

DOCKET NO. FST-CV15-5014808-S	)	SUPERIOR COURT
	)	
WILLIAM A. LOMAS	)	JUDICIAL DISTRICT OF
	)	STAMFORD/NORWALK
Plaintiff,	)	
	)	
v.	)	AT STAMFORD
	)	
PARTNER WEALTH MANAGEMENT, LLC,	)	
KEVIN G. BURNS, JAMES PRATT-HEANEY,	)	
WILLIAM P. LOFTUS	)	
	)	SEPTEMBER 21, 2016
Defendants.	)	

**MOTION FOR APPOINTMENT OF COMMISSION AND  
FOR LEAVE TO TAKE DEPOSITION IN NEW YORK OF DAVID LAGASSE, ESQ.**

Pursuant to Connecticut General Statutes § 52-148c(b) and Practice Book Sections 13-28(a), 13-27(f) and 13-29(d), the Plaintiff, William A. Lomas (“Plaintiff” or “Lomas”), respectfully requests that this Court commission a court reporter or other person authorized to administer oaths in the State of New York, County of New York, to take the deposition of **David Lagasse, Esq. of Mintz Levin, 666 Third Avenue, New York, New York 10017**, in accordance with the notice of deposition in substantially the same form as attached hereto as **Exhibit A**. Plaintiff further requests that the Court commission **McCarter & English LLP, 245 Park Avenue, 27th Floor, New York, New York 10167**, or some duly authorized substitute, to issue or seek the issuance of a subpoena in substantially the same form as attached hereto as **Exhibit B** in connection with said deposition pursuant to the laws of the State of New York. The deposition will take place pursuant to Connecticut law and the Connecticut Rules of Court at **McCarter & English LLP, 245 Park Avenue, 27<sup>th</sup> Floor, New York, New York 10167**, on

October 17, 2016 at 10:00 a.m., or on any other mutually agreeable date and time, or any day or dates to which the taking of said deposition may be postponed or continued.

In support of this Motion, Plaintiff represents as follows:

1. This case arises out of a limited liability company agreement among four members.
2. The gravamen of the claim is that Defendants have refused to purchase Lomas' equity interest in Partner Wealth Management, LLC ("PWM"), in accordance with a formula specified in the PWM Limited Liability Company Agreement dated November 30, 2009.
3. Rather, Defendants amended the Agreement in a manner adverse to Lomas, materially limiting the cash buyout to which he is contractually entitled.
4. To carry out Defendants plan to amend, they enlisted the assistance of Attorney Lagasse, who had been retained earlier to assist in restructuring the annual distribution of cash flow and to prepare a partner compensation plan.
5. Attorney Lagasse met with the members of the LLC, including Lomas, on December 18, 2014 in Westport, Connecticut.
6. At the beginning of that meeting, Attorney Lagasse announced that he was representing only PWM. Plaintiff remained a member of PWM at that time.
7. The purpose of the meeting was to amend the Agreement so as to limit the buyout rights triggered by Lomas' withdrawal.
8. During the meeting, Attorney Lagasse took notes, corresponded with the members, including Lomas, about the proposed changes, and thereafter circulated a DocuSign

version of the revised limited liability company agreement with a signature line for each of the members, including Lomas.

9. Lomas refused to sign the agreement.

10. Thereafter, the Defendants moved forward with the revised limited liability company agreement, with the help of Attorney Lagasse, and eventually executed the document in late December with an effective date of January 1, 2015.

11. Prior to this litigation, there was no attorney-client relationship between the individual Defendants and Attorney Lagasse.

12. Lomas seeks to depose Attorney Lagasse in this matter because he was a participant in, and a witness to, a key meeting of the members of PWM on December 18, 2014, during which facts relevant to the claims in this litigation were discussed and disputed, including whether to amend the Agreement so as to materially alter and/or limit the buyout obligation the Defendants owe to Lomas.

13. Lomas additionally seeks the minutes and/or notes of Attorney Lagasse during the December 18, 2014 meeting.

14. By virtue of Attorney Lagasse's involvement in the proposed amendment to the Agreement, the information and documents Plaintiff seeks are relevant and reasonably calculated to lead to the discovery of admissible evidence.

15. In addition, the timing of the retention of Attorney Lagasse by PWM, his engagement letter with PWM, the scope of his representation have all become issues in this litigation. Lomas needs to question Attorney Lagasse at his deposition in order to pin down these and other relevant facts and in order to secure his testimony for trial in Connecticut.

**WHEREFORE**, the Plaintiff, William A. Lomas, respectfully moves the Court to commission an authorized court reporter or other person authorized to administer oaths in the State of New York to take the deposition of **David Lagasse, Esq. of Mintz Levin**, and to commission **McCarter & English, LLP, 245 Park Avenue, 27<sup>th</sup> Floor, New York, NY 10167**, or some duly authorized substitute, to issue or seek the issuance of a subpoena in connection with said deposition.

Dated: September 21 , 2016  
Hartford, Connecticut

THE PLAINTIFF,  
WILLIAM A. LOMAS

By: /s/ Thomas J. Rechen  
Thomas J. Rechen  
Brittany A. Killian  
McCarter & English, LLP  
City Place I  
185 Asylum Street  
Hartford, CT 06103  
Tel.: (860) 275-6700  
Fax: (860) 724-3397  
Juris No. 419091

# EXHIBIT A

DOCKET NO. FST-CV15-5014808-S	)	SUPERIOR COURT
	)	
WILLIAM A. LOMAS	)	JUDICIAL DISTRICT OF
	)	STAMFORD/NORWALK
Plaintiff,	)	
	)	
v.	)	AT STAMFORD
	)	
PARTNER WEALTH MANAGEMENT, LLC,	)	
KEVIN G. BURNS, JAMES PRATT-HEANEY,	)	
WILLIAM P. LOFTUS	)	
	)	SEPTEMBER 21, 2016
Defendants.	)	

**NOTICE OF DEPOSITION DUCES TECUM**

PLEASE TAKE NOTICE that, pursuant to Section 13-26 et seq. of the Connecticut Rules of Court and pursuant to a Commission issued by the Superior court for the State of Connecticut, William A. Lomas will take the deposition of **David Lagasse, Esq. of Mintz Levin, 666 Third Avenue, New York, New York 10017**, on October 17, 2016, at 10:00 a.m. at McCarter & English LLP, 245 Park Avenue, 27<sup>th</sup> Floor, New York, New York 10167 for the purposes of discovery and use at the trial thereof before a person authorized to administer oaths in the State of New York, designated by the Superior Court for the State of Connecticut as commissioner for the purposes of taking this deposition.

You are invited to attend and cross examine.

The deponent is further commanded to bring to said deposition any and all documents in accordance with Schedule A attached hereto.

Dated: September 21, 2016  
Hartford, Connecticut

THE PLAINTIFF,  
WILLIAM A. LOMAS

By: /s/ Thomas J. Rechen  
Thomas J. Rechen  
Brittany A. Killian  
McCarter & English, LLP  
City Place I  
185 Asylum Street  
Hartford, CT 06103  
Tel.: (860) 275-6700  
Fax: (860) 724-3397  
Juris No. 419091

## **SCHEDULE A**

### **Definitions**

1. “David Lagasse”, “you” and “your” mean collectively David Lagasse, attorney at law, a member of Mintz Levin, 666 Third Avenue, New York, NY 10017, and its subsidiaries, parents, subsidiaries of subsidiaries, divisions, affiliates in which it owns a majority or a controlling interest, and other organizational or operating units, its predecessors and successors, and its employees, officers, directors, managers, attorneys, agents, representatives, and all persons acting on its behalf.

2. “William Lomas” means Plaintiff William A. Lomas, and all agents and persons acting or who have acted on his behalf.

3. “PWM” means Defendant Partner Wealth Management, LLC and its subsidiaries, parents, subsidiaries of subsidiaries, divisions, affiliates in which it owns a majority or a controlling interest, and other organizational or operating units, its predecessors and successors, and its employees, officers, directors, managers, attorneys, agents, representatives, and all persons acting on its behalf.

4. “Burns” means Defendant Kevin G. Burns, and all agents and persons acting or who have acted on his behalf.

5. “Pratt-Heaney” means Defendant James Pratt-Heaney, and all agents and persons acting or who have acted on his behalf.

6. “Loftus” means Defendant William P. Loftus, and all agents and persons acting or who have acted on his behalf.

7. The word “record(s)” or “document(s)” means the originals (or any copy when originals are not available) and any non-identical copies (whether different from the originals because of notes made on such copies or otherwise), of writings of every kind and description, whether inscribed by hand or by mechanical, electronic, microfilm, photographic or other means, as well as phonic (such as tape recordings) or visual reproduction or oral statements, conversations or events, and including, but not limited to, correspondence, teletype messages, internal memoranda, notes, reports (including drafts, preliminary, intermediate and final reports), contracts, agreements, surveys, comparisons, charts, books, pamphlets, bulletins, minutes, calendar and diary entries, log sheets, ledgers, compilations, studies, tabulations, tallies, maps, diagrams, drawings, plans, pictures, computer runs, summaries of computer runs, and any translations of any of the foregoing, in the actual or constructive possession, custody or control of PWM. “Record” or “document” shall also specifically include any record or document that once existed but has since been lost or destroyed. “Record” or “document” also means all electronically produced, generated, or stored records and documents, including, but not limited to, computer files, word processing files, computer databases, spreadsheets, schedules, and Computer Aided Design (CAD) files, including all non-identical copies, back-ups, or archival versions of same. To the extent that such materials are produced on media other than paper, include information sufficient to allow translation into usable form,

8. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

9. The terms “correspondence” or “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

10. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be construed outside its scope.

11. The terms “all” and “each” shall both be construed as all and each.

### **DOCUMENTS REQUESTED**

Produce at the time and place for your deposition, or earlier, the following documents and things:

1. All documents related to your representation of PWM, Loftus, Burns or Pratt-Heaney from January 1, 2013 through January 14, 2015.

2. All communications between you and Loftus, Burns or Pratt-Heaney related to your representation of PWM from January 1, 2013 through January 14, 2015.

3. All documents related to the meeting held on December 18, 2014, including any handwritten notes, memorandum or meeting minutes you prepared in connection with, or during, that meeting.

4. All engagement letters between you and PWM, Loftus, Burns, and/or Pratt-Heaney.

# **EXHIBIT B**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

WILLIAM A. LOMAS

Plaintiff,

vs.

PARTNER WEALTH MANAGEMENT, LLC, KEVIN  
G. BURNS, JAMES PRATT-HEANEY, WILLIAM P.  
LOFTUS

Defendants,

---

: **SUBPOENA DUCES TECUM AD**  
: **TESTIFICANDUM PURSUANT TO THE**  
: **UNIFORM INTERSTATE DEPOSITIONS**  
: **AND DISCOVERY ACT AND**  
: **C.P.L.R. § 3119**

:  
: **Originating State:** Connecticut  
: **Originating County:** Stamford  
: **Originating Court:** Superior Court  
: **Originating Case No:** FST-CV15-5014808-S

**SUBPOENA DUCES TECUM AD TESTIFICANDUM**  
**Pursuant to the Uniform Interstate Deposition and Discovery Act**  
**(Personal Attendance Required)**

**TO: DAVID LAGASSE, ESQ.**  
**MINTZ LEVIN**  
**666 THIRD AVENUE**  
**NEW YORK, NEW YORK 10017**

You are hereby commanded to attend a deposition before the above named Court at the offices of **McCarter & English, LLP, 245 Park Avenue, 27th Floor, New York, New York 10167, on October 17, 2016, at 10:00 a.m.**, as well as at any recessed or adjourned date, in the above entitled action, to give testimony regarding the topics described in the attached Schedule A and that you have and bring with you and produce at the same time and place the documents requested in the attached Schedule B.

The Subpoenaed Evidence shall not be produced or released until the date specified for the taking of the deposition. This Subpoena complies with, and is issued under the authority of,

C.P.L.R. § 3119. Failure to comply with, and appear to, the command of this Subpoena will subject you to a penalty, damages in a Civil Suit, and punishment for contempt of Court.

**Contact Information of Counsel for  
all parties in the action:**

Richard J. Buturla, Esq.  
Mark J. Kovack, Esq.  
Berchem, Moses & Devlin, P.C.  
75 Broad Street  
Milford, CT 06460

Gerard Fox, Esq.  
Edward D. Altabet, Esq.  
Steven I. Wallach, Esq.  
Gerard Fox Law, P.C.  
12 East 49<sup>th</sup> Street, Suite 2605  
New York, NY 10017

Thomas J. Rechen  
Brittany A. Killian  
McCarter & English, LLP  
City Place I  
185 Asylum Street  
Hartford, CT 06103

**McCARTER & ENGLISH, LLP**  
Attorneys for Plaintiff,  
WILLIAM A. LOMAS

By: \_\_\_\_\_

245 Park Avenue, 27<sup>th</sup> Floor  
New York, New York 10167-0001  
(212) 609-6800  
(212) 609-6921 (fax)

Dated: September 21, 2016

## **DEFINITIONS**

1. “David Lagasse”, “you” and “your” mean collectively Davis Lagasse, attorney at law, a member of Mintz Levin, 666 Third Avenue, New York, NY 10017, and its subsidiaries, parents, subsidiaries of subsidiaries, divisions, affiliates in which it owns a majority or a controlling interest, and other organizational or operating units, its predecessors and successors, and its employees, officers, directors, managers, attorneys, agents, representatives, and all persons acting on its behalf.

2. “William Lomas” means Plaintiff William A. Lomas, and all agents and persons acting or who have acted on his behalf.

3. “PWM” means Defendant Partner Wealth Management, LLC and its subsidiaries, parents, subsidiaries of subsidiaries, divisions, affiliates in which it owns a majority or a controlling interest, and other organizational or operating units, its predecessors and successors, and its employees, officers, directors, managers, attorneys, agents, representatives, and all persons acting on its behalf.

4. “Burns” means Defendant Kevin G. Burns, and all agents and persons acting or who have acted on his behalf.

5. “Pratt-Heaney” means Defendant James Pratt-Heaney, and all agents and persons acting or who have acted on his behalf.

6. “Loftus” means Defendant William P. Loftus, and all agents and persons acting or who have acted on his behalf.

7. The word “record(s)” or “document(s)” means the originals (or any copy when originals are not available) and any non-identical copies (whether different from the originals because of notes made on such copies or otherwise), of writings of every kind and description, whether inscribed by hand or by mechanical, electronic, microfilm, photographic or other means, as well as phonic (such as tape recordings) or visual reproduction or oral statements, conversations or events, and including, but not limited to, correspondence, teletype messages, internal memoranda, notes, reports (including drafts, preliminary, intermediate and final reports), contracts, agreements, surveys, comparisons, charts, books, pamphlets, bulletins, minutes, calendar and diary entries, log sheets, ledgers, compilations, studies, tabulations, tallies, maps, diagrams, drawings, plans, pictures, computer runs, summaries of computer runs, and any translations of any of the foregoing, in the actual or constructive possession, custody or control of PWM. “Record” or “document” shall also specifically include any record or document that once existed but has since been lost or destroyed. “Record” or “document” also means all electronically produced, generated, or stored records and documents, including, but not limited to, computer files, word processing files, computer databases, spreadsheets, schedules, and Computer Aided Design (CAD) files, including all non-identical copies, back-ups, or archival versions of same. To the extent that such materials are produced on media other than paper, include information sufficient to allow translation into usable form,

8. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

9. The terms “correspondence” or “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

10. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be construed outside its scope.

11. The terms “all” and “each” shall both be construed as all and each.

### **SCHEDULE A**

#### **TOPICS OF EXAMINATION**

1. Your representation of PWM, Loftus, Burns or Pratt-Heaney from January 1, 2013 through January 14, 2015.
2. All communications between you and Loftus, Burns, Pratt-Heaney, and/or Jeffrey Fuhrman related to your representation of PWM from January 1, 2013 through January 14, 2015.
3. The meeting you attended at PWM on December 18, 2014.

### **SCHEDULE B**

#### **DOCUMENTS REQUESTED**

Produce at the time and place for your deposition, or earlier, the following documents and things:

1. All documents related to your representation of PWM, Loftus, Burns or Pratt-Heaney from January 1, 2013 through January 14, 2015.
2. All communications between you and Loftus, Burns or Pratt-Heaney related to your representation of PWM from January 1, 2013 through January 14, 2015.

3. All documents related to the meeting held on December 18, 2014, including any handwritten notes, memorandum or meeting minutes you prepared in connection with, or during, that meeting.
4. All engagement letters between you and PWM, Loftus, Burns, and/or Pratt-Heaney.

**ORDER**

The foregoing Motion having been heard, it is hereby **ORDERED**:

**GRANTED / DENIED**

BY THE COURT:

\_\_\_\_\_  
Judge/Clerk

Dated: \_\_\_\_\_

DOCKET NO. FST-CV15-5014808-S	)	SUPERIOR COURT
	)	
WILLIAM A. LOMAS	)	JUDICIAL DISTRICT OF
	)	STAMFORD/NORWALK
Plaintiff,	)	
	)	
v.	)	AT STAMFORD
	)	
PARTNER WEALTH MANAGEMENT, LLC,	)	
KEVIN G. BURNS, JAMES PRATT-HEANEY,	)	
WILLIAM P. LOFTUS	)	
	)	SEPTEMBER , 2016
Defendants.	)	

**COMMISSION TO TAKE DEPOSITION**

**TO: McCarter & English LLP  
245 Park Avenue  
27th Floor  
New York, New York 10167**

GREETINGS:

BE IT KNOWN that you are hereby appointed by the laws of the State of Connecticut a Commissioner of the Superior Court for the Judicial District of Stamford in the State of Connecticut in connection with the deposition of **David Lagasse, Esq. of Mintz Levin, 666 Third Avenue, New York, New York 10017**, in the above captioned cause now pending in the Superior Court within the Judicial District of Stamford in said State of Connecticut.

THEREFORE, you are authorized and directed by this Court to issue or seek the issuance of a subpoena in connection with said deposition pursuant to the laws of the State of Connecticut.

SO ORDERED.

Dated at Stamford, Connecticut, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

BY THE COURT

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DOCKET NO. FST-CV15-5014808-S	)	SUPERIOR COURT
	)	
WILLIAM A. LOMAS	)	JUDICIAL DISTRICT OF
	)	STAMFORD/NORWALK
Plaintiff,	)	
	)	
v.	)	AT STAMFORD
	)	
PARTNER WEALTH MANAGEMENT, LLC,	)	
KEVIN G. BURNS, JAMES PRATT-HEANEY,	)	
WILLIAM P. LOFTUS	)	
	)	September , 2016
Defendants.	)	

**COMMISSION TO TAKE DEPOSITION**

**TO: Person Authorized to Administer  
Oaths in the State of New York**

GREETINGS:

BE IT KNOWN that you are hereby appointed by the laws of the State of Connecticut a Commissioner of the Superior Court for the Judicial District of Stamford in the State of Connecticut in connection with the deposition of **David Lagasse, Esq. of Mintz Levin, 666 Third Avenue, New York, New York 10017**, in the above captioned cause now pending in the Superior Court within the Judicial District of Stamford in said State of Connecticut.

THEREFORE, you are authorized and directed to take the deposition of David Lagasse, in accordance with Section 13-30 of the Connecticut Rules of Court, a copy of which is attached, The deposition shall be captioned, headed and introduced as follows:

DOCKET NO. FST-CV15-5014808-S	)	SUPERIOR COURT
	)	
WILLIAM A. LOMAS	)	JUDICIAL DISTRICT OF
	)	STAMFORD/NORWALK
Plaintiff,	)	
	)	
v.	)	AT STAMFORD
	)	
PARTNER WEALTH MANAGEMENT, LLC,	)	
KEVIN G. BURNS, JAMES PRATT-HEANEY,	)	
WILLIAM P. LOFTUS	)	
	)	SEPTEMBER , 2016
Defendants.	)	

Deposition of David Lagasse taken on behalf of Plaintiff William A. Lomas,

The deponent having been first duly sworn deposes and states as follows:

Following the foregoing introduction, you will cause the deposition to include the question and answers to each and in identical language used in said question and in said answers by the deponent. The questions and answers shall be appropriately designated according to the party of attorney asking the question. One certificate, envelope or direction will suffice for the entire deposition of the deponent. Every document or other exhibit referred to in the deposition and annexed thereto should be signed or initialed by the stenographer and marked in some manner for identification.

At the conclusion of the deposition, you will annex thereto your certification in substantially the following form:

STATE OF NEW YORK) )

COUNTY OF NEW YORK ) )

Personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2016, David Lagasse, who made a solemn oath (or affirmation) to the truth of the same; which deposition was taken to be

used in the above-entitled action now pending in Superior Court for the Judicial District of Stamford in the State of Connecticut; the reason for taking said deposition being that the deponent is permanently located outside the State of Connecticut.

Subscribed, taken and sworn to before me:

\_\_\_\_\_  
Commissioner Appointed by the Superior Court  
For the Judicial District of Stamford

You will place the deposition transcript in an unstamped envelope, securely seal the envelope and endorse the envelope on its outside as follows:

DOCKET NO. FST-CV15-5014808-S	)	SUPERIOR COURT
	)	
WILLIAM A. LOMAS	)	JUDICIAL DISTRICT OF
	)	STAMFORD/NORWALK
Plaintiff,	)	
	)	
v.	)	AT STAMFORD
	)	
PARTNER WEALTH MANAGEMENT, LLC,	)	
KEVIN G. BURNS, JAMES PRATT-HEANEY,	)	
WILLIAM P. LOFTUS	)	
	)	
Defendants.	)	

DEPOSITION OF DAVID LAGASSE  
TAKEN ON \_\_\_\_\_, 2016

You will then enclose the unstamped envelope, thus endorsed, in an outer envelope, address the latter and promptly forward the same to the party at whose request it was taken and give to all other parties a notice that the deposition has been transcribed and so delivered.

SO ORDERED

Dated at Stamford, Connecticut, this \_\_\_\_\_ day of \_\_\_\_\_, 2016

BY THE COURT

\_\_\_\_\_  
Judge of the Superior Court

**CERTIFICATION OF SERVICE**

This is to certify that on September 21, 2016, a copy of the foregoing was served by e-mail and first class mail, postage prepaid, to all counsel of record as follows:

Richard J. Buturla, Esq.  
Mark J. Kovack, Esq.  
Berchem, Moses & Devlin, P.C.  
75 Broad Street  
Milford, CT 06460

Gerard Fox, Esq.  
Edward D. Altabet, Esq.  
Steven I. Wallach, Esq.  
Gerard Fox Law P.C.  
12 East 49<sup>th</sup> Street, Suite 2605  
New York, NY 10017

*/s/ Thomas J. Rechen* \_\_\_\_\_  
Thomas J. Rechen