

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,) SEPTEMBER 23, 2016
AND WILLIAM P. LOFTUS,)
)
Defendants.)
)
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) ANSWER AND
) COUNTERCLAIM COMPLAINT
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. Deny, except admit that Partner Wealth Management, LLC (“P~~W~~M”) is a Connecticut limited liability company and has its principal place of business at 33 Riverside

Avenue, Westport, CT 06880.

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 allegations are 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 allegations are 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 allegations are 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 allegations are 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 allegations are denied.

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

12. Deny the first sentence of paragraph 12. Deny knowledge and information sufficient to form a belief as to the truth of the allegation contained in the second sentence of paragraph 12. Admit the allegations contained in the last sentence of paragraph 12, except deny that LLBH Group Private Wealth Management, LLC (“**LLBH Group**”) provided broker-dealer services.

13. Admit, except deny knowledge and information sufficient to form a belief as to

the truth of the allegation that the document attached as Exhibit C is a complete copy of the Asset Purchase Agreement dated December 1, 2009 by and between the parties thereto.

14. Admit, except deny knowledge and information sufficient to form a belief as to the truth of the allegation that a true and accurate copy of the Management Agreement is attached as Exhibit D to the Amended Complaint.

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. Deny, except admit that Lomas' notice of withdrawal from PWM is dated October 13, 2014 and that the effective date of Lomas' withdrawal from PWM is January 14, 2015.

18. The allegations contained in paragraph 18 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

19. The allegations contained in paragraph 19 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

20. The allegations contained in paragraph 20 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

21. The allegations contained in paragraph 21 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

22. The allegations contained in paragraph 22 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

23. The allegations contained in paragraph 23 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

24. The allegations contained in paragraph 24 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

25. The allegations contained in paragraph 25 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

26. Admit that Jeff Fuhrman was the COO and CFO of LLBH, but deny knowledge and information sufficient to form a belief as to the remainder of the allegations in paragraph 26.

27. Deny.

28. Deny.

29. Deny.

First Count
(Breach of Contract)

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
(Breach of Fiduciary Duty)

1-32. Defendants hereby incorporate by reference their responses to paragraph 1-32 of the Amended Complaint.

33. Deny.

34. Deny except admit that Burns and Fuhrman exchanged a series of email on or about October 18 and 19, 2014.

35. Deny, except admit that Fuhrman sent an email on or about October 18 or 19, 2014, part of which appear to be reproduced in paragraph 35 of the Amended Complaint.

36. Deny, except admit that Burns sent an email on or about October 18 or 19, 2014, part of which appears to be reproduced in paragraph 36 of the Amended Complaint.

37. Deny, except admit that Fuhrman sent an email on or about October 18 or 19, 2014, part of which is reproduced in paragraph 37 of the Amended Complaint.

38. Deny, except admit that Fuhrman, who is not a Member of PWM, prepared a Power Point presentation dated September 13, 2013.

39. Deny.

40. Deny, except admit that Burns sent an email on or about November 21, 2014, part of which appears to be reproduced in paragraph 40 of the Amended Complaint.

41. Deny, except admit that Burns sent an email on or about November 21, 2014, part of which appears to be reproduced in paragraph 41 of the Amended Complaint.

42. Deny.

43. Deny, except admit that a new agreement that was duly voted upon and became effective January 1, 2015.

44. Deny; the 2015 PWM Agreement speaks for itself.

45. Deny knowledge and information sufficient to form a belief as to the truth of the allegation concerning Lomas' personal expectations.

46. Deny.

47. The allegations contained in paragraph 47 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

48. The allegations contained in paragraph 48 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

49. The allegations contained in paragraph 49 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

Third Count
(Willful and Wanton Misconduct)

1-49. Defendants hereby incorporate by reference their responses to paragraph 1-49 of the Amended Complaint.

50. Deny.

51. The allegations contained in paragraph 51 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

52. The allegations contained in paragraph 52 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

53. The allegations contained in paragraph 53 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

54. The allegations contained in paragraph 54 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

Fourth Count
(Oppression)

1-54. Defendants hereby incorporate by reference their responses to paragraph 1-54 of the Amended Complaint.

55. The allegations contained in paragraph 55 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

56. The allegations contained in paragraph 56 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations

are denied.

57. The allegations contained in paragraph 57 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

Fifth Count
(Common Law Action for Accounting)

1-57. Defendants hereby incorporate by reference their responses to paragraph 1-57 of the Amended Complaint.

58. The allegations contained in paragraph 58 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

59. The allegations contained in paragraph 59 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

Sixth Count
(Statutory Action for Accounting)

1-59. Defendants hereby incorporate by reference their responses to paragraph 1-59 of the Amended Complaint.

60. The allegations contained in paragraph 60 state conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required the allegations are denied.

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.

Seventh Count
(Declaratory Judgment)

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

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.

Fourteenth Affirmative Defense

76. Plaintiff's claims are barred under the doctrine of mistake.

Fifteenth Affirmative Defense

77. Plaintiff's claims are barred for lack of consideration.

Sixteenth Affirmative Defense

78. Plaintiff's claims are barred because there was no meeting of the minds.

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 Counterclaim Complaint 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.

a. PWM was formed pursuant to the PWM Limited Liability Company (“**LLC**”) Agreement dated November 30, 2009 (the “**2009 PWM Agreement**”).¹

b. The 2009 PWM Agreement was duly amended as of May 1, 2014 in order to link compensation to performance (the “**2014 Amendment**”).²

c. An amended and restated PWM LLC agreement was duly voted on and approved by the Members of PWM holding at least 65% of the Percentage Interests³ on or about December 26, 2014, and which became effective January 1, 2015 (the “**2015 PMW Agreement**”).⁴

¹ See **Exhibit A**. (All Exhibits attached to this Counterclaim Complaint are true and correct copies of the document that they purport to be. All Exhibits are being filed under seal. Counterclaim Defendant is in actual possession of all Exhibits hereto and will be served copies of all Exhibits.)

² See **Exhibit B**.

³ As defined in the 2009 PWM Agreement.

⁴ See **Exhibit C**.

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 by way of a letter dated October 13, 2014 (the “**Withdrawal Notice**” or “**Notice of Withdrawal**”) to PWM and the other Members.⁵ As stated in the Notice of Withdrawal, the effective date of Lomas’ withdrawal as a member of PWM was January 14, 2015 (the “**Effective Withdrawal Date**”). Prior to the Effective Withdrawal Date, Lomas remained an officer and member of PWM.

7. Burns, Loftus, Pratt-Heaney, and Lomas are collectively referred to herein as either the “**Partners,**” “**Principals,**” or “**Members**” (or in the singular when referring to one).

8. Burns, Loftus, and Pratt-Heaney are referred to collectively as either the “**Remaining Partners,**” “**Remaining Principals,**” or “**Remaining Members.**”

9. Non-Party LLBH Private Wealth Management, LLC (“**LLBH**”) is a registered investment advisor (“**RIA**”).

10. PWM is the manager of LLBH pursuant to a Management Agreement dated December 1, 2009 (the “**Management Agreement**”). Burns, Pratt-Heaney, and Loftus are all officers of LLBH. Prior to the Effective Withdrawal Date, Lomas was also an officer of LLBH.

11. Non-Party Jeff Fuhrman (“**Fuhrman**”) is currently the President of LLBH and

⁵ See Exhibit D.

was, during the events described herein, the Chief Financial Officer (“**CFO**”) and Chief Operation Officer (“**COO**”) of LLBH.

12. Non-Party Focus Financial Partners LLC (“**Focus**”) is the 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

I. PRELIMINARY STATEMENT

13. After working together for many years at Merrill Lynch, Burns, Loftus, Pratt-Heaney, and Lomas decided to break away from the so-called “wire-house” environment and establish their own independent wealth advisory business in October 2008 (the “**Business**” or “**LLBH/PWM**”).⁶ 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. Although Lomas had never been the strongest performer, in the Business’ first few years his work was adequate. But over time, Lomas’ performance began to decline. Over the course of 2013 and 2014, he had not only substantially underperformed, but was actively harming the Business by, among other things, failing to develop himself as an advisor; by his frequent absenteeism; by his failure to originate any meaningful Business since at least 2013 despite express and continuing promises and representations to the other Principals that he would do so; by causing unnecessary delays in the implementation of wealth management strategies, which negatively impacted PWM’s bottom line; by delaying and preventing necessary reforms to PWM’s compensation and

⁶ Because of the complex structure of the relationships between LLBH, PWM, LLBH Group, and the Principals, the Counterclaim Complaint will collectively refer to the on-going enterprise as either the “**Business**” or “**LLBH/PWM**.”

valuation structure; and by hindering the implementation of the recommendations developed (at considerable expense) by a management consultant that had been retained to help LLBH/PWM achieve robust growth.

14. LLBH/PWM's business is wealth management. It entails providing high net worth and ultra-high net worth individuals customized advice across all areas of their financial lives, including investment management, trust and estate planning, charitable giving, tax planning, retirement planning, insurance planning, banking, and family and corporate governance matters.

15. At the most basic level, the economics of the business are straightforward: the more client assets that are under LLBH's management, the greater the fees generated. Under the Management Agreement, the fees generated by LLBH's management of client assets, less costs and expenses, are referred to by two interchangeable terms: Earnings Before Owners Compensation ("**EBOC**") or Earnings Before Partners Compensation ("**EBPC**"). LLBH's EBOC is split between Focus, who receives 47.5% of EBOC, and PWM, who receives 52.5% of EBOC. PWM's share of EBOC is called the "**Management Fee**."

16. Prior to 2014, the Management Fee was split equally among the four partners. But an equal distribution is only fair and equitable if everyone contributes equally. The inequity of the equal distribution of the Management Fee began to become clear in or around the fourth quarter of 2012 when Burns took stock of the relative contributions of the Partners to the growth of the Business and realized that while he was working at a break-neck pace and growing his book of business, he was not being compensated for that performance.

17. To address the matter, in early 2013, LLBH/PWM hired a consultant, **FA Insight** (or "**FAI**"), to help it rationalize the compensation system because – up until that point

– compensation was completely unmoored from performance. When it became apparent to Lomas that his free-riding would be much more difficult under a system that linked compensation to performance, he informed the other Principals in late February 2013 that he wanted to withdraw from the Business. Negotiations with Lomas followed in March and April 2013. The Remaining Principals, working with Focus, offered Lomas \$2.75 million (the “**2013 Offer**”), which was more than generous.⁷ But it wasn’t enough for Lomas.

18. Meanwhile, while the Partners were negotiating in good faith with Lomas, FA Insight had been working hard throughout February, March, and April 2013 to develop a multi-year organizational plan designed to permit the Business to achieve robust growth. In order to achieve robust growth, the Principals (with the exception of Pratt-Heaney) had to be primarily focused on new client acquisition, meaning at least 70% of their time had to be devoted to originating new business. In order to accomplish this, FA Insight provided two key strategic recommendations. First, with the exception of Pratt-Heaney, who was to continue having executive operational responsibilities as Chief Executive Officer (“CEO”), Chief Investment Officer (“CIO”), and Chief Compliance Officer (“CCO”), the Business would need to hire a full time CFO/COO to manage all non-client facing activities, including operations, finance, human resources, IT, and marketing. Second, in order to further increase the Principals’ capacity to focus their time on client acquisitions, the next generation of advisors had to be groomed and these associate advisors needed to take over the role of managing existing client relationships.

19. When Lomas rejected the offer of \$2.75 million sometime at the end of April 2013, it was after FA Insight had developed and presented its key strategic recommendations to LLBH/PWM – which did not include Lomas. Lomas knew he wanted more money than he’d

⁷ See Exhibit E.

been offered and he knew that he had to persuade the other Partners – who were all excited that he was leaving – to let him stay. And so he hatched a scheme. He told his Partners that he would commit to the plan laid out by FA Insight and would be focused on growing the business and client acquisition. But when Lomas made these representations, he knew they weren't true. He knew he had no intention of originating new business. And he knew he intended to hinder and delay, to the extent he was able, the implementation of FA Insight's recommendations. What Lomas knew was that the 2013 Offer was keyed off of the 2012 Management Fee. When he told his Partners that he would recommit himself to growing the Business, 2013 was nearly half over and the 2013 Management Fee was projected to be higher than the 2012 Management Fee. Lomas' plan was to stay for long enough to attempt to get the benefit of a buy-out that would be based on the higher 2013 Management Fee. But when 2014 rolled around, Lomas knew that the Management Fee for 2014 was projected to be even higher than 2013. He knew this because LLBH/PWM submits budget numbers to Focus every year in November or December for the next year. Working with his lawyer, Sam Braunstein, Lomas adjusted his scheme over January, February, and March of 2014. Lomas believed if he could remain a Member until the middle of October 2014, he could give the minimum 90 days' notice required for withdrawal under the 2009 PWM Agreement, that his withdrawal would then be effective January 2015, and then – although he would have contributed virtually nothing to the growth of the Business – he could claim that he was entitled to be bought out for an amount keyed off of the higher 2014 Management Fee instead of the lower 2013 Management Fee. All Lomas believed he had to do was intentionally delay and hinder the other Partners from changing PWM's compensation and valuation structure even though he promised the other Partners that he was committed to the aggressive growth plan developed by FA Insight and would be supportive

of majority decisions.

20. The other Partners had no inkling they were being misled. Indeed, they had no idea that every day that they saw Lomas between the day he falsely promised he would work to grow the business and the day he noticed his resignation, that he was dealing dishonestly with them, in bad faith, and failing to provide them with material information concerning his intentions. The Remaining Members were “all in” and worked diligently to implement FA Insight’s recommendations. Fuhrman was hired in July 2013 to be the CFO/COO and the process of grooming the associate advisors to manage existing client relationships was underway.

21. Shortly after his arrival, Fuhrman not only saw the inequities of the compensation structure, but realized that compensation and valuation would need to be reformed if LLBH/PWM wanted to attract and successfully recruit new partners into the Business.

22. In September 2013 – or roughly six weeks after he began – Fuhrman outlined a way to change the compensation structure so that it was linked to business development. But Lomas, as part of his scheme, actively delayed and hindered the adoption of the new compensation system until May of the following year. Lomas knew that as soon as the Partners fixed the broken compensation system, the next step in the process was to change the way PWM was valued to match the changes to the compensation structure. Changing the way a Member’s interest in PWM was valued had been on the Members’ radar for a long time – and it was actively discussed with FA Insight in the spring of 2013, with Fuhrman in the fall of 2013 and into 2014, and at the June, July, August, September, and October 2014 Executive Committee meetings. Burns, Loftus, and Pratt-Heaney all wanted to change the compensation and valuation provisions. They entertained Lomas’ delays because they sought to build consensus – they

thought they were dealing with a fellow Partner who was acting in good faith. But in fact, Lomas was working to delay in order to defraud them.

23. Additionally, it had always been assumed by the Partners that Focus, if asked, would be willing to help PWM finance the buy-out of a withdrawing Principal's equity. But the Principals learned over the course of 2013 and 2014 that they were mistaken about what Focus was willing to do and mistaken about a key tax issue.

24. One of the other Principals, Pratt-Heaney, had been looking to cash in a portion of his equity in PWM in late summer/early fall of 2014. Pratt-Heaney was looking to sell 20% of his 25% equity stake – or 5% of PWM. At Pratt-Heaney's request, Fuhrman had approached Focus to consider the financing of such a transaction. On October 13, 2014, Fuhrman reported back. In a meeting on October 13, 2014 with Fuhrman, Burns, Loftus, and Lomas (the “**October 13 Meeting**”), the Members learned that Focus was unwilling to buy a portion of Pratt-Heaney's equity. Focus would only buy cash flow – *i.e.* the fees generated by a Partners' book of business (at some undisclosed multiple). As far as Focus was concerned, PWM's equity was a fiction – the only thing that was real, that had value, and that could be purchased, was an individual Partner's contribution to Management Fee.

25. This unwelcome development was compounded by the second mistaken assumption that Fuhrman had pointed out to the Partners months earlier in connection with discussions about LLBH/PWM's ability to bring junior partners into the Business. Call it the “**Pre-Tax/Post-Tax Issue.**” Under the then-current structure, for every \$1.00 paid to a withdrawing Member of PWM, the remaining Members of PWM would need to earn approximately \$1.92 – or nearly double the amount to be paid. This is because while the valuation was calculated on a pre-tax basis, the purchase money would be drawn from post-tax

dollars. This structure would make enticing new junior partners to buy into the business very difficult – even more so if valuation was not linked with actual performance and results.

26. Despite these unwelcome revelations, the Remaining Principals had a plan in place for aggressive growth and did not believe there was an imminent problem because, as far as the Remaining Principals knew, none of the Principals intended to retire in the near-term. Indeed, when Burns and Loftus asked Lomas at the October 13 Meeting whether he planned to retire in the near-term, Lomas misled them and told them “I don’t know” when he knew full well that he intended to withdraw as he’d been planning for months, if not longer. Lomas understood the significance of these two revelations – Focus’ position that PWM’s equity is a fiction and the Pre-Tax/Post-Tax Issue – to his scheme to defraud the other Partners. Lomas left the office early that day and, either on his own or with the help of his attorney, Sam Braunstein (“**Braunstein**”) drafted his Notice of Withdrawal, which he tendered the next day, on October 14, 2014.

27. The other Principals were momentarily stunned by the Withdrawal Notice. Since its formation, with the exception of Lomas’ first aborted resignation from PWM in the spring of 2013, none of the Principals had given any real consideration to the possibility that one of the founding Members would withdraw before the infusion of new capital by newly admitted Members. And equally as significant, although Lomas was a 25% owner of PWM, he had not been responsible for anywhere near 25% of the fees generated. Fuhrman and Loftus attempted to discuss the situation with Lomas in the ensuing weeks and tried to work out a deal with him that would not result in an economic hardship for the Remaining Principals or cause the Business to implode. But Lomas refused to negotiate.

28. Discussions had been underway since at least the middle of 2013 concerning the need to change the way PWM would be valued so that both compensation and valuation of a

Principal's interest was tied to his or her performance. But the Principals had determined that the first order of business was to change compensation since – at least as far as Burns, Loftus, and Pratt-Heaney knew – none of the Principals intended to retire in the near term. And so in or around May 2014 – after months of stonewalling and delays by Lomas – the Principals unanimously agreed to change the compensation structure and adopted the 2014 Amendment. With the 2014 Amendment secure, the Principals turned to addressing the way that PWM should be valued. Lomas had other ideas though and, in furtherance of his scheme to defraud PWM and the other Principals, had stonewalled these efforts in order to attempt to claim the benefit of the 2014 Management Fee.

29. While, as a practical matter, the preferred method of change was by consensus, unanimity was never a requirement under the 2009 PWM Agreement in order to amend it.

30. Article VII of the 2009 PWM Agreement authorizes changes to the agreement by a 65% majority vote. An amended and restated agreement was prepared, discussed, and put to a vote in late December 2014. Burns, Loftus, and Pratt-Heaney – representing a 75% majority – voted in favor of adopting the proposed amended and restated operating agreement. As a result of this supermajority vote in favor of the amended and restated operating agreement, the 2015 PWM Agreement became effective January 1, 2015, two weeks before the Effective Date of Lomas' withdrawal on January 14, 2015 – *i.e.* while Lomas was still a Member.

31. The remaining Principals are seeking to protect the Business they have worked hard to build and grow and which Lomas has damaged. The 2015 PWM Agreement was duly voted on while Lomas was still a full Member of PWM. PWM and the Remaining Principals seek a declaration that the 2015 PWM Agreement controls the valuation of Lomas' interest in PWM and they seek a declaration that none of the provisions of the 2009 PWM Agreement

affect the valuation of a Member's interest in the case of a voluntary withdrawal. In addition, Counterclaim Plaintiffs seek a set off and damages against any amount to be paid to Lomas under the 2015 PWM Agreement (or in addition to or alternatively under the 2009 PWM Agreement) 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 obligation to use any and all good faith efforts in connection with the transitioning of his clients; (iv) the failure to devote his full time and energy to the Business in breach of the 2009 PWM Agreement; (v) for the fraud he perpetrated against the other Principals when he falsely promised them he would work to grow the business; (vi) his breach of the non-solicitation covenants; (vii) his breaches of his fiduciary duties to PWM; (viii) his breach of his fiduciary duties to the Remaining Principals; and (ix) for punitive damages for his willful and wanton misconduct.

32. Counterclaim Plaintiffs also seek their costs and attorneys' fees in connection with the foregoing, to which they are contractually entitled to.

II. THE FORMATION OF PWM, THE MANAGEMENT FEE, AND VALUATION MULTIPLES

33. In October 2008, the Principals left Merrill Lynch and established an RIA called LLBH Group Private Wealth Management, LLC (previously defined as "**LLBH Group**").⁸ 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, who specializes in providing financial and operational support for independent RIAs. But when the Principals broke away from Merrill Lynch, it was the first such first break away that Focus had ever helped facilitate.

34. In connection with their break away from Merrill Lynch, the Principals retained a

⁸ See Exhibit F.

law firm, the Hamburger Law Firm (the “**Hamburger Law Firm**”). In structuring the transaction with Focus, the Hamburger Law Firm relied upon form documents drafted by Focus.

35. On or about October 17, 2008, two key documents were executed: (a) the LLBH Group LLC Agreement between and among the Principals (the “**LLBH Group LLC Agreement**”); and (2) an Option Agreement between Focus and LLBH Group and the Principals (the “**Option Agreement**”).

36. Under the Option Agreement, Focus obtained an option to purchase substantially all of the assets of LLBH Group, which was exercisable for 30 days from the first anniversary of the date of the Option Agreement.

37. Roughly a year later, in October or November of 2009, Focus exercised its option and the parties entered into a series of pre-negotiated agreements:

- a. an Asset Purchase Agreement between, on the one hand, Focus and LLBH, 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 2009 PWM Agreement; and
- c. the Management Agreement.

38. Under the APA, Focus, through its subsidiary, LLBH, acquired all of the assets of LLBH Group – including accounts receivables, client and customer lists, and intellectual property. Focus paid substantial consideration to the Principals in the form of cash and equity in Focus.⁹

39. After these series of transactions, PWM became the manager of LLBH and became contractually entitled to the Management Fee.

⁹ Importantly, because of the structure of the deal, none of the Principals made a capital contribution to PWM.

* * *

40. PWM's only asset is the Management Fee that it is contractually 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.**

41. One way to think about the difference between the Principals' compensation and the valuation of a Member's interest in PWM is the time horizon. Compensation in a given year is based upon how well LLBH and an individual Partner's book of business does in that year in terms of fees. Valuation is based upon looking at a Partner's book's past fee generation and then projecting that into the future.

42. Consider compensation first. If the Management Fee in a given year is \$1 million and if the Management Fee is split equally without regard to performance, then all four Partners would receive \$250,000 in that year. If compensation is based, in whole or in part, upon performance, then the Partners will divide up that \$1 million Management Fee according to their relative performance.

43. Next consider valuation. The economic value of a Partner's interest in PWM is not a function of equity – it is a function of the fees that his book of business has generated and is expected to generate in the future. When, for example, a Member withdraws, the withdrawing Member is selling and the remaining Members are buying – not equity – but cash flow, *i.e.* a Member's book of business. The expectation is that a departing partner's book of business will continue to produce fees for the Business into the future. Thus, the value of a Principal's interest is not the amount of fees generated in a particular year, but the expected future value his or her book of business will generate for LLBH/PWM. And so a multiple needs to be applied.

44. Although the 2009 PWM Agreement mentions a multiple of 5.0x, it is clear that

neither the Partners, nor the Hamburger Law Firm, nor Focus contemplated at the time the 2009 PWM Agreement came into effect that that multiple would apply to a situation involving the payments owed to a departing Partner who was voluntarily withdrawing.

45. The 2009 PWM Agreement was based upon the LLBH Group LLC Agreement – which was the operative agreement among the Principals between October 17, 2008 and November 30, 2009.

46. Significantly, Section 8.8 of both the LLBH LLC Agreement and the 2009 PWM Agreement – which mentions the 5.0x multiple – are identical. However, when the LLBH Group LLC Agreement was drafted, no one understood the valuation provisions contained in that agreement to have any applicability to the valuation of a founding Member’s interest in PWM upon voluntary withdrawal.

47. In an October 7, 2008 email, Loftus commented on what was then Section 8.7 of the draft LLBH Group LLC Agreement (“**Draft Section 8.7**”). The proposed language of Draft Section 8.7 is identical – right down to the misuse and misspelling of the word “predecessor” – to what would become Section 8.8 of the LLBH LLC Agreement and Section 8.8 of the 2009 PWM Agreement.¹⁰

¹⁰ The text of Draft Section 8.7 (including additions and omitting deletions) that Loftus was commenting on reads:

The initial value of the Company shall be the value determined by Focus Financial Partners, LLC in any acquisition of the Company or a predecessor [*sic*] entity that closes before December 31, 2009. Thereafter, or if no such acquisition has occurred, the Management Committee shall determine the value of the Company within thirty (30) days of the end of each fiscal quarter. The method to be utilized in the calculation of such value for purposes hereof shall be five (5) times the Focus Management Fee (as such term is defined in the Management Agreement to be entered into between the Company, Focus Financial Partners, LLC and certain of its operating subsidiaries) for the prior four calendar quarters, reduced by the aggregate outstanding principal balance of promissory notes issued by the Company; such value is herein referred to as “Company Value” and shall be deemed to include goodwill.

48. In the October 7, 2008 email from Loftus to the Hamburger Law Firm, on which Pratt-Heaney, Lomas, and Burns were all copied, Loftus noted that Draft Section 8.7 states that “valuation at sale is 5x’s EBOC.” Loftus went on to explain: **“I asked Rich [Gil of Focus] about this and he agrees that this refers to partnership shares bought by either a junior partner at LLBH or Focus Financial.”**¹¹ In short, no one – not the parties to the LLBH Group LLC Agreement, nor the parties to the 2009 PWM Agreement, nor the Hamburger Law Firm which advised with respect to both agreements, nor Focus – who provided the form agreement – ever understood or had a meeting of the minds that the multiple mentioned in either the LLBH LLC Agreement or the 2009 PWM Agreement would control the valuation and payout with respect to a voluntary withdrawal by a Member of PWM. They had life insurance policies in the event of the untimely death of a Member, but no insurance for any other purposes. And indeed, it was the farthest thing from anyone’s mind.

49. As detailed in the Management Agreement’s Transition Plan, there was no contemplation that any of the Members would retire for at least a decade. Pratt-Heaney, who is the oldest of the Principals, intended to remain “active in the firm for at least 10 years” – or until at least 2019. Additionally, “William Loftus, Kevin Burns and William Lomas have no current plans to transition out of the business.” The Transition Plan further noted the importance of “developing the next generation of leadership” and identified key individuals within LLBH/PWM who could potentially buy into the Business as junior partners.

50. For better or worse, no one understood the provision mentioning the 5.0x multiple as having any bearing on the valuation of a Partner’s interest who was voluntarily withdrawing.

¹¹ See **Exhibit G**. (All emphasis of quoted documents is added unless otherwise specified.)

III. LOMAS GIVES UP THE PLANNING ROLE AND FAILS TO DO MUCH ELSE WHILE COLLECTING HIS GENEROUS SALARY

51. When the Principals left Merrill Lynch and struck out on their own on October 17 2008, the financial world was in chaos: Lehman Brothers had filed for bankruptcy on September 15, 2008, which remains the largest bankruptcy filing in U.S. history; Bear Stearns had collapsed and had been sold in a fire-sale to JPMorgan Chase in March 2008; by the fall of 2008 the credit markets had completely seized up; and between August 15, 2008 and October 17, 2008 the Dow Jones Industrial Average fell from 11659.90 to 8852.22. Against this backdrop, the Principals were scrambling to keep their clients, set up a business, and then grow it.

52. When they left Merrill, the Principals had a relatively clear idea of the roles that each would perform at their newly created independent RIA. While all of them were responsible for new business development, 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 and operational roles, and Lomas was to devote a portion of his time to the Chief Financial Officer role and running the planning process. Lomas, however, failed to adequately perform either of his operations roles and his efforts at business generation substantially stagnated over time.

53. The planning process is an important aspect of the Business because LLBH/PWM'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 based upon their assets and goals. The planning process is also 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 that the Principals offer their clients, which is summed up by LLBH's trademarked

tagline: “Wall Street Experience Meets Hometown Care.”

54. During the planning process, quantitative fact finding is undertaken and a set of recommendations running the gamut of investment management, trust and estate planning, philanthropic giving, corporate governance, tax planning, family governance, retirement planning, banking, and insurance needs are all evaluated and a comprehensive plan to meet a client’s goals is developed.

55. 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.

56. Despite this advantage, shortly after establishing the Business, Lomas informed the other Principals that he no longer wanted to manage the planning process. Instead, he told them he wanted to develop business, or as he repeatedly put it, he wanted to “Get out there.” As it turns out, Lomas did not want to do much of anything – neither planning nor business development. Although planning – in addition to business development – was to be Lomas’ primary value contribution to the Business, he began transition the planning function to Mike Kazakewich (“**Kazakewich**”), an employee of LLBH, over the course of 2009. By no later than mid-2010, Kazakewich was running the planning process.

57. 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. Lomas began taking extended hunting or fishing trips while the other Principals diligently worked to build the Business.

58. By 2013 and into 2014, when he was in the office, by all accounts he would sit in his office watching youtube videos or mope about the office thereby destroying employee morale. Lomas acknowledged his destructive attitude when he sought to stay at LLBH/PWM in 2013 after attempting to resign and promised that “he would work to be more happy” which he acknowledged might require “therapy.” But nothing changed. He no longer managed the planning process, did little as CFO, and scarcely originated business. Despite contributing little, he still continued to collect his extraordinarily generous salary.

59. Indeed, Lomas had repeatedly encouraged the other Principals not to work just like him – and proposed a scheme whereby they all would take a two year ‘vacation’ and wait for their non-competition 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 § IV, infra*).

60. Not only was Lomas physically checked-out of his job, he was also mentally checked-out as well. His performance was poor and as the Business began to cater to ultra-affluent individuals, thereby becoming more complex, Lomas was simply unable to keep up. 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. It does not mean racking up various certifications – which is all Lomas seemed to do at times. 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.

61. Lomas' poor performance was compounded by the fact that he could and would delay the adoption of a 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 set up several very successful investment funds 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.

IV. LLBH ENGAGES A CONSULTANCY, FA INSIGHT, IN JANUARY 2013 TO HELP IT PLAN FOR A FUTURE OF ROBUST GROWTH AND LOMAS ATTEMPTS TO RESIGN IN FEBRUARY 2013

62. In or around the fourth quarter of 2012, Burns took stock of his own performance and the Business. He realized that he was working harder than ever before, bringing in more clients and assets to manage than ever before, but was doing worse financially. He conveyed his concerns to the other Principals. All of them agreed that a change had to occur as the original expectation – that everyone would contribute equally to the growth and development of the

business – was not holding true. What was necessary was a re-working of the Principals economic relationship to ensure that performance and success were rewarded.

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

64. 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 would include, 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.

65. 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, which had been established in 2009, was established 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 among the Principals because an equal distribution of the Management Fee was neither equitable nor fair when one of the Principals is free-riding off the hard work of the others.

66. On February 20, 2013, based upon initial feed-back in connection with reforming the compensation structure, FA Insight's mandate was expanded beyond helping the Principals re-work the compensation structure to help develop a three-year organizational structure and transition plan.

67. Lomas knew that FA Insight had been hired to help PWM rationalize the compensation structure and he knew that he would no longer be able to coast on past success. Lomas also knew that FA Insight's mandate had just been expanded because the other Principals wanted to aggressively grow PWM. And so, on or about February 25, 2013, Lomas wrote an email to the other Principals informing them that he wanted to withdraw:

I have thought long about where we are and how we manage LLBH and have come to the realization that I am just not on the same page as to how you see the business and the vision that you have to grow it. That being said I would like have a partners call tomorrow on some solutions to that inherent conflict. I believe that LLBH has a bright future, but I am not sure that is with me continuing to be a part of it.

I look forward to coming up with some creating solutions to resolve this issue quickly so that you can move ahead with your growth plans in the manner in which you think best.¹²

68. Upon receiving this email, discussions between Lomas and the other Principals began in earnest. Indeed, the Remaining Principals were excited and convinced that Lomas was leaving and, tellingly, Lomas is completely absent from any of FA Insight's long-term models for LLBH.

69. While the Principals continued to negotiate in good faith with Lomas, on March 28, 2013, FA Insight provided a report to LLBH entitled *Optimizing Organizational Design to*

¹² See Exhibit H

Support Growth and Reduce Principal Dependency (the “**March 28 Report**”).¹³ As FAI explained, as a result of meetings with the Principals and the staff of LLBH to discuss compensation on February 14 and 15, 2013, a range of “organizational structural challenges” became clear. A major issue was the fact that “[f]irm growth is dependent” on new client acquisition by the four Principals. FA Insight identified two key obstacles to the Principals’ acquisition of new clients: (i) the Principals’ need to deliver advice to existing clients; and (ii) the fact that the Principals performed certain executive functions and operational roles – both of which limited the Principals capacity to originate new clients. The report recognized that Lomas provided CFO services, Pratt-Heaney handled human capital management, compliance, operations, and had duties commensurate with the titles of CEO and Chief Investment Officer. (A subsequent report, *see infra* ¶ 76, would also reflect the reality that Loftus and Burns devoted a portion of their time to CEO and CIO functions.)

70. In addition, noted the March 28 Report, “In recent weeks Bill Lomas ... has indicated a desire to exit LLBH.” “While regrettable,” the report continued, “we have assumed for the purposes of the recommendations that Bill will depart LLBH during 2013.”

71. The March 28 Report set out a three year transition and organizational plan. One of the first recommendations was the retention of an experienced CFO/COO. This would enable the remaining Principals to focus more of their time on client acquisition and would enable Pratt-Heaney in particular to allocate an increased amount of his time – roughly 40% – to the CEO role. Pratt-Heaney would also retain his title as Chief Compliance Officer as the person who is ultimately responsible for the client function had to be a Principal.

72. Other key recommendations included further re-orienting the Principals to new

¹³ *See Exhibit I.*

client acquisition. In the first year of the plan, LLBH would work to transition trusted and key employees into the roles of full time associate advisors, which would be necessary to support the robust growth that LLBH/PWM was planning over the next three years. By the second year of the plan, the goal was for the “lead advisors” (*i.e.* the Principals) to fully transition maintenance and management of existing client relationships to the associate advisors, thereby creating additional “capacity for new client acquisition to support future growth.” The goal in year 2 was for the Principals to be allocating approximately 70% of their time to new client acquisition and 30% to management and maintenance of existing relationships. And over the third year of the transition plan the “lead advisors [would be] primarily dedicated to new business development” – *i.e.* more than 70+% of their time – and focus on maintaining “ongoing management of a small, select group of strategic relationships only.”

73. FA Insight’s plan was designed to support robust growth, the professional development of associate advisors, and facilitate the extraordinary client service that LLBH/PWM had become known for. And none of these plans included Lomas.

V. LOMAS DEVISES A SCHEME IN MARCH OR APRIL 2013 TO DEFAUD THE OTHER MEMBERS OF PWM

74. About three weeks after the March 28 Report, on or about April 18, 2013, the Principals, working with Focus, developed a power point presentation entitled *Financing for Bill Lomas Buyout*.¹⁴ As detailed in the power point prepared by Focus, the offer on the table from the Principals to Lomas was a one-time cash payment of \$2.75 million. Since Lomas was looking to withdraw in 2013, the offer was keyed off of the 2012 Management Fee, the last full year prior to what would have been the effective year of his withdrawal. Although the 5.0x

¹⁴ See Exhibit E.

multiple mentioned in the 2009 PWM Agreement has no bearing on the valuation of a the value of a Principal's interest who is voluntarily withdrawing, the offer was based on that multiple and contemplated an upfront lump sum payment rather than installment payments.

75. But these terms weren't good enough for Lomas. Lomas demanded that a 5.4x multiple be used. Despite Focus' power point presentation, which clearly showed that Focus and the Principals all contemplated a 5.0x multiple, Lomas insisted that Focus was willing to buy him out at a 5.4x multiple.

76. A few days later, on April 25, 2013, FAI provided another report to LLBH entitled *Addendum to Organizational Design Recommendations* (the "**April 25 Report**").¹⁵ The April 25 Report opened by noting that "[a]s 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 [*i.e.* the March 28 Report], it has been assumed that Bill will not play a role within the future LLBH organizational structure."

77. However, at some point in late April or early May 2013, Lomas refused to accept the 2013 Offer. According to Lomas' own hand-written notes, "I can't make numbers work at current offer." Lomas wanted more money and he needed to figure out a way to get it.

78. Lomas' performance had been far below grade – indeed, throughout this time he wasn't showing up to work – and the other Principals certainly could have terminated him for cause under Section 8.10 of the 2009 PWM Agreement.

79. Moreover, none of the other Principals asked him to stay. On April 27, 2013, Burns attempted to put the matter diplomatically but directly:

Given recent events I believe that your staying at the firm would not be the right thing. Nothing has materially changed since you announced your desire to retire and the genie is out of the bottle.

¹⁵ See **Exhibit J**.

Jim, Bill and I are as aligned as we have ever been on the direction the firm needs to go. We are excited, we are energized and we feel as though its [sic] now or never to make this push. You on the other hand have by your own admission not been fully engaged for quite some time. You are in better financial shape than any of us and have made it clear that you are much more risk adverse than we are. That's easy to understanding. This caution [] too often turns to inaction and delay and quite frankly, in my opinion will dampen our enthusiasm and impede our future growth. I believe that view is shared by many on the team.¹⁶

80. Faced with a generous offer that was not good enough and Partners who were frustrated by his admitted lack of energy and declining performance, Lomas hatched a scheme to stay so he could continue his free-ride on the other Partners hard work and then exit roughly six months later with a windfall pay-day. The scheme was as simple as it was brazen and dishonest.

81. If Lomas withdrew in 2013, regardless of the multiple used to calculate the value of a stake in PWM, he believed the value of his interest would be tied in some way to the 2012 Management Fee. The way Lomas understood the mechanics of a withdrawal, in whatever year a Partner withdrew, the relevant starting place for discussions about his interest was the prior calendar year's Management Fee. When Lomas decided not to accept the offer of \$2.75 million, 2013 was nearly half over. Lomas, as a Member of PWM and CFO, had regular access to the actual financials of LLBH and would have known that 2013 was shaping up to be an even better year than 2012. Lomas also knew, based upon FA Insight's March 28 Report and the April 25 Report, that LLBH was positioning itself for robust growth over the next three years and was in the process of implementing the plan developed by FA Insight.

82. But Lomas also knew that the other Principals and the LLBH team were frustrated with him. He knew if wanted to remain at the Business that he would need to make his Partners believe that he was as committed to adopting and implementing FA Insight's recommendations

¹⁶ See Exhibit K.

as they were. FA Insight's recommendations included, among other things, having the Principals (with the exception of Pratt-Heaney) transition most of their operational responsibilities to a full time CFO/COO and transition most of their responsibilities for the maintenance and management of existing relationships to associate advisors so that the Principals could devote at least 70% of their time to new client acquisition.

83. Lomas had long ago given up the planning process. A search was underway for a CFO/COO and Fuhrman would be hired by LLBH to fill this role by late July 2013 – meaning that whatever operational responsibilities Lomas had as CFO would soon be completely assumed by Fuhrman. LLBH had a team of trusted employees in place who were being groomed as associate advisors to handle the management of existing client relationships. And so the only role for Lomas if he stayed – indeed, the only way he could add value to the Business – was by “prospecting” or business development. Lomas knew all of this and that is why he falsely promised the other Principals that he would commit himself to “prospecting” for new clients. Lomas believed that by falsely promising PWM and his Partners that he would recommit himself to the growth of the Business, he could buy himself enough time to attempt to claim the benefit of the 2013 Management Fee.

84. And so, when Lomas told the other Principals that he planned to remain at the Business – despite months of negotiations over a buy-out and despite FA Insight models that did not include him – he promised and represented to the other Principals that he would work with vim and vigor to grow the Business by focusing on new client acquisitions, would support majority decisions, and would work to implement the long-term strategic plan developed by FA Insight. As Loftus recounted in his deposition:

He had said to everyone after the negotiation [to buy him out in 2013] * * * **he said I'm all in, I'm totally recommitted to**

the business, I'm going to reenergize myself and be a strong contributor.

That was in the summer of 2013. And although his performance was very poor from the summer of 2013 through 2014, you know, I took him at his word that he was recommitted to the business, and I was operating -- I was extremely busy, as you can see by the productivity, and I just sort of took my partner at his word that he was recommitted to the business and that he was going to be part of the future.¹⁷

85. Lomas had, at one point in his career, developed business. But his contribution to the growth of the Business had substantially diminished over time and he was living off of his stagnant book of legacy clients. Despite their reservations about him staying, the other Principals believed that Lomas meant what he said and that he would contribute to the growth of the Business.

86. Lomas feigned doing work for a few weeks and thereafter he resumed his familiar 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. Although the other Partners were all committed to implementing FA Insight’s compensation recommendations and then adjusting how PWM was valued, Lomas, as part of scheme to defraud the other Partners stonewalled, delayed, and hindered the other Principals from implementing these vital and necessary changes to LLBH/PWM.

87. Despite Lomas’ promises and representations – and despite the fact that he no longer had responsibilities as CFO or for planning – there was mounting frustration with him. Indeed, on September 5, 2013 Burns told Lomas:

Bill there is no equity value unless we at least double this business. I am beyond frustrated. There is nothing more important than that right now. Not next month not next year. A perfect example and

¹⁷ See Deposition Tr. of William Loftus taken on August 30, 2016 (“**Loftus Dep. Tr.**”) at 122.

just a symptom of the issue is You going to a Pershing meeting that our coo and Jim are already going to. **It is just more time away from what you told us was going to be your primary new role of prospecting. I'm just not seeing it. I see very little has changed since before the retirement fiasco.**¹⁸

88. Burns' concern was prescient. In 2013 and 2014 Lomas generated the least amount of fees compared to the other Partners. Lomas' contribution to year-over-year fee growth was 8% of the total fee growth – and most of this growth was attributable to good market conditions as he only added one new client between 2013 and 2014. By contrast, Burns and Loftus, who – like Lomas – had no operational responsibilities contributed 41% and 39% to LLBH/PWM's year-over-year fee growth. And Pratt-Heaney, who retained substantial operational responsibilities, still beat Lomas and contributed 12% to LLBH/PWM's year-over-year growth. Whether in relative or absolute terms, despite his express promise to develop new business and to implement FA Insight's recommendations, Lomas continued his free-ride for the purpose of defrauding his Partners.

VI. THE 2014 AMENDMENT TO REFORM COMPENSATION, THE PRINCIPALS' ON-GOING DISCUSSION TO CHANGE VALUATION, AND LOMAS' CONTINUING FRAUD AND BREACH OF FIDUCIARY DUTIES

89. Because the Management Fee is PWM's only real asset and is the basis upon which the Partners are compensated, valuation and compensation are two sides of the same coin. 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 other words, the value of any Principal's interest in PWM is directly tied to the amount of fees he or she generates.

90. Since the fourth quarter of 2012, all of the Partners realized there was a problem

¹⁸ See Exhibit L.

with the way the economics of the firm were structured: some Partners were working harder and bringing in more business than others, but not being rewarded for their greater contribution to the growth of PWM's Management Fee.

91. All of the Principals knew that with the retention of FA Insight, the way they were compensated would change first and then the valuation of the Principals' equity would be adjusted to match. Compensation was something that needed immediate attention whereas valuation did not since – at least as far as Burns, Loftus, and Pratt-Heaney knew – none of the Principals intended to withdraw until at least 2019.

92. This was the Principals' shared understanding – or at least, it was the shared understanding of Burns, Loftus, and Pratt-Heaney. Lomas certainly understood that this was the process and he falsely told his Partners he was committed to it. Thus, FA Insight remarked in its April 11, 2013 memorandum that it would begin “compensation benchmarking” in order to assist “with the anticipated valuation of LLBH.”¹⁹ All of the Principals understood that first compensation would be adjusted and then valuation. Even Lomas knew this, as his hand-written notes dated April 12, 2013 concerning FA Insight's work reveal: “Timing, Interprocess [sic] view; Equity: Later.”

93. Ultimately, FA Insight did not make specific compensation recommendations because LLBH had, by the spring of 2013, committed to hiring a CFO/COO. The expectation was that the newly hired CFO/COO would work with the Principals to reform the structure of the Business and help implement FA Insight's proposals.

94. LLBH hired Jeff Fuhrman as CFO/COO in late July 2013.

95. On or about September 13, 2013 – just a few days after Burns had expressed his

¹⁹ See Exhibit M.

frustration with Lomas on September 5 for not focusing on new client acquisition like he had promised – Fuhrman presented ideas to the Principals for changing the compensation structure. Lomas, as part of his plan, sought to delay and drag out these discussions for as long as possible because he knew full well that because he was underperforming his compensation would go down. He also knew that once the compensation structure was reformed, the Principals would turn their attention to reforming valuation. Thus Lomas' plan required that he continue throughout this time to mislead the other Principals and delay the process to the detriment of PWM and the other Principals.

96. On or about January 3, 2014, Fuhrman circulated a draft of a proposed amendment to the 2009 PWM Agreement that would cause compensation to be linked to performance.

97. Unbeknownst to the other Principals, at around this same time, Lomas was working with an attorney in furtherance of his scheme to defraud the other Principals. Now that it was 2014, Lomas believe if noticed a new withdrawal he could attempt to claim he was entitled to a purchase price based upon the 2013 Management Fee instead of the lower 2012 Management Fee. Lomas communicated with attorney Sam Braunstein for the purpose of and in furtherance of carrying out his scheme to defraud the other partners on:

- a. January 17, 2014;
- b. January 24, 2014;
- c. January 28, 2014
- d. January 29, 2014;
- e. February 1, 2014;
- f. February 2, 2014;

- g. February 4, 2014;
- h. February 6, 2014;
- i. February 7, 2014;
- j. February 12, 2014; and
- k. March 10, 2014.²⁰

98. With the aid of Braunstein, Lomas began to modify his fraudulent scheme. By late 2013, Lomas would have known that the 2014 Management Fee was projected to be even higher than the 2013 Management Fee. Lomas had successfully delayed the implementation of the new compensation structure and believed that he could successfully delay its implementation further, thereby delaying changes to the way PWM was valued. While Lomas' original plan was to withdraw in early 2014, Lomas, in consultation with his attorney, now looked to stay until at least October 2014. Under the 2009 PWM Agreement, a Partner must give at least 90 days' notice of his intent to withdraw. Lomas knew if he could make it until at least October 2014, he could notice his withdrawal for 90 days and have it be effective in January 2015 and thereby attempt to claim a buyout based upon the 2014 Management Fee.

99. Meanwhile, as Lomas continued to collect his generous salary based upon his false and misleading representations and omissions, the other Partners and Fuhrman were diligently and in good faith working to grow the business, to implement FA Insight's recommendations, and to reform the compensation and valuation structure of PWM. All the while, as part of his scheme to defraud the other Principals, Lomas was intentionally delaying and hindering PWM and the other Principals' efforts to implement the compensation and valuation reforms. The reforms to both compensation and valuation had been actively

²⁰ See Exhibit N.

contemplated since at least April 11, 2013, when FA Insight informed the Principals that it would begin “compensation benchmarking” in order to assist “with the anticipated valuation of LLBH.” And reforming the way PWM was valued had been a persistent discussion since.

100. For example, on February 7, 2014, Fuhrman sent an email agenda to the Principals for their next Executive Committee meeting. Fuhrman noted as an agenda item: “PWM Operating Agreement Amendments – As I look at the PWM Operating Agreement, there are a number of items which I’d recommend changing or, at a minimum discussing” including “[m]ultiples,” “[v]aluation,” and “[r]edemptions.”

101. In an email to the Principals on April 8, 2014, which circulated a near-final draft of the 2014 Amendment, Fuhrman wrote: “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.**”²¹

102. On or about 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. With the 2014 Amendment being concluded, the Partners now turned their attention to valuation and other matters that needed to be addressed in the operating agreement.

²¹ *See Exhibit O.*

103. On June 2, 2014, Fuhrman sent an email agenda to the Principals in advance of the June 5, 2014 Executive Committee meeting. On the agenda was “Operating Agreement Amendments Discussion.”²²

104. On July 11, 2014, Fuhrman sent an email agenda to the Principals in advance of the July 14, 2014 Executive Committee. On the agenda was “Operating Agreement Discussion.”²³

105. At the July 14, 2014 Executive Committee Meeting, Fuhrman gave a Power Point presentation to the Principals (the “**July 2014 Power Point**”), which provided, among other things, an extensive analysis of proposed changes to the PWM operating agreement, including reforming the valuation provisions, and a schedule to discuss and adopt the changes.²⁴ Under the schedule, 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.

106. Among the specific items considered by the Principals was a change to the valuation multiple from 5.0x to 3.0x. (Even though the 5.0x multiple mentioned in Section 8.8 of the 2009 PWM Agreement has no bearing upon the valuation of a withdrawing Partner’s interest, the discussion glossed over that fact because a key consideration for changing the multiple was the fact that absent change, it would be difficult if not impossible to entice junior

²² See **Exhibit P**.

²³ See **Exhibit Q**.

²⁴ See **Exhibit R**.

partners into PWM.)

107. The July 2014 Power Point also discussed three other important issues. First, as of July 2014, the Principals had data on LLBH's performance for the first half of 2014. LLBH was poised to realize a 38.6% increase in year-over-year net income from 2013 to 2014. Lomas now believed he only needed to wait another three months to give notice in order to attempt to claim the benefit of the 2014 Management Fee.

108. Second, although Lomas was ostensibly the CFO until Fuhrman was hired in July 2013, Lomas never tracked any metrics of partner performance. With Fuhrman's arrival, metrics were tracked with rigor. And what they showed was that Lomas' contribution to year-over-year growth from 2013 through 2014 was 10.4% – despite the fact that he no longer had any operational roles as CFO or planning. By contrast, Pratt-Heaney, who still retained extensive operational responsibilities as CEO, CIO, and CCO was responsible for 20.9% of the year-over-year growth. And Loftus and Burns – who like Lomas had relinquished all or significantly all of their operational responsibilities – contributed 34.1% and 34.7% to firm growth, respectively.

109. Third, when the Business was formed in 2008 and PWM formed in 2009, no one – not Focus, not the Principals, and not the Hamburger Law Firm – realized the Pre-Tax/Post-Tax Issue. As the July 2014 Power Point explained: for every dollar paid to a withdrawing Partner, the remaining Partners would need to earn roughly \$1.92 – or almost double. This is because PWM, which is a limited liability company, is a pass-through. Whereas the valuation of a partner's interest is in pre-tax dollars, the purchase money for that interest is in post-tax dollars. This radically changes the economic calculus. The Principals had all assumed that when a Principal withdrew, as the withdrawing Principal's clients transitioned to the to the remaining Principals, the fees generated by those clients would simply be diverted for a time in order to

permit PWM to pay the withdrawing principal for the clients that were successfully transitioned over. (And of course, there was also an expectation that each of the partners would have roughly equal books of business.) Under the collectively mistaken view of the Principals, a buy-out would work as follows: assume that the Management Fee was \$4 million and that each Principal's set of clients was responsible for generating \$1 million per annum. So if for the sake of argument a 5.0x multiple is used, then a withdrawing principal would be entitled to \$5 million. What Fuhrman pointed out was that this math was fundamentally mistaken. If a withdrawing Partner is to receive \$5 million, the remaining Principals would need to earn \$9.6 million on the withdrawing partner's book (*i.e.* 5,000,000 x 1.92). This meant that the base assumption that the cash flow from a withdrawing Principal's book could simply be diverted to the withdrawing Partner for a time in order to purchase his interest was radically incorrect.

110. The problem is compounded even further if the fees allocable to a withdrawing partner's book of business are less than 25% of the total fees. If the Management Fee in a given year is \$4 million, but a departing Principal's contribution to that number is only \$500,000, then the remaining Principals would need to pay \$9.6 million for a \$500,000 book. This would not only be grossly inequitable, but would bankrupt LLBH/PWM. Such economics are not only grossly inequitable to existing Members, no potential junior partner would ever want to buy into such a structure. And so, at least since early-2013, the Principals knew that the 2009 PWM Agreement had to change. Lomas knew this change was imminent. But at least in his mind, his scheme only required that he delay the other partners until at least mid-October 2014 – when he could notice a withdrawal that would become effective in 2015 and get the benefit of the other Principals' hard work to increase net income 38% over the prior year.

111. Lomas knew full well these issues. In a set of hand-written notes that he took

sometime in early 2014 – presumably in January, February, or March 2014, when he was having extensive communications with his lawyer Sam Braunstein about his fraudulent scheme to withdraw – he noted that the “FIRST MAN OUT OF PARTNERSHIP [HAS A] HIGHER LIKELIHOOD OF RECEIVE PAYOUT WITH CURRENT CONDITIONS.” (all capitals in original).²⁵ Indeed, Lomas feared that “IF SOMEONE LEAVES EARLIER [HE’D BE] HAVING TO STAY ON AND PAY THEM OUT.” (all capitals in original). Lomas also made clear that he had no desire to spend any more time with “JPH, KB, [or] WPL.” And Lomas also knew that a “POTENTIAL OPERATING AGREEMENT CHANGE” was coming. (all capitals in original).

112. But change was necessary. And it was coming.

113. The changes to the operating agreement were an agenda item at the July 14, 2014 Executive Committee meeting.²⁶

114. The changes to the operating agreement were an agenda item at the August 14, 2014 Executive Committee meeting.²⁷

115. The changes to the operating agreement were an agenda item at the September 8, 2015 Executive Committee meeting.²⁸

116. And the changes to the operating agreement were an agenda item at the October 2, 2014 Executive Committee meeting.²⁹

117. Believing that Lomas had no intention of withdrawing and thinking that he – as

²⁵ See **Exhibit S**.

²⁶ See **Exhibit L**.

²⁷ See **Exhibit T**.

²⁸ See **Exhibit U**.

²⁹ See **Exhibit V**.

their Partner – was acting in good faith with them, they indulged these prolonged discussions in order to build consensus.

118. But this was all just a ruse by Lomas. Under his scheme, in his mind, he just needed to make it until mid-October 2014 and withdraw. He knew he was obligated to give at least 90 days' notice of his withdrawal. He knew if he gave notice in mid-October, the it would be effective at the beginning of January 2015. And Lomas found the perfect opportunity on October 13, 2014 and exploited it – without any regard for the economic well-being of his Partners, PWM, LLBH's employees, or LLBH's clients.

VII. LOMAS ATTEMPTS TO EXECUTE ON HIS FRAUDULENT SCHEME

119. Against the backdrop of these on-going discussions to further amend the operating agreement and its valuation provisions, in or around 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.

120. One of the reasons that the Principals had partnered with Focus was their collective – albeit mistaken – belief that Focus would afford them an exit strategy from the Business when, after 2019, they began to consider retirement.

121. In October 2014, the Principals learned otherwise. The Principals (not including Pratt-Heaney), along with Fuhrman, all met on October 13, 2014 – the day Lomas dated his Notice of Withdrawal. At that meeting, Fuhrman reported that Focus was not willing to buy a portion of Pratt-Heaney's equity in PWM.

122. Rajini Kodialam (“**Kodialam**”), a Co-Founder and Managing Director at Focus, explained Focus' position to Burns in an email that same day. Pratt-Heaney, wrote Kodialam,

“can only sell *his* cash flow, the 25% of mgmt fee is not real.”³⁰ She expounded further:

“Even if you, WAL [Lomas] or WPL [Loftus] agree to buy based on the 25% concept, I will tell you it is ridiculous.” What Kodialam was explaining to Burns was that PWM’s equity is a fiction with no real value. The only thing of value is not even the Management Fee *per se*³¹, but a Principal’s individual contribution to the Management Fee. If a Principal’s contribution to the Management Fee were equal to 25% of the Management Fee, then by coincidence and happenstance there would be the appearance of equity value. But when the cash flow generated by a Principal’s book is less than 25% of the Management Fee, the illusion that the equity has value is revealed. This is why Rich Gil had told Loftus in October 2008 that the valuation provision in the LLBH LLC Agreement only applied to the purchase of shares by an incoming junior partner or a purchase by Focus. A Principal who contributes less than 25% to the Management Fee simply does not have 25% of the Business to sell. And thus Focus’ unambiguous view was that even attempting to buy based on equity percentages was “ridiculous.”

123. As Pratt-Heaney explained to Lomas in a November 22, 2014 email, when he tried to explain to Lomas that his position – that he was entitled to 25% of the aggregate Management Fee rather than his individual contribution to it – was absurd: “this is going badly since they fel[t] th[ey] are paying 25% for less than that in production. * * * When i went to sell my 5% I hit the same response. **After trying to make my case i saw the math did not work, they are paying a dollar and getting 85 cents.**”³² In other words, what Focus (or the remaining

³⁰ See Exhibit W.

³¹ The Business is based upon high net worth and ultra-high net worth individuals having trust and confidence in their advisor and his ability to manage their wealth and help them achieve their goals. The Management Fee, therefore, is not like a stream of income from the sale of widgets.

³² See Exhibit X.

Principals) would pay for its cash flow allocable to a Principal based on their book of business. Focus will not buy, for example, 85 cents of cash flow for \$1.00. Indeed, no sane or rational person would buy 85 cents for a \$1.00. (Worse, as previously described, the transaction is even more irrational since after the Pre-Tax Post Tax Issue is factored in, it would amount to asking someone to buy 85 cents for \$1.92.)

124. What became clear after Fuhrman broke the news regarding Focus' position with respect to Pratt-Heaney's desire to cash in some of his interest in PWM was that Focus *would never buy equity* in PWM. Indeed, as far as Focus was and is concerned, the very idea of the Principals (or anyone) buying equity in PWM is simply "ridiculous."

125. But Lomas' scheme, such as it was, was premised on the idea that the equity has value. Lomas' scheme entailed him free riding upon the other Principals' hard work and then attempting to claim 25% of the pool. But the scheme relied, in part, upon Focus sharing the view that the Principals were each entitled to 25% of the pool. What Lomas realized was that *Focus would only pay for production* – it would only pay for fees generated by a Principal's book. That is why, according to everyone present at the meeting, upon hearing Focus' position regarding Pratt-Heaney, Lomas' face turned white.

126. Burns and Loftus asked Lomas at the October 13 Meeting 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." When pressed about whether he intended to retire in the near term, he further misled them and said "I don't know." Lomas left the office early that day and, presumably with attorney Sam Braunstein's help, attempted to realize on his fraud and cash out. On October 14, 2014, he tendered his Notice of Withdrawal to the other Principals.

127. With Focus only willing to buy cash flow for value (*e.g.* paying \$1 for 85 cents) and Focus unwilling to lend money to finance a buy-out of a withdrawing Principal's equity because – in Kodialam's words – the entire concept of buying equity is "ridiculous," a perverse kind of reverse musical chairs was created whereby the first Principal without a seat was the winner. Of course, Lomas knew this, as evidenced by his hand-written notes from early 2014 (*see supra* ¶ 111). The perversity of the situation was only compounded by other problems previously noted: (a) Lomas was an underperformer and so his cash flow was not worth anywhere close to 25% of any expected Management Fee for 2014; (b) no planning had been done or reserves set aside to deal with the Pre-Tax/Post-Tax Issue; and (c) the Principals had always believed that Focus would help finance any buy-out of a withdrawing Partner when that day arrived sometime subsequent to 2019.

128. Lomas knew he had never had any intention of making good on his representation to implement FA Insight's recommendations or his representation that he would grow the business. At the October 2, 2014 Executive Committee meeting, Fuhrman's power point showed that Lomas' performance had trended down from July 2014. And Lomas knew after the October 13 Meeting that delaying changes to the operating agreement would be increasingly difficult as the revelations made the need to change the PWM LLC agreement even more urgent. And so Lomas, with malice and with a deliberate intent to harm, noticed his withdrawal on October 14, 2014. Lomas 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 – or letting one of the other Principals who actually generated growth retire before him. 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.

VIII. THE 2015 PWM AGREEMENT

129. The Principals had long intended to overhaul the 2009 PWM Agreement and the way that PWM was to be valued. 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 (which applied retroactively from January 1, 2014). While Lomas’ Notice of Withdrawal on October 14, 2014, caught the other Principals by surprise, it meant that changes to the operating agreement that the Principals had long been discussing and planning would finally need to occur if the Business was to survive. And now, without the need to placate to Lomas and build consensus, the Remaining Principals could at last implement the reforms they had now been discussing for over a year without Lomas further delaying and deceiving them.

130. Article VII of the 2009 PWM Agreement provides: “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.

131. In or around November 2014, a draft amended and restated operating agreement was circulated to the Principals. And a meeting attended by all of the Partners was held on December 18, 2014 to discuss the proposed amended and restated operating agreement.

132. The proposed amended and restated PWM operating agreement contained numerous changes to the 2009 PWM Agreement. Among the proposed changes, were changes to the valuation provisions, which had been discussed at numerous Executive Committee meetings. Under the proposed amended and restated PWM operating agreement, the valuation provisions would now track the compensation provisions set forth in the 2014 Amendment and multiples that were intended to apply to the situation of a withdrawing Principal utilized.

133. Consistent with the 2014 Amendment, the 2015 PWM Agreement established a valuation formula to track and comport with the new compensation structure established by the 2014 Amendment, 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's interest in PWM:

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)**^[33] 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)**^[34] for the Valuation Period (if such distributions had been

³³ 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;

³⁴ 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

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.³⁵

134. To slightly oversimplify, under this structure, the Principals created a floor – the Base Interest – that would be valued as a percentage of each Principal's equity multiplied by 4.0. Any increase over the Base Interest as a result of a Principal's acquisition of new clients or the growth of assets by existing clients – the Performance Interest – would be valued at a multiple of 6.0.

135. On or about December 26, 2014, all four Principals voted on the adoption the proposed amended and restated agreement. Pursuant to Article VII of the 2009 PWM Agreement, the Members holding at least 65% of the Percentage Interests – Loftus, Burns, and Pratt-Heaney, who together control 75% of the Percentage Interests – all voted in favor of adopting the proposed amended and restated PWM operating agreement, which became effective January 1, 2015 (*i.e.* the 2015 PWM Agreement).

136. Lomas admitted this fact under oath at his deposition:

Q. And you sent out on October 13, 2014 a notice that you would withdraw from the company effective January 14, 2015, correct?

A. Yes.

Q. And there was a vote prior to January 14, 2015 on a new limited

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.

³⁵ See Exhibit C.

liability agreement, correct?

A. **Yes.**

Q. And one of the things that was being proposed was that the method by which a partner would be paid upon withdrawing would change, correct?

A. **Yes.**

Q. You voted against it, correct?

A. **I did.**

Q. And the other three partners voted in favor of it, correct?

A. **Yes.**

Q. And a new operating agreement came into being, correct?

A. **Based upon that assumption – [Attorney Objection to Form]**

A. **At that point the three quarter vote provided there would be under that agreement a new operating agreement, an amended operating agreement.**

Q. And have you seen that new operating agreement?

A. **I have.**

Q. And it's dated as of January 1, 2015, correct?

A. **Yes, it is.**

Q. And you testified earlier that you worked as a partner in this business and did not in any way quit or stop working or fulfilling your duties all the way through to January 14th, close of business January 14, 2015, correct?

A. **Yes.**³⁶

137. Importantly, the 2009 PWM Agreement was not being changed to harm Lomas, despite the fact that he had carefully orchestrated a fraud to maximize his own economic benefit at the expense of his Partners and PWM. The 2009 PWM Agreement was changed because the change had been long planned because the economics of it did not work. As Burns explained at his deposition:

Q. Why not vote to amend the 2009 agreement so that Mr. Lomas would be owed zero? Why not do that?

A. The new agreement was not designed for Mr. Lomas, it was designed for myself, Jim, Bill Loftus, Bill Lomas, future partners, because we all, including Mr. Lomas -- and obviously from his secret note, he knew it long before we did -- realized it was an unworkable agreement. We made a mistake when we put it together because it left way too

³⁶ See Deposition Tr. of William Lomas taken on July 18, 2016 (“**Lomas Dep. Tr.**”) at pp. 191-192.

many unsolved issues as to how do you pay for it, with post tax, pretax, will Focus step in.

So I guess to answer your question, I don't have specifics, but this was not a Bill Lomas agreement. So I wasn't going to put it at zero. It makes no sense. We were trying to build and keep a business operating.³⁷

138. Loftus similarly testified that the reason the 2009 PWM Agreement was being replaced and superseded had nothing to do with Lomas:

this was not a Bill Lomas issue, he was not being singled out, he wasn't being dealt with in an arbitrary or capricious manner, he was being dealt with the same way we were dealing with ourselves. We ate our own cooking, and we did it because the firm was growing dramatically.

As I mentioned, the firm had grown from a billion dollars -- we celebrated \$1 billion in assets under management in the summer of 2013, and by the time Bill retired, we were well over a billion 6 [1.6 billion], so that's 50 percent growth, and we needed to put in place a mechanism that would permit new partners to come into the firm and to create longevity for the firm.

So we were simply offering Bill Lomas the same deal that we would have offered ourselves had we chosen -- had we chosen to retire.³⁸

139. Unlike Lomas – who has acted maliciously, wantonly, and deceitfully with his Partners for the purpose of maximizing his own *unearned* economic benefit to the detriment of his Partners and the Business – PWM, Burns, Loftus, and Pratt-Heaney acted virtuously to put in place an agreement that would let them build the firm. The Principals’ – or at least – Burns’, Loftus’, and Pratt-Heaney’s intention has always been to build a firm that would “last generations.” As Burns testified: “You cannot run a business for generations if you are going to mimic the Social Security system.”³⁹ Lomas, by his malicious and willful misconduct, is

³⁷ See Deposition Tr. of Kevin Burns taken on July 19, 2016 (“**Burns Dep. Tr.**”) at pp. 142.

³⁸ See Loftus Dep. Tr. at 170.

³⁹ See Burns Dep. Tr. at 159.

materially threatening the viability of the Business and its ability outlast its founding Members.

IX. LOMAS' MISCONDUCT AFTER NOTICING HIS WITHDRAWAL

140. Upon tendering his Notice of Withdrawal, Lomas had important obligations to his Partners and his clients – obligations of both a fiduciary and contractual nature. Although Lomas had an on-going obligation under both Section 8.9 of the 2009 PWM Agreement and 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 retaining for the Company his or her assigned clients and Business contacts for which he or she was responsible while a Member of the Company,” 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 participate in transitional meetings with clients until PWM agreed to pay Lomas what he demanded. In short, in violation of his contractual and fiduciary obligations, Lomas was attempting to extort a deal by holding the book of business he expected the Partners to pay him for hostage.⁴⁰

141. 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. Another element of that is conveying a mood of confidence and seriousness to clients. But Lomas did anything but employ any and all good faith efforts. As Pratt-Heaney testified at his deposition:

Q. What was Mr. Lomas' appearance?

A. **I mean, he grew a beard, which he can do. I was more concerned that he -- we would go to client meetings, and he didn't have a suit and tie on. He didn't travel with us. He was not a willing -- I didn't feel he was willingly helping us transition clients.**

Q. So you didn't object to the facial hair?

⁴⁰ See Exhibit Y.

A. **I thought it was inappropriate for the fact he's been dealing with clients and been my partner for a long time. He never had [the facial hair] before. It seems to be what men do when they retire.**
* * *

Q. Can you identify any client that complained about Mr. Lomas' mood?
* * *

A. **The clients -- his mood was reflected in the fact that most clients thought he was ill because of his temperament, and the way that he talked and the way he was carrying himself. We had clients call and ask if he was sick.**⁴¹

142. Pratt-Heaney proceeded to identify, from memory, at least eight clients who expressed concern regarding Lomas' health. Pratt-Heaney continued:

I have known Bill for many years. His clients have over 20 years. Something was wrong. He was not a man retiring, and happy and helping transition clients. It was obvious. It was obvious to me, it was obvious to clients.

Not knowing what's going on, they assumed it was illness.
* * *

We were going to say Bill is leaving, Mike is going to be doing the planning, but Mike has been doing your planning for the last four year[s], no big deal, everything is going to be fine. It was an easy message and a joyous one that he was retiring. The joy didn't get transferred.⁴²

143. Moreover, as Loftus explained at his deposition, the transition does not happen at one point in time. "Remember, these were not clients that had to move their accounts. Their accounts were already with us. They were custodied. So sort of the easy move for them to do is nothing."⁴³ Meaning that if, after these meetings, clients were not persuaded to remain with LLBH/PWM, that outcome might not manifest itself for several months or more – until after the

⁴¹ See Deposition Tr. for James Pratt-Heaney taken on August 25, 2016 ("Pratt-Heaney Dep. Tr.") at 85 & 88.

⁴² See Pratt-Heaney Dep. Tr. at 89-90.

⁴³ See Loftus Dep. Tr. at 178.

client found a new advisor.

144. In point of fact, Confidential Client No. 1,⁴⁴ who was allocated to Lomas, withdrew nearly all of his assets – approximately \$15.5 million – in May 2015. According to Pratt-Heaney, Confidential Client No. 1 told him that his money was with LLBH/PWM because of Lomas and that LLBH/PWM would now have to earn it. That is certainly not a statement by a client who has been warmed over and charmed by Lomas for the benefit of PWM.

145. And Confidential Client No. 2, who was also allocated to Lomas, withdrew all of his assets – approximately \$25 million – from LLBH in August 2015. As Loftus explained:

[Lomas'] largest relationship left, ostensibly to go to a family office, which is puzzling because we were performing family office services for the client, we were doing Bill Pay, which is a traditional family office service, so we were doing the clients' bills, we were doing all of the planning work, we had done their trust and estate, so we had done all of the functions that a traditional family office would perform. So for the client to say I'm moving my relationship, and it was probably a \$30 million relationship, to a family office is troubling.⁴⁵

146. Having failed to conduct himself appropriately and having failed to use any and all good faith efforts to transition these clients, roughly \$40 million walked out the door.

X. LOMAS' UNLAWFUL SOLICIATION OF CURRENT CLIENTS

147. Since withdrawing from PWM, Lomas has been in regular contact with many of LLBH/PWM's clients, including some of the firm's largest clients.

148. For at least one of these clients, Confidential Client No. 3, Lomas has been advising her on matters that are core advisory services provided by LLBH/PWM. In particular,

⁴⁴ 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. _."

⁴⁵ See Loftus Dep. Tr. at 178.

Lomas reached out to an account manager at Lazard in order to help facilitate this client's receipt of information concerning her ownership in a closely held company.⁴⁶ The entire point of the non-solicitation covenant is to prevent Lomas from doing exactly this kind of activity.

149. Rather than LLBH/PWM having the opportunity to deepen and strengthen its relationship with this client, Lomas undermined LLBH/PWM's relationship by involving himself in the situation. To make matters worse, Lomas failed to then inform LLBH/PWM of the contact or the situation.

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

XI. COUNTERCLAIM PLAINTIFFS' BROAD SET OFF RIGHTS

151. Under both the 2009 PWM Agreement and the 2015 PWM Agreement, Counterclaim Plaintiffs have powerful set off rights that entitle them to set off against any payments Lomas might be owed the damage he has caused to PWM and the remaining Principals.

152. 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.

⁴⁶ See Exhibits Z & AA.

153. 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.

154. As detailed below, Lomas is liable to the Counterclaim Plaintiffs for the damage he has caused them, including their costs and reasonable attorneys' fees in connection with this action to vindicate their rights.

FIRST COUNT
(Breach of Contract – Set Off, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Attorneys' Fees)
[By All Counterclaim Plaintiffs Against Lomas]

155. Counterclaim Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 154 of the Counterclaim Complaint as if fully set forth herein.

156. 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, January 1, 2015.

157. 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 PWM Agreement and 2015 PWM Agreement.

158. 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 acquiring new clients and by growing the assets under LLBH's management, and thereby growing the Management Fee, which is PWM's only asset.

159. 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 by acquiring new clients.

160. Lomas, however, sought to free-ride on the other Principals hard work. Lomas quit managing the planning process that he had agreed to manage in or around 2009. He told the other Principals that he was giving up the planning process so he could "get out there" and prospect for new clients. But Lomas failed to do this.

161. Instead, 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.

162. 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.

163. After Lomas sought to resign in February 2013 and thereafter decided he did not want to withdraw at that time, he promised the other Principals in April or May of 2013 that he would work to implement the recommendations of FA Insight and promised to re-commit himself to the Business through new client acquisition. But Lomas, in bad faith, stonewalled and delayed the implementation of FA Insight’s recommendations, including reforming the compensation and valuation structure. Lomas also had no intention of using good faith efforts to develop new business. He made these promises and representations to the other Principals as part of a scheme to defraud PWM and the other Principals.

164. 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 growth of the Business and certainly an obligation not to actively hinder its growth. By the aforementioned conduct, Lomas damaged PWM’s Business.

165. Furthermore, PWM and the remaining Principals are contractually entitled to set off against any moneys that may be owed Lomas in connection with the purchase of his interest in PWM for any damage caused by Lomas to PWM or the Remaining Principals as a result of Lomas’ breach of the 2009 PWM Agreement or the 2015 PWM Agreement. Lomas breached the implied covenant of good faith and fair dealing implied into both the 2009 PWM Agreement and the 2015 Agreement.

166. Lomas has acted in bad faith and breached the implied covenant of good faith and

fair dealing as described above. PWM and the Remaining Members have been damaged by Lomas' failure to perform as expected of him, by his failure to develop himself as an adviser, by his intentional delays in the adoption of the recommendations of FA Insight, by his delays in connection with the reformation of the compensation and valuation structure, and his false promises that he was recommitted to the Business and would develop business.

167. As a result of Lomas' breach of the implied covenants of good faith and fair dealing, PWM and the Remaining Members are entitled to damages in an amount to be determined at trial, but believed to be no less than \$1.45 million

168. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement and/or Section 8.9(d) of the 2009 PWM Agreement, PWM and the Remaining Principals are also entitled to recover all of their costs and attorneys' fees in connection with this action.

SECOND COUNT

(Breach of Contract – Set Off, Negligent Performance of Duties, and Attorneys' Fees) [By All Counterclaim Plaintiffs Against Lomas]

169. Counterclaim Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 168 of the Counterclaim Complaint as if fully set forth herein.

170. 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 any costs, expenses (including attorneys' fees), and damages attributable to Lomas' "negligence."

171. Lomas owed a legal duty and/or 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.

172. Lomas breached his legal duty and/or duty of care that was owed to PWM, Burns,

Pratt-Heaney, and Loftus, by among other things, falsely promising and representing that he would work and/or was committed to implementing the recommendations of FA Insight and falsely promising that he would re-commit himself to the Business through new client acquisition.

173. Lomas violated his duty of care when he failed to undertake those actions that were necessary and/or reasonably foreseeable to implement FA Insights recommendations and to develop new business.

174. Despite promising that he would work to implement FA Insight's recommendations and focus on new client acquisition, Lomas contributed virtually nothing to the growth of PWM's Management Fee in 2013 and 2014. Lomas did not manage the planning process. 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.

175. 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.

176. By his negligence, PWM and the Remaining Principals were damaged in an amount to be determined at trial, but believed to be no less than \$1.45 million.

177. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement and/or Section 8.9(d) of the 2009 PWM Agreement, PWM and the Remaining Principals are also entitled to recover all of their costs and attorneys' fees in connection with this action.

THIRD COUNT
**(Breach of Contract – Set Off, Breach of Section 3.9 of the 2009 PWM Agreement,
and Attorneys’ Fees)**
[By All Counterclaim Plaintiffs Against Lomas]

178. Counterclaim Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 177 of the Counterclaim Complaint as if fully set forth herein.

179. Under Section 3.9 of the 2009 PWM Agreement, a Member “shall dedicate their full-time and efforts and time to the business and the affairs of the Company.”

180. This provision of the 2009 PWM Agreement was binding upon Lomas from November 30, 2009 through January 1, 2015.

181. Lomas breached his obligation under the 2009 PWM Agreement by, among other things, falsely promising and representing that he would work and/or was committed to implementing the recommendations of FA Insight and falsely promising that he would re-commit himself to the Business through new client acquisition.

182. Lomas failed to devote his full time and efforts to the business as evidenced by his delays in connection with the implementation of FA Insight’s recommendations, his delays in connection with the reformation of PWM’s compensation and valuation structure, and his failure to materially develop new business.

183. By his conduct in 2013 and 2014, Lomas breached the requirement of Section 3.9 of the PWM Agreement by the aforementioned conduct.

184. As a result of the aforementioned conduct, Lomas caused damage to PWM and the Remaining Members in an amount to be proved at trial, but believed to be no less than \$1.45 million.

185. Pursuant to Section 8.9(d) of the 2009 PWM Agreement, PWM and the Remaining Principals are also entitled to recover all of their costs and attorneys’ fees in

connection with this action.

FOURTH COUNT

**(Breach of Contract – Set Off, Breach of the Obligation to Employ Good Faith Efforts in Connection with Transitioning Clients, and Attorneys’ Fees)
[By All Counterclaim Plaintiffs Against Lomas]**

186. Counterclaim Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 185 of the Counterclaim Complaint as if fully set forth herein.

187. As detailed above in Section IX, under both Section 8.9 of the 2009 PWM Agreement and Section 7.8 of the 2015 PWM Agreement, Lomas had a duty to use any and all good faith efforts to work with PWM and the other Principals to ensure that any clients that Lomas serviced remained with PWM.

188. Lomas breached this obligation by refusing to cooperate with the other Principals. Lomas delayed and interfered with the other Principals notifying clients of his impending withdrawal. When Lomas finally, begrudgingly, participated in phone calls and in person meetings, his mood was dour – his general demeanor was negative and unsupportive of the Remaining Principals. Indeed, so poor was his attitude at in person meetings in Florida and elsewhere that at least eight clients inquired whether he was ill or sick.

189. Any and all good faith efforts implies that a departing Principal will actively and enthusiastically cooperate and help sell his clients on remaining with LLBH/PWM. Lomas failed not only failed to do this, but by his conduct breached the obligation to use any and all good faith efforts to transition his clients.

190. As a result of Lomas’ breach of this obligation, PWM and the Remaining Principals have been damaged in an amount to be determined at trial, but believed to be no less than \$1,000,000.

191. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement and/or

Section 8.9(d) of the 2009 PWM Agreement, PWM and the Remaining Principals are also entitled to recover all of their costs and attorneys' fees in connection with this action.

FIFTH COUNT
(Fraud by False Promise/Material Misrepresentations and Omissions and Attorneys' Fees)
[By All Counterclaim Plaintiffs Against Lomas]

192. Counterclaim Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 191 of the Counterclaim Complaint as if fully set forth herein.

193. In February 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 him out.

194. The other Principals were excited 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 March 28 Report and April 25 Report did not include Lomas.

195. Although PWM, working with Focus, offered to purchase Lomas' interest in PWM, Lomas refused and insisted on being paid out at a higher multiple than the one mentioned by the 2009 PWM Agreement (even though that multiple has no applicability to the valuation of a Member's interest in the case of their voluntary withdrawal).

196. No one asked Lomas to stay at LLBH/PWM. And the other Principals could have terminated Lomas for cause for his non-performance under Section 8.10 of the 2009 PWM Agreement. Lomas knew he wanted more money than he'd been offered and he knew that he had to persuade the other Partners – who were all excited that he was leaving – to let him stay. And so he hatched a scheme. He told his Partners that he would commit to the plan laid out by

FA Insight and would be focused on growing the business and client acquisition. But when Lomas made these representations, he knew they weren't true. He knew he had no intention of originating new business. And he had no intention of letting FA Insight's recommendations be implemented.

197. Lomas' plan was to stay for long enough to attempt to get the benefit of a buy-out that would be based on the higher 2013 Management Fee. But when 2014 rolled around, Lomas knew that the Management Fee for 2014 year projected to be even higher than 2013. He knew this because LLBH/PWM submits budget numbers to Focus every year in November or December for the next year.

198. Working with his lawyer, Sam Braunstein, Lomas adjusted his scheme between January and March of 2014. The two had numerous communications between this time concerning Lomas' intention to withdraw. Lomas knew if he could remain a member until the middle of October 2014, he could give the minimum 90 days' notice required under the 2009 Agreement, that his withdrawal would then be effective January 2015, and then – although he would have contributed virtually nothing to the Business – he could claim that he was entitled to bought out for an amount keyed off of the 2014 Management Fee. All Lomas believed he had to do was intentionally delay and hinder the other Partners from changing PWM's compensation and valuation structure even though he promised the other Partners that he was committed to the aggressive growth plan developed by FA Insight and would be supportive of majority decisions.

199. In October 2014, Lomas attempted to realize on his fraud by tendering his Notice of Withdrawal with an Effective Withdrawal Date of January 14, 2015.

200. As a result of these and other false promises and material misrepresentations, Lomas remained at PWM for 2013 and 2014 and caused damage to PWM and the Remaining

Principals.

201. Lomas continued to receive his generous salary throughout this time period despite doing nothing to earn it. Had Lomas not deceived his Partners, they would not have had to pay him this salary.

202. Lomas caused damage to PWM and the Remaining Partners as a result of his fraud by intentionally delaying necessary and important reforms to the compensation and valuation structure.

203. Lomas caused damage to PWM and the Remaining Partners by virtue of the fact that FA Insight had been paid to develop a business model that did not include Lomas.

204. 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. Notwithstanding the fact that FA Insight had developed a plan to help LLBH/PWM achieve robust growth and that Lomas represented he would support the plan, as part of scheme to defraud the other Principals, Lomas intentionally delayed and stymied their efforts to reform the business for future success and growth.

205. After Lomas made these false representations and promises, Lomas feigned doing business development work for a few weeks. In fact, Lomas planned to remain a Member of PWM in order to get the benefit of the 2013 Management Fee, which was higher than the 2012 Management Fee.

206. But in late 2013 or early 2014, when Lomas realized the Management Fee for 2014 was projected to be even higher than it was in 2013, working with his attorney Sam Braunstein, Lomas re-worked his scheme to defraud the other Principals. His plan was to

attempt to make until at least October 2014 and then he would resign and attempt to cash in using the 2014 Management Fee.

207. Under Connecticut law, a promise to do something in the future with the present intention not to undertake the promised action is actionable fraud. And under Connecticut law, material misrepresentations or omissions as to past or present facts is also actionable fraud.

208. 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 appeared committed to growing the Business. When Lomas made his false promises and representations, the other Principals believed that Lomas was committing to growing his book of business and committed to the strategic plan developed by FA Insight. But Lomas had no intention of doing either when he made these representations and promises. His real goal was to avoid being forced out and bought-out at a number that was fair, but which he did not like. Lomas was counting on the other Principals continuing to grow their books while he continued his free-ride on their hard work. And then he would attempt to cash out after his Partners had put in more hard work to grow the Business.

209. By virtue of Lomas' false promises and representations, PWM and the Remaining Principals have been damaged in an amount to be determined at trial, but believed to be no less than \$1.45 million.

210. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement and/or Section 8.9(d) of the 2009 PWM Agreement, because of Lomas' willful misconduct, PWM and the Remaining Principals are also entitled to recover all of their costs and attorneys' fees in

connection with this action.

SIXTH COUNT

**(Breach of Contract – Breach of the Non-Solicitation Covenant and Attorneys’ Fees)
[By All Counterclaim Plaintiffs Against Lomas]**

211. Counterclaim Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 210 of the Counterclaim Complaint as if fully set forth herein.

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

213. 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.⁴⁷

214. “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

⁴⁷ Section 8.9(c) of the 2009 PWM Agreement, as amended, contains materially identical provisions prohibiting solicitation.

that the Member is no longer associated with the Company.” (See 2015 PMW Agreement § 8.7(c)).

215. Lomas has been and continues to initiate contact with clients of LLBH/PWM.

216. In at least one instance, with respect to Confidential Client No. 3, Lomas undertook action on her behalf which is within the scope of LLBH/PWM’s relationship with Confidential Client No. 3. He provided her with advice and aid in connection with financial matter. Moreover, Lomas knew what he was doing was wrong because he did not alert LLBH/PWM to the contact that he had with Confidential Client No. 3.

217. PWM and the Remaining Members have been damaged by Lomas’ unlawful solicitation in an amount to be determined at trial.

218. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement and/or Section 8.9(d) of the 2009 PWM Agreement, PWM and the Remaining Principals are entitled to set off any losses in connection with Lomas’ unlawful solicitation of LLBH/PWM clients and is also entitled to recover their costs and attorneys’ fees in connection with this action.

SEVENTH COUNT
(Breach of Fiduciary Duty to PWM and Attorney’s Fees)
[By PWM Against Lomas]

219. Counterclaim Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 218 of the Counterclaim Complaint as if fully set forth herein.

220. Lomas, as an officer of PWM, owed PWM fiduciary duties. As an officer of PWM, PWM reposed trust and confidence in Lomas to act in PWM’s best interests.

221. Lomas willfully and intentionally sought to delay FA Insight’s recommendations that were intended to set LLBH/PWM on a course of robust growth. Lomas knew that these changes were important to PWM’s short-term and long-term success. Lomas knew that

LLBH/PWM was seeking to grow the business into an institution that would last generations. And Lomas knew that without implementing FA Insight's recommendations, PWM would be materially damaged and harmed.

222. Lomas willfully and intentionally sought to delay PWM from reforming its compensation and valuation structure to the detriment of PWM. Without reformation of the compensation and valuation structure, PWM's Principals would not be treated fairly and equitably creating a substantial risk that those who did perform might leave PWM. Without reform of the compensation and valuation structure, PWM would be materially hindered in its ability to attract and recruit junior partners. Without new partners coming into PWM, PWM's available capital would be negatively impacted. And without new partners coming into PWM, PWM's ability to continue as a going concern for generations would be materially threatened.

223. After his first attempted resignation in February 2013, after he determined that he wanted more money, Lomas falsely represented and promised PWM and the Remaining Principals that he was committed to FA Insight's recommendations and that he was committed to growing the Business. Throughout this time, Lomas was paid his generous salary on the basis of these false and misleading promises, representations, and omissions. By virtue of these false and misleading promises and representations and omissions, Lomas breach his fiduciary duties to PWM.

224. As a result of the conduct described above, Lomas breached his fiduciary duties to PWM. As a result, PWM has suffered damages in an amount to be determined at trial, but believed to be no less than \$1.45 million.

225. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement and/or Section 8.9(d) of the 2009 PWM Agreement, PWM and the Remaining Principals are entitled to

set off any losses in connection with Lomas' breach of his fiduciary duties and is also entitled to recover their costs and attorneys' fees in connection with this action.

EIGHTH COUNT

**(Breach of Fiduciary Duties Owed to the Remaining Principals and Attorney's Fees)
[By Burns, Loftus, and Pratt-Heaney Against Lomas]**

226. Counterclaim Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 225 of the Counterclaim Complaint as if fully set forth herein.

227. Lomas owes fiduciary duties to Burns, Loftus, and Pratt-Heaney. As their Partner, the Remaining Principals reposed trust and confidence in Lomas.

228. Lomas willfully and intentionally sought to delay FA Insight's recommendations that were intended to set LLBH/PWM on a course of robust growth. Lomas knew that these changes were important to PWM's short-term and long-term success. Lomas knew that LLBH/PWM was seeking to grow the business into an institution that would last generations. And Lomas knew that without implementing FA Insight's recommendations, PWM would be materially damaged and harmed.

229. Lomas willfully and intentionally sought to delay PWM from reforming its compensation and valuation structure to the detriment of PWM. Without reformation of the compensation and valuation structure, PWM's Principals would not be treated fairly and equitably creating a substantial risk that those who did perform might leave PWM. Without reform of the compensation and valuation structure, PWM would be materially hindered in its ability to attract and recruit junior partners. Without new partners coming into PWM, PWM's available capital would be negatively impacted. And without new partners coming into PWM, PWM's ability to continue as a going concern for generations would be materially threatened.

230. After his first attempted resignation in February 2013, after he determined that he

wanted more money than he was offered, Lomas falsely represented and promised PWM and the Remaining Principals that he was committed to FA Insight's recommendations and that he was committed to growing the Business. Throughout this time, Lomas was paid his generous salary on the basis of these false and misleading promises, representations, and omissions. By virtue of these false and misleading promises and representations and omissions, Lomas breach his fiduciary duties to PWM.

231. Throughout this time – while he was scheme with his attorney Sam Braunstein – the other Principals believed he was acting in good faith, but he was not.

232. Lomas hindered and delayed the adoption of the 2014 Amendment.

233. Lomas hindered and delayed the adoption of reforms to the valuation structure.

234. Lomas falsely promised his Partners that he would re-commit himself to the growth of the Business when he knew it was false. Indeed, Lomas schemed to both keep collecting his generous salary while free-riding on the other Principals' hard work to the other Principals' detriment.

235. The other Principals had reposed trust and confidence in Lomas. But Lomas, without regard for the economic well-being of the other Principals or PWM itself, withdrew knowing that because of the Pre-Tax/Post-Tax Issue, his actions would cause material harm to the other Principals, which harm would be compounded by the fact that Focus was not willing to finance a purchase of Lomas' interest and Lomas had not contributed in the way he'd promised to the growth of the Management Fee. Without regard for his Partners or PWM, Lomas undertook to withdraw in an effort to game the system.

236. As a result of the conduct alleged, Lomas breached his fiduciary duties to the Remaining Members. As a result, the Remaining Members have suffered damages in an amount

to be determined at trial, but believed to be no less than \$1.45 million.

237. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement and/or Section 8.9(d) of the 2009 PWM Agreement, PWM and the Remaining Principals are also entitled to recover their costs and attorneys' fees in connection with this action.

NINTH COUNT
(Willful and Wanton Misconduct and Attorney's Fees)
[By All Counterclaim Plaintiffs Against Lomas]

238. Counterclaim Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 237 of the Counterclaim Complaint as if fully set forth herein.

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

240. Lomas not only falsely promised and/or misled his Partners concerning his true intentions, but his conduct was calculated to inflict harm and damage on PWM and the Remaining Principals. As Lomas' own hand written notes make clear, he held his Partners in contempt. And despite his promises and representations, he did not want to work with them. As his handwritten notes also make clear, Lomas knew that when a Partner withdrew, PWM would need to resolve two very difficult issues, namely, Focus' unwillingness to buy equity and the Pre-Tax/Post-Tax Issue. But Lomas did not care about anyone other than himself.

241. Lomas knew that PWM and the other Principals were working hard to implement FA Insight's recommendations in order to achieve robust growth. Lomas knew that it was important to PWM and the Remaining Principals that the compensation and valuation reforms described herein be implemented. But Lomas sought to delay and materially hinder these efforts, for no legitimate purpose other than to harm PWM and his Partners.

242. Lomas knew because PWM and the Remaining Principals had not worked out an

adequate plan yet to deal with the Pre-Tax/Post-Tax Issue, his surprise withdrawal would cause harm to the Business. Lomas knew that PWM and the Remaining Partners would face further harm as a result of the revelation that Focus was not a purchaser of equity.

243. Lomas knew he had substantially underperformed over 2013 and 2014, despite promises and representations that he would contribute to the growth of LLBH/PWM.

244. And Lomas believed – as evidenced by his own admissions in his hand-written notes – that under the governance structure he had sought to keep in place, the Remaining Partners would have to earn more than double whatever amount a withdrawing Partner might be entitled to in order to buy-out the first Partner to withdraw. Lomas knew all of this and despite his promises and representations that he was invested and committed to growing the Business, he looked to cash out and harm his Partners.

245. 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.

246. 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 PWM, Burns, Loftus, and Pratt-Heaney and the harm such actions would cause them.

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

248. PWM, Burns, Loftus, and Pratt-Heaney have suffered damages in an amount to be determined at trial, but believed to be no less than \$1.45 million.

249. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement and/or

Section 8.9(d) of the 2009 PWM Agreement, PWM and the Remaining Principals are also entitled to recover their costs and attorneys' fees in connection with this action.

TENTH COUNT
(Preliminary and Permanent Injunction and Attorney's Fees)
[By All Counterclaim Plaintiffs Against Lomas]

250. Counterclaim Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 249 of the Counterclaim Complaint as if fully set forth herein.

251. Counterclaim Plaintiffs incorporate by referenced the allegations set forth in Section X regarding Lomas' efforts to solicit PWM's clients in violation of the non-solicitation covenants contained in the 2009 and 2015 PWM Agreements.

252. Upon information and belief, Lomas continues to have contact with PWM's and the Remaining Principals' clients.

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

254. Counterclaim Plaintiffs have no adequate remedy at law.

255. Additionally, pursuant to Section 7.8(d) of the 2015 PWM Agreement and/or Section 8.9(d) of the 2009 PWM Agreement, PWM and the Remaining Principals are entitled to recover their costs and attorneys' fees in connection with the enforcement of the non-solicitation covenants.

256. 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.

ELLEVENTH COUNT
**(Declaratory Judgment – The 2015 PWM Agreement Controls the
Valuation of Lomas’ Interest in PWM)**
[By All Counterclaim Plaintiffs Against Lomas]

257. Counterclaim Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 151 of the Counterclaim Complaint as if fully set forth herein.

258. 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.

259. The Principals had long discussed changing the 2009 PWM Agreement, including valuation and how a departing Partner would be paid. Lomas knew this, but despite promises and representations to the contrary, sought to delay amending the 2009 PWM Agreement.

260. Under the 2009 PWM Agreement, each Partner has an equal vote and none has a veto. Although Lomas voted against the adopted of the 2015 PWM Agreement, Burns, Loftus, and Pratt-Heaney all voted in favor its adoption. As a result of the vote, the 2015 PWM Agreement came into force on January 1, 2015, while Lomas was still a Member of PWM.

261. 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.

TWELFTH COUNT

**(Declaratory Judgment – Section 8.8 of the 2009 PWM Agreement Does Not Control or Govern the Valuation of a Withdrawing Member's Interest in PWM)
[By All Counterclaim Plaintiffs Against Lomas]**

262. Counterclaim Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 261 of the Counterclaim Complaint as if fully set forth herein.

263. When the parties entered into the 2009 PWM Agreement, they entered into it while laboring under several mutual mistakes and/or a failure to have a meeting of the minds on certain key provisions.

264. The parties all mistakenly believed that the purchase money for a departing partner's interest in PWM would be pre-tax money, when in fact it would be post-tax dollars.

265. The parties all mistakenly believed that Focus would help finance the purchase of any departing partner's interest, when in fact Focus would not.

266. More importantly, Section 8.8 of the 2009 PWM Agreement was taken *in haec verba* from the LLBH Group LLC Agreement that the exact same parties entered into nearly a year prior on October 17, 2008.

267. Additionally, Draft Section 8.7 of the LLBH LLC Agreement is identical – including the misspelling of the word “predecessor” – to Section 8.8 of the 2009 PWM Agreement and Section 8.8 of the LLBH Group LLC Agreement.

268. All of these agreements were based upon form agreements provided by Focus to the Hamburger Law Firm.

269. As detailed in an October 7, 2008 email from Loftus to the Hamburger Law Firm and which copied all of the other Partners, Focus explained, and the parties to the agreements

accepted that the meaning of Draft Section 8.7 was that the 5.0x multiple was only applicable to equity purchases by junior partners or Focus. None of the parties understood or agreed that the provisions set forth in Draft Section 8.7, Section 8.8 of the LLBH Group LLC Agreement, nor Section 8.8 of the 2009 PWM Agreement controlled or had any bearing whatsoever on the sale of an interest in PWM by founding, departing Partner.

270. 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. Because there was no meeting of the minds and/or as a result of mutual mistakes, Counterclaim Plaintiffs seek a declaration that Section 8.8 of the 2009 PWM Agreement does not control or govern the valuation of a Member's interest in PWM who is voluntarily withdrawing.

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 1-8 in excess of \$15,000, exclusive of interest and costs;
2. Punitive damages on Count 9 for Counterclaim Defendant's willful and wanton misconduct;
3. A preliminary and permanent injunction on Count 10, 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;
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;
8. Pursuant to Conn. Gen. Stat. § 52-29, in connection with Count 11, 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;
9. Pursuant to Conn. Gen. Stat. § 52-29, in connection with Count 12, an order declaring

that, Section 8.8 of the 2009 PWM Agreement does not control or govern the valuation of a departing Member's interest in PWM who is voluntarily withdrawing; and

10. 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**

Dated: September 23, 2016
New York, New York

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

By: /s/ Edward D. Altabet
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CERTIFICATE PURSUANT TO PRACTICE BOOK § 17-56(b)

In connection with Counterclaim Plaintiffs' Counts 11 and 12 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.

Dated: September 23, 2016
New York, New York

GERARD FOX LAW P.C.

By: /s/ Edward D. Altabet
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*Attorneys for Defendants and Counterclaim
Plaintiffs*

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing (together with exhibits) was caused to be emailed and mailed on September 23, 2016 to:

Thomas Rechen, Esq.
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/s/Edward D. Altabet
Edward D. Altabet