kevin Burns, 191 Gregory Boulevard,
5 East Norwalk, Connecticut.

6 MR. LOFTUS: William Loftus, 326 Compo Road South,
7 Westport, Connecticut.

8 MR. PRATT-HEANY: Jim Pratt-Heavy, 7 Christina
9 Lane, Weston, Connecticut.

10 THE COURT: Thank you. Counsel?

11 ATTY. LAGASSE: Your Honor. Gentlemen, you heard
12 the terms of the agreement as read into the record.
13 I'm just going to ask each of you individually,
14 whether you agree to the -- agree to be bound by the
15 terms.

16 Mr. Burns?

17 MR. BURNS: Yes, I do.

18 ATTY. LAGASSE: Mr. Pratt-Heany?

19 MR. PRATT-HEANY: I do.

20 ATTY. LAGASSE: Mr. Loftus?

21 MR. LOFTUS: I do.

22 THE COURT: Thank you, gentlemen. You may have a
23 seat.

24 And Attorney Rechen, I would also ask you to make
25 the same inquiry of Mr. Lomas.

26 ATTY. RECHEN: Yes, Your Honor.

27 THE COURT: Thank you, sir.

1 ATTY. RECHEN: Mr. Lomas, if you would just state
2 your name.

3 MR. LOMAS: My name is William Lomas.

4 THE COURT: Yes, Mr. Lomas, we'll just swear you
5 in as well.

6 MR. LOMAS: Okay.

7 THE CLERK: Please raise your right hand.

8 Do you solemnly swear or solemnly and sincerely
9 affirm as the case may be that the evidence you shall
10 give concerning this case shall be the truth, the
11 whole truth and nothing but the truth so help you God
12 or upon penalty of perjury?

13 MR. LOMAS: I do. I will.

14 THE CLERK: State your name and your address for
15 the record, please.

16 MR. LOMAS: My name is William Lomas. My address
17 is 293 Lyons Plane Road, Weston, Connecticut.

18 THE COURT: Thank you.

19 ATTY. RECHEN: Mr. Lomas, you've heard the
20 settlement terms pertaining to the settlement of the
21 prejudgment remedy application as those terms were
22 just read to the Court by Attorney Lagasse?

23 MR. LOMAS: Yes.

24 ATTY. RECHEN: And do you agree that that those
25 are the terms to which you have agreed in settlement
26 of the prejudgment remedy application?

27 MR. LOMAS: Yes, I have.

1 THE COURT: Thank you, counsel.

2 All right. The Court will accept the parties
3 agreement, approve it and it will be so ordered as an
4 order of the Court resolving the application for
5 prejudgment remedy. I will ask our monitor to
6 prepare a copy of the transcript for me. And I will
7 review and sign it so it will become part of the
8 Court file.

9 Anything further, folks?

10 ATTY. RECHEN: No, Your Honor. Thank you very
11 much.

12 THE COURT: Thank you all very much. Thank you.

13 ATTY. LAGASSE: Nothing from the defendants.

14 THE COURT: Thank you. Have a good day everybody.

15 X X X X X X X X

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NO: FST-CV15-5014808S : SUPERIOR COURT
LOMAS, WILLIAM A. : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
PARTNER WEALTH MANAGEMENT, LLC : SEPTEMBER 21, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Donna Nelson-Heller, Judge, on the 21st day of September, 2015.

Dated this 25th day of September, 2015, in Stamford, Connecticut.



Lisa Franchina
Court Recording Monitor

EXHIBIT C

GERARD FOX LAW P.C.

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May 27, 2016

VIA E-MAIL (trechen@mccarter.com)

Thomas Rechen, Esq.
McCarter & English, LLP
CityPlace I
185 Asylum Street
Hartford, Connecticut 06103

Re: *Lomas v. Partner Wealth Management, LLC et al.*

Dear Mr. Rechen:

Please be advised that pursuant to Section 7.7(a)¹ of the Partner Wealth Management, LLC ("PWM") Agreement dated January 1, 2015 (the "**2015 PWM Agreement**"), PWM and the remaining Members hereby exercise their right, which is exercisable "upon their sole discretion," to completely defer all payments that may be due to Mr. Lomas (whether payable directly or into escrow) for the remainder of 2016.²

PWM and the remaining Members have paid or are currently scheduled to make the following payments between now and October 15, 2019:

¹ Section 7.7(a) provides in pertinent part:

* * * it is specifically agreed that, notwithstanding any such obligation(s) of the Company or the remaining Members, however evidenced, the Company or the remaining Members may, upon their sole discretion, defer (or reduce the amount of) any such installment payments during a period of "Compensation Shortfall" (herein defined). * * * For purposes hereof, a "Compensation Shortfall" shall mean a decline in the Company's financial performance for any fiscal year(s), such that the amount of compensation from the Company paid to non-selling Members is more than twenty-five percent (25%) less than the average compensation paid by the Company (or its predecessor) to the non-selling Members during the three (3) fiscal year period (hereinafter, "Base Period") immediately preceding the occurrence of the event which resulted in the Company's obligation to make such installment payments. Interest shall continue to accrue during any such deferral or reduction of installment payments.

² Accord § 8.12(a) of the PWM LLC Agreement dated November 30, 2009 (the "2009 PWM Agreement").

- (A) Directly to Mr. Lomas (the “Direct Payments”):
- (i) \$631,306.99 was paid on October 15, 2015;
 - (ii) \$757,568.39 on October 15, 2016;
 - (iii) \$726,003.04 on October 15, 2017;
 - (iv) \$694,437.69 on October 15, 2018;
 - (v) \$662,872.34 on October 15, 2019; and
- (B) Into escrow (the “Escrow Payments”):
- (i) \$325,444.99 was paid on December 15, 2015;
 - (ii) \$274,625.10 by October 15, 2016 (payable in monthly installments over the preceding 11 months);
 - (iii) \$255,707.70 by October 15, 2017 (payable in monthly installments over the preceding 11 months);
 - (iv) \$237,355.55 by October 15, 2018 (payable in monthly installments over the preceding 11 months); and
 - (v) \$219,003.41 by October 15, 2019 (payable in monthly installments over the preceding 11 months).

As you know, the aggregate amount of the Direct Payments and Escrow Payments (the “Aggregate Payments”) is based upon the theory of damages set forth in Mr. Lomas’ Complaint. Aggregate Payments scheduled for 2016, if paid, will result in a Compensation Shortfall in 2016 to the remaining Members.

Pursuant to Section 7.7(a), the Base Period is defined as the three fiscal year period immediately preceding the occurrence of the event which resulted in the Company’s obligation to make any installment payments. The event which resulted in the Company’s obligation to make such payments to Mr. Lomas was the effective date of Mr. Lomas’ withdrawal from PWM, which occurred on January 14, 2015. Therefore, the Base Period is calculated by reference to fiscal years 2012, 2013, and 2014.

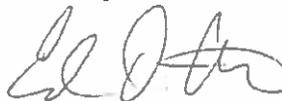
Enclosed herewith is an analysis showing the expected Compensation Shortfall. As the enclosed analysis shows, the Compensation Shortfall for the remaining Members is expected to be 50% when compared with the Base Period. (In fact, last year it was higher and the Compensation Shortfall was 58%.)

Pursuant to Section 7.7(b)³, PWM will re-asses the matter at the end of the first quarter of 2017 and determine whether it will be able to resume installment payments to Mr. Lomas in 2017 without experiencing a Compensation Shortfall.

³ Section 7.7(b) provides: “Installment payments shall be promptly resumed at such time as the compensation of the non-selling Members from the Company for any fiscal year again exceeds seventy-five percent (75%) of the average of such compensation during the Base Period.”

Please be advised that PWM and the remaining Members will file an application with the Court seeking to, *inter alia*, vacate the prejudgment remedy now in place and to have the monies that are currently in escrow returned.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Altabet", written in a cursive style.

Edward D. Altabet

Partner Wealth Management, LLC
 Compensation Analysis: 2012 to 2016

	Year Ending December 31,				
	2012	2013	2014	2015	2016
Pro Forma Net Income	2,519,240	2,479,696	3,163,739	1,715,333	1,788,394
Estimated Tax Rate	45%	45%	45%	45%	45%
Estimated Tax Liability Per Partner	291,163	286,714	363,641	417,291	413,289
Pro Forma Estimated After-Tax Income Per Partner	338,647	333,210	427,293	154,486	182,842
Base Period (Pro Forma Estimated After-Tax Income Per Partner Average of 2012 to 2014)	-	-	366,383	366,383	366,383
Compensation Surplus/(Shortfall)	-	-	-	(58%)	(50%)