

provisions (and thus eclipsed under the economic loss rule, discussed below), the fact finder will require opinion testimony to attain the requisite understanding of the counterclaim defendants' reporting obligations, the efficacy and reasonableness of their reliance upon Ms. Lynch's alleged instructions, and the extent of Ms. Lynch's authority. Mr. Cohen's claims for negligence, professional negligence, and breach of fiduciary duty, premised upon allegations of professional misconduct, must be dismissed. Colo. Rev. Stat. § 13-20-602(4); *Teiken v. Reynolds*, 904 P.2d 1387, 1389-1390 (Colo. Ct. App. 1995).

V. Economic loss rule

The counterclaim defendants point out that Mr. Cohen's contract claim is predicated upon the allegation, which they admit, that the parties' relationships were governed by contracts. They argue that all of Mr. Cohen's tort claims, with the exception of his professional negligence claim (which concerns alleged activities not covered by the parties' interrelated agreements), are barred by the economic loss rule. They insist that Mr. Cohen be limited in any recovery to the terms of the bargain. *Alma v. Azco Const., Inc.*, 10 P.3d 1256, 1262 (Colo. 2000).

Mr. Cohen argues that he should be permitted to plead his tort and contract theories in the alternative. In the typical case, Mr. Cohen would be permitted to pursue alternative theories until summary judgment. *Contrast Tuchman v. Pell Rudman Trust Co., N.A.*, 245 F. Supp. 2d 1156, 1160 (D. Colo. 2003). Here, however, Mr. Cohen has backed himself into a corner by filing motions – to compel arbitration, to dismiss the complaint, to dismiss the Second Amended Complaint, to file late a certificate of review – at every development of the pleadings. The law of the case now includes the rulings: that Ms. Lynch executed the 2002 Agreements on Mr. Cohen's behalf with apparent authority to do so; that the 2002 Agreements governed the parties'

relationships; that the 2002 Agreements identified the services that the counterclaim defendants were to perform for Mr. Cohen; and that the 2002 Agreements memorialized the counterclaim defendants' duties to Mr. Cohen, including the duty to provide periodic reports. In addition, Mr. Cohen has incorporated the Fund agreements into his counterclaims by reference. As a result, nothing prevents resolution of the question at this time.

A. Fraud and negligence misrepresentation

Next, Mr. Cohen objects to the dismissal of his tort claims to the extent that they are predicated upon allegations of misconduct that preceded the execution of the 2002 Agreements. The subject matter of the 1997 Agreement does not coincide with, and the 2002 Agreements postdated, the investment advice that the counterclaim defendants allegedly provided in preparation for the formation of Traditional Holdings. However, all of the purportedly fraudulent activities, upon which the remaining tort claims are based, occurred after, and in putative violation of, the 2002 Agreements. (Mr. Cohen references the irrelevant allegation that he received communications from Agile Group before he invested his lost assets with Agile Group in February, 2002.) The question, then, is whether the economic loss rule covers tort claims for fraud and negligent misrepresentation.

Absent an independent duty of care, Colorado's economic loss rule prohibits a party suffering only economic loss from asserting a tort claim for the breach of an express or implied contractual duty. *Alma*, 10 P.3d at 1264. Colorado courts have declined to employ the rule to dismiss claims for fraud and negligent misrepresentation where the contracted promise constituted the allegedly fraudulent representation and where the dishonesty inhered in the contract negotiations. *Brody v. Bock*, 897 P.2d 769, 776 (Colo. 1995); *Keller v. A.O. Smith Harvestore*

Products, Inc., 819 P.2d 69, 73 (Colo. 1991). The reason for this declination is that the content of the allegedly fraudulent statement is material not for the purpose of establishing a contractual obligation but rather for demonstrating the reasonableness of the claimant's detrimental reliance upon the misrepresentation in entering into the contract. *Brody*, 897 P.2d at 776.

By contrast, where, as here, the formation of the contract precedes the misrepresentation, which breaches an express or implied duty arising from the contract, a tort claim for the misrepresentation is barred. *BRW, Inc. v. Dufficy & Sons, Inc.*, 99 P.3d 66, 75 (Colo. 2004). The 2002 Agreements established and defined the relationships between the parties. *Gryenberg v. Agri Tech, Inc.*, 985 P.2d 59, 63 (Colo. Ct. App. 1999), *aff'd*, 10 P.3d 1267 (Colo. 2000). Mr. Cohen does not assert that the parties, in bargaining for the provision of periodic reports, failed to contemplate that the reports would be truthful. *Id.* at 62. Indeed, the omissions of which the counterclaim defendants are accused would directly have violated the express requirement that they disclose all activity in Traditional Holdings' accounts. Also, the 2002 Agreements and the Fund partnership agreement required the counterclaim defendants to act in good faith and absolved them from liability for all but gross negligence or willful misconduct.

Furthermore, the reporting obligation would be rendered meaningless if the counterclaim defendants were free in the performance of the 2002 Agreements to omit from the disclosures select information without prior authorization. The parties are entitled to rely upon these promises and the claims for fraud and negligent misrepresentation must be dismissed. *BRW*, 99 P.3d at 75.

B. Aiding and abetting

The claims for aiding and abetting Ms. Lynch's alleged fraud and breach of fiduciary duty

stand on the same footing. Mr. Cohen contends that the counterclaim defendants' duty not to aid and abet Ms. Lynch arises not from the contracts but rather from an independent, common law obligation to refrain from assisting Ms. Lynch in the breach of her own duties to him. However, the conduct by which the counterclaim defendants are alleged to have assisted Ms. Lynch is the same conduct predicated the misrepresentation claims; if the counterclaim defendants did not breach the contracts then they also did not aid and abet. *See Waters v. International Precious Metals Corp.*, 172 F.R.D. 479, 499 (S.D. Fla. 1996). As explained above, allowing Mr. Cohen to assert separate tort claims for the alleged contractual breaches would defeat the parties' settled assignments of duties and risks.

VI. Other arguments

Though I conclude that Mr. Cohen's fraud and negligent misrepresentation claims must be dismissed for the reasons stated above, for the sake of clarity I address alternative grounds that the counterclaim defendants proffer for dismissal. They contend that Mr. Cohen fails to plead fraud with sufficient particularity and that the negligent misrepresentation claim fails for lack of a third-party transaction.

A. Sufficiency of the fraud allegations

The counterclaim defendants assail Mr. Cohen's fraud allegations for lack of particularity. It is sufficient to note that Mr. Cohen identified particular alleged omissions from periodic communications.

The counterclaim defendants also argue that Mr. Cohen's scienter allegations defeat themselves. They point out that Mr. Cohen acknowledges in his counterclaim that Mr. Greenberg twice corresponded by letter, warning Mr. Greenberg of the impending crisis. They assert that

these efforts by Mr. Greenberg were inconsistent with – in fact, contrary to – their purported scheme to deceive Mr. Cohen as to the condition of his finances. I agree that Mr. Cohen’s account seems implausible. However, my task under Rule 12 is not to assess the plausibility of Mr. Cohen’s allegations. Rather, I am obliged to accept all of his allegations as true, including the allegation that the counterclaim defendants divined that he would not receive the letters.

B. Sufficiency of the negligent misrepresentation allegations

As the Restatement makes clear, and this Court has observed, a claim for negligent misrepresentation is available in Colorado against one who, in the course of his business, profession or employment, negligently supplies false information for the guidance of others in their business transactions. Restatement (Second) of Torts § 552 (1977); *United Int’l Holdings, Inc. v. Wharf (Holdings) Ltd.*, 946 F. Supp. 861, 870-871 (D. Colo. 1996); *Stat-Tech Liquidating Trust v. Fenster*, 981 F. Supp. 1325, 1343 (D. Colo. 1997). The term “business transactions” means transactions between the claimant and someone other than the defendant. *United Int’l Holdings*, 946 F. Supp. at 871; *Stat-Tech Liquidating Trust*, 981 F. Supp. at 1343; *Grubka v. WebAccess Int’l, Inc.*, 445 F. Supp. 2d 1259, 1270 (D. Colo. 2006).

Mr. Cohen argues that revisions to the model Colorado Jury Instructions signal an abandonment of the third-party transaction requirement. However, that amendment is insufficiently authoritative effectively to adumbrate the Colorado Supreme Court’s treatment of the question. As this Court has explained, the claim of misrepresentation is limited by the third-party requirement because for most pecuniary damages resulting out of business transactions there are adequate remedies available under the law of sales and contract. *Colorado Nat’l Bank of Denver v. Adventura Associates, L.P.*, 757 F. Supp. 1167, 1172 (D. Colo. 1991). This case

illustrates the point: Mr. Cohen is seeking tort damages for alleged conduct that constitutes a breach of contract. The negligent misrepresentation claim must be dismissed on this additional ground.

Accordingly, it is ORDERED that:

- 1) the counterclaim defendants' motion for judgment on the pleadings [#122] is GRANTED; and
- 2) Mr. Cohen's second (breach of fiduciary duty), third (fraud), fourth (negligent misrepresentation), fifth (professional negligence), sixth and seventh (aiding and abetting), and eighth (negligence) claims are DISMISSED.

Dated: January 23, 2007, in Denver, Colorado.

BY THE COURT:

s/Lewis T. Babcock
Lewis T. Babcock, Chief Judge

Exhibit R:
Judge Lewis Babcock Order
dated September 5, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE

Civil Case No. 05-cv-01233-LTB

NATURAL WEALTH REAL ESTATE, INC., a/k/a Greenberg & Associates, Inc., d/b/a Agile Advisors, Inc. a Colorado corporation;
TACTICAL ALLOCATION SERVICES, LLC, d/b/a Agile Allocation Services, LLC, a Colorado limited liability company;
AGILE GROUP, LLC, a Delaware limited liability company;
GREENBERG & ASSOCIATES SECURITIES, INC., d/b/a Agile Group, a Colorado corporation;
and
NEAL R. GREENBERG, a Colorado resident,

Plaintiffs and Counterclaim Defendants,

v.

LEONARD COHEN, a Canadian citizen residing in California;
KELLEY LYNCH, a United States citizen residing in California; and
JOHN DOE, Numbers 1-25,

Defendants,

and,

LEONARD COHEN, a Canadian citizen residing in California,

Counterclaim Plaintiff,

v.

TIMOTHY BARNETT, a Colorado citizen,

Counterclaim Defendant.

ORDER

This matter is before me on Defendant, Leonard Cohen's, Motion for Summary Judgment as to Plaintiffs' Tenth Claim for Relief for Interpleader [**Docket # 185**], Plaintiffs' response [**Docket # 196**], and Cohen's reply [**Docket # 210**]. Oral arguments would not materially assist

the determination of this motion.

The allegations in this case are adequately noted in prior orders of this Court, and I need not repeat them here. After several years of litigation, each claim and counterclaim in this case—with the exception of Plaintiffs’ interpleader claim now at issue—has been dismissed. Plaintiffs’ interpleader claim concerns approximately \$154,000 in funds (“the funds”) belonging to Traditional Holdings LLC, an investment entity created by Cohen and Defendant Lynch for purposes of managing Cohen’s assets. Plaintiffs disavowed any interest in the funds, but requested interpleader for purposes of settling the conflicting positions of Cohen and Lynch regarding ownership of the funds. Plaintiffs paid the funds into the Registry of the Court pending resolution of this issue.

On May 12, 2006, the Superior Court of California, County of Los Angeles, ruled on the issue of ownership of the funds, and entered default judgment in favor of Cohen and against Lynch in the amount of \$7.3 million in damages and interest. *See* Judgment, *Cohen v. Lynch*, Los Angeles Superior Court Case No. BC 338322 (May 12, 2006) [**Docket # 186-16**]. In rendering judgment, the California court declared Lynch was “not the owner of any assets in Traditional Holdings, LLC” and any interest Lynch had in “any other entity related to Cohen . . . she [held] as trustee for Cohen’s equitable title.” The California court enjoined Lynch from interfering with Cohen’s right to receive any such funds or property or in any other way exercising control over any funds or property related to Cohen. The California court ruling was not appealed and is now final.

The final judgment of the California court settles the dispute between Lynch and Cohen over ownership of the interpleaded funds. As Plaintiffs are no longer exposed to multiple liability, Plaintiffs’ interpleader claim is now moot. See FED. R. CIV. P. 22(a)(1). When the dispute underlying an interpleader claim is mooted, the interpleader claim should be dismissed. See *Oldcastle Materials, Inc. v. Rohlin*, 343 F. Supp. 2d 762, 787 (N.D. Iowa 2004); *Burningtree v. Holland*, 760 F. Supp. 118, 119 (E.D. Mich. 1991).

Accordingly, IT IS ORDERED that:

- 1. Plaintiffs’ Tenth Claim for Relief for Interpleader is DISMISSED;
- 2. Defendant Cohen’s Motion for Summary Judgment as to Plaintiffs’ Tenth Claim for Relief for Interpleader [**Docket # 185**] is DENIED AS MOOT;
- 3. The interpleaded funds currently in the Registry of the Court—including any accrued interest, less the Court Registry handling fee—shall be disbursed to Defendant Cohen within ten days of the date of this Order;
- 4. Each party shall bear its own attorney fees and costs related to this motion.

Dated: September 5, 2008.

BY THE COURT:

s/Lewis T. Babcock
Lewis T. Babcock, Judge

Exhibit S:
Defendant Leonard Cohen's
Status Report entered October 11, 2005
(Natural Wealth Docket No. 36)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-CV-01233-LTB-MJW

GREENBERG & ASSOCIATES, INC., d/b/a Agile Advisors, Inc., a Delaware corporation;
TACTICAL ALLOCATION SERVICES, LLC, d/b/a/ Agile Allocation Services, LLC, a
Delaware limited liability company; AGILE GROUP, LLC, a Delaware limited liability
company; GREENBERG & ASSOCIATES SECURITIES, INC., d/b/a/ Agile Group, a Delaware
corporation; and NEAL R. GREENBERG, a Colorado resident,

Plaintiffs,

v.

LEONARD COHEN, a Canadian citizen residing in California; ROBERT KORY, a United
States citizen residing in California; KELLEY LYNCH, a United States citizen residing in
California and JOHN DOE, Nos. 1-25,

Defendants.

DEFENDANT LEONARD COHEN'S STATUS REPORT

Pursuant to the Court's order of September 21, 2005, Defendant Leonard Cohen provides the following status report of the proceedings in the United States District Court for the Central District of California entitled, *Leonard Norman Cohen, Petitioner v. Neal R. Greenberg, et al., Respondents*, Case No. CV 05-6047 RSWL.

In that case, Cohen sought an order compelling arbitration of (i) the purported claims that Neal Greenberg and his companies, known as the Agile Group, have asserted against Cohen in the action pending before this Court and (ii) Cohen's claims against Greenberg and the Agile Group that Cohen has asserted in a Statement of Claim filed with the NASD as the initial step in an arbitration proceeding.

On October 3, 2005, the federal court in Los Angeles held a hearing on Cohen's First Amended Petition To Compel Arbitration and Greenberg and the Agile Group's motion to stay proceedings in deference to the action pending in this Court. At the hearing on October 3, 2005, the federal court announced its ruling from the bench. The court granted Greenberg and the Agile Group's motion to stay proceedings on the ground that the "first to file" rule applied and that the first filed action was before this Court. It denied Cohen's motion to compel arbitration as moot and without prejudice.

Cohen respectfully contends that federal court in Los Angeles erred in applying the first to file rule. Cohen, however, has decided to file his motion to compel arbitration before this Court for resolution. Cohen intends to file the motion to compel this week.

Accordingly, Cohen respectfully requests that the Court defer any ruling on the Agile Group's motion to deposit funds until it has ruled on Cohen's motion to compel arbitration.

Date: October 11, 2005

Respectfully submitted,

s/S. Ashlie Beringer

S. Ashlie Beringer
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D.C. Box No. 18

Attorneys for Defendant Leonard Cohen

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on October 11, 2005, I electronically filed the foregoing **DEFENDANT LEONARD COHEN'S STATUS REPORT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Randall Livingston livingston@b-p-law.com
David Chapman dchapman@bhf-law.com
Meghan Martinez mmartinez@bhf-law.com

s/S. Ashlie Beringer

S. Ashlie Beringer
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Fax: (303) 296-5310
E-Mail: aberinger@gibsondunn.com

Attorneys for Defendant Leonard Cohen

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**Exhibit U:
Motion to Compel Arbitration
by Leonard Cohen dated October 11, 2005**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-CV-01233-LTB-MJW

GREENBERG & ASSOCIATES, INC., d/b/a Agile Advisors, Inc., a Delaware corporation;
TACTICAL ALLOCATION SERVICES, LLC, d/b/a/ Agile Allocation Services, LLC, a
Delaware limited liability company; AGILE GROUP, LLC, a Delaware limited liability
company; GREENBERG & ASSOCIATES SECURITIES, INC., d/b/a/ Agile Group, a Delaware
corporation; and NEAL R. GREENBERG, a Colorado resident,

Plaintiffs,

v.

LEONARD COHEN, a Canadian citizen residing in California; ROBERT KORY, a United
States citizen residing in California; KELLEY LYNCH, a United States citizen residing in
California and JOHN DOE, Nos. 1-25,

Defendants.

DEFENDANT LEONARD COHEN'S PETITION TO COMPEL ARBITRATION

Leonard Norman Cohen petitions for an Order compelling arbitration of:

- a. Purported claims asserted by Neal R. Greenberg; Greenberg & Associates, Inc.,
d/b/a Agile Advisors, Inc.; Tactical Allocation Services, LLC, d/b/a Agile Allocation Services
LLC; Agile Group, LLC; and Greenberg & Associates Securities, Inc., d/b/a Agile Group
(collectively referred to as the "Agile Group") in an action pending in the United States District
Court for the District of Colorado; and
- b. Claims asserted by Cohen against the Agile Group in an arbitration commenced
with the NASD Dispute Resolution ("NASD") by the filing of Cohen's Statement of Claim with
the NASD.

This Petition is made pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 4. This Petition seeks relief on the grounds that the parties' written agreements and the rules promulgated by the NASD provide for arbitration of the disputes that have arisen between them, that the Agile Group refuses to arbitrate, and that Cohen has no other adequate remedy to compel arbitration. The NASD has advised that Greenberg & Associates Securities, Inc., d/b/a Agile Group ("Greenberg Securities") is a member of the NASD. The NASD has also confirmed that Neal Greenberg is an associated person of Greenberg Securities under NASD Rules. Although Greenberg & Associates, Inc., d/b/a Agile Advisors, Inc.; Tactical Allocation Services, LLC, d/b/a Agile Group, LLC and Agile Group, LLC are, according to the NASD, not formal members of the NASD, by the use of their name "Agile Group," they have held themselves out to Cohen and the public at large as members of the NASD and by the use of that name seek to induce the public to believe that they are members of the NASD. Further, each member of the Agile Group is and holds itself out as an agent of the Agile Group, a member of the NASD. They have made filings with the Securities & Exchange Commission confirming that they are under common control. Accordingly, they are also required to arbitrate under applicable law.

PARTIES

1. Leonard Norman Cohen ("Cohen") is, and at all relevant times has been, a Canadian citizen permanently residing in Los Angeles, California.
2. Cohen is informed and believes and on those grounds alleges that Neal R. Greenberg ("Greenberg") is a citizen of the state of Colorado.
3. Greenberg & Associates, Inc., d/b/a Agile Advisors, Inc., is a Delaware corporation with its principal place of business in Boulder, Colorado,

4. Tactical Allocation Services, LLC, d/b/a Agile Allocation Services LLC ("TAS") is a Delaware limited liability company with its principal place of business in Boulder, Colorado.

5. Agile Group, LLC, is a Delaware limited liability company with its principal place of business in Boulder, Colorado.

6. Greenberg Securities is a Delaware corporation with its principal place of business in Boulder, Colorado.

7. The members of the Agile Group do business under the corporate group name, "Agile Group", and hold themselves out as single organization or corporate group that services the investment needs of their clients, under the "brand names" Agile and Agile Group, the same name used by Greenberg Securities, the NASD member. On their website, www.agilefunds.com, the members of the Agile Group advertise themselves as a single collective organization, with a single "organizational chart" and single set of executive officers. The members of the Agile Group all operate from the same business address. A copy of the relevant pages from the Agile Group's website is attached hereto as Exhibit A. Further, each of the members of the Agile Group is and at all relevant times held itself out as the agent of each of the other members and have admitted that fact in filings with the SEC.

JURISDICTION AND VENUE

8. This Court has diversity jurisdiction under 28 U.S.C. § 1332 in that the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

9. Venue is proper in the District of Colorado under 28 U.S.C. 1391(a) as the members of the Agile Group including Greenberg are subject to personal jurisdiction in this District.

10. Because this Court has diversity jurisdiction under 28 U.S.C. § 1332, the FAA, 9 U.S.C. § 4, empowers this court to grant an order compelling arbitration.

FACTUAL ALLEGATIONS

11. Cohen is an accomplished poet, novelist, recording artist and musician with a successful career spanning nearly five decades.

12. The members of the Agile Group are investment advisors, asset managers, and a broker dealer, doing business as "Agile Group." Agile Group is a registered member of the NASD, and membership list for the NASD, lists Agile Group as a member and not Greenberg & Associates Securities, Inc. d/b/a Agile Group as the member. Thus, the members of the Agile Group want the public to believe that Agile Group is a member of the NASD.

A. The Agreements To Arbitrate.

13. Cohen and TAS entered into an Investment Advisory Agreement ("Agreement"), pursuant to which TAS was to provide financial investment advice, financial services and manage certain accounts for Cohen. True and correct copies of the Agreement is attached hereto as Exhibit B.

14. Pursuant to the terms of the Agreement, TAS and Cohen agreed to arbitrate before the NASD any disputes arising out of or relating to the Agreements and the services provided by TAS. Specifically, the arbitration clauses provide that "[a]ny dispute or controversy rising out of or relating to this Agreement . . . or any breach of this Agreement . . . or with

respect to the relationship between [Greenberg] and [Cohen] shall be settled by final and binding arbitration" before the NASD. *See id.*

15. Rule 10301(a) of the NASD Manual provides in part:

Any dispute, claim, or controversy eligible for submission under the Rule 10100 Series between a customer and a member and/or associated person arising in connection with the business of such member or in connection with the activities of such associated persons shall be arbitrated under this Code, as provided by any duly executed and enforceable written agreement or upon the demand of the customer.

Rule 10101 of the NASD Manual provides for arbitration of "any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association". . . "between or among members or associated persons and public customers, or others."

16. Greenberg Securities is a member of the NASD. Neal Greenberg is an associated person under the NASD Rules. These Rules constitute an agreement to arbitrate claims between members and associated persons, on the one hand, and public customers, such as Cohen, on the other hand. The remaining members of the Agile Group have held themselves out and advertise themselves publicly as part of the "Agile Group" (the NASD member) and have acted and held themselves out as the agent of Greenberg Securities. Under applicable law, they too are required to arbitrate their claims as if they were also signatories of the agreement to arbitrate as NASD members.

B. The Disputes Pending In The United States District Court For Colorado.

17. Beginning in the last quarter of 2004, Cohen, through his counsel, began discussions with the Agile Group regarding the Agile Group's responsibility for the dissipation of millions of dollars from the funds that the Agile Group were obligated to manage. In connection with those discussions, Cohen alleged that the Agile Group was liable to Cohen as a result of its tortious acts and omissions and breaches of contractual and legal duties. Cohen sought to have the Agile Group mediate the disputes.

18. In response to Cohen's efforts, the Agile Group e-filed a lawsuit in the District Court, Boulder County, State of Colorado on June 5, 2005 against Cohen (and his attorney), and the action was subsequently removed to the United States District Court for the District of Colorado under diversity jurisdiction on July 1, 2005. The Agile Group filed an amended complaint in the District of Colorado on August 2, 2005.

19. The claims asserted in the Colorado complaint arise out of and in connection with the Agile Group's business as investment advisors and securities brokers and the parties' relationship in connection with the Agile Group's investment, management and handling of Cohen's accounts. The claims concern alleged wrongdoing in connection with Cohen's attempts to recoup the funds lost as a result of the Agile Group's wrongdoing. Cohen denies the material allegations in the Colorado Complaint. The claims asserted in the Colorado complaint are therefore subject to arbitration, pursuant to the parties' Agreements and rules promulgated by the NASD.

20. Cohen has demanded that the Agile Group arbitrate the purported claims against him before the NASD, and to date the Agile Group has refused to agree to do so.

C. Cohen's Claims Filed With The NASD Against the Members of the Agile Group.

21. On August 19, 2005, Cohen commenced an arbitration against the Agile Group by sending to the NASD, a Statement of Claim alleging claims for breach of contract, breach of the implied covenants of good faith and fair dealing, fraud, negligent misrepresentation and negligence against each of the members of the Agile Group arising out of their acts and omissions in handling Cohen's money and accounts. A true and correct copy of the Statement of Claim is attached hereto as Exhibit C.

22. The NASD has advised that Cohen that Greenberg Securities is a member of the NASD and Neal Greenberg is an associated person and therefore required to arbitrate the claims alleged in Cohn's Statement of Claim. The NASD has advised that it does not consider Greenberg & Associates, Inc., d/b/a Agile Advisors, Inc., TAS, and Agile Group, LLC to be members of the NASD. As explained by the NASD, these members of the Agile Group can still be made parties to an NASD arbitration if they voluntarily agree to do so or if they are compelled to by a court.

23. Regardless of the NASD's view, Greenberg & Associates, Inc., d/b/a Agile Advisors, Inc., TAS, and Agile Group, LLC have held themselves out to the public at large as members of the NASD. They use the name Agile Group and consider themselves members of Agile Group. Of course, Agile Group (the d/b/a of Greenberg Securities) is the listed NASD member. Each of these members of the Agile Group also have held themselves out as agents of Greenberg Securities and they have acted as agents of Greenberg Securities. As such all the members of the Agile Group and Greenberg are also required to arbitrate before the NASD under applicable law.

REQUEST FOR RELIEF

The agreements to arbitrate in the Agreements and in the NASD Rules are enforceable by this Court pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., which specifically authorize this Court, upon this Petition, to enter an Order directing the parties to arbitrate before the NASD and pursuant to NASD procedure.

WHEREFORE, Cohen respectfully requests that the Court:

A. Order each of the members of the Agile Group including Greenberg to submit their claims, which are now pending in the United States District Court for the District of Colorado, to arbitration before the NASD;

B. Order the members of the Agile Group, including Greenberg, to arbitrate Cohen's claims alleged in the Statement of Claim before the NASD;

- C. Award to Cohen costs of this proceeding; and
- D. Such other and further relief as the Court deems proper.

Date: October 11, 2005

Respectfully submitted,

s/S. Ashlie Beringer

S. Ashlie Beringer
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Attorneys for Defendant Leonard Cohen

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on October 11, 2005, I electronically filed the foregoing **DEFENDANT LEONARD COHEN'S PETITION TO COMPEL ARBITRATION** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Randall Livingston livingston@b-p-law.com
David Chapman dchapman@bhf-law.com
Meghan Martinez mmartinez@bhf-law.com

s/S. Ashlie Beringer

S. Ashlie Beringer
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Fax: (303) 296-5310
E-Mail: aberinger@gibsondunn.com

Attorneys for Defendant Leonard Cohen

Exhibit V:
Brief in Support re. Motion for Judgment
on the Pleadings dated October 19, 2006

*Brief can be found
at racketeeringact.
wordpress.com*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-CV-01233-LTB-MJW

NATURAL WEALTH REAL ESTATE, INC., d/b/a Agile Advisors Inc., a Colorado corporation;
TACTICAL ALLOCATION SERVICES, LLC, d/b/a Agile Allocation Services, LLC, a Colorado limited liability company;
AGILE GROUP, LLC, a Delaware limited liability company;
GREENBERG & ASSOCIATES SECURITIES, INC., d/b/a Agile Group, LLC, a Colorado corporation; and
NEAL R. GREENBERG, a Colorado resident,
Plaintiffs,

v.

LEONARD COHEN, a Canadian citizen residing in California;
KELLEY LYNCH, a United States citizen residing in California; and
JOHN DOE, NOS. 1-25,
Defendants,

and

LEONARD COHEN, a Canadian citizen residing in California;
Counterclaim Plaintiff,

v.

TIMOTHY BARNETT, a Colorado citizen,
Counterclaim Defendant.

**PLAINTIFFS' AND BARNETT'S MOTION FOR JUDGMENT ON THE PLEADINGS
AS TO COHEN'S SECOND THROUGH EIGHTH COUNTERCLAIMS**

Plaintiffs Natural Wealth Real Estate, Inc. ("Natural Wealth"); Tactical Allocation Services, LLC ("TAS"); Agile Group, LLC; Greenberg & Associates Securities, Inc. ("Greenberg Securities"); Neal R. Greenberg ("Greenberg") and Timothy Barnett ("Barnett") (collectively, "Counter-Defendants"), by undersigned counsel, pursuant to Fed. R. Civ. P. 12(c), hereby submit their Motion for Judgment on the Pleadings as to Cohen's Second through Eighth Counterclaims, and as grounds therefore, state as follows:

1. Cohen's negligence, breach of fiduciary duty, and fraud claims (Second through Fourth and Sixth through Eighth Claims) are barred by the economic loss rule.
2. Cohen has failed to plead his fraud claims with particularity (Third and Seventh Claims).
3. Cohen has failed to sufficiently plead his fraud claims as a matter of law (Third and Seventh Claims).
4. Cohen has failed to plead the existence of a third party transaction necessary to sustain his claim for negligence misrepresentation (Fourth Claim).
5. Cohen has failed to timely file a certificate of review as required by C.R.S. § 13-20-602(1)(a) in order to bring his claims for professional negligence, negligence, and breach of fiduciary duty (Second, Fifth, Sixth, and Eighth Claims).

WHEREFORE, for the reasons more fully set forth in Counter-Defendants' Memorandum in Support of Motion for Judgment on the Pleading as to Cohen's Second through Eighth Counterclaims filed simultaneously herewith, Counter-Defendants respectfully request that this Court grant their Motion, dismiss Cohen's Second through Eighth Claims for Relief, and award Counter-Defendants their attorneys fees and expenses.

DATED: October 19th, 2006.

Respectfully submitted,

s/R. Daniel Scheid

R. Daniel Scheid
LEWIS SCHEID LLC
2300 Fifteenth Street, Suite 2300
Denver, CO 80202
Telephone: (303) 534-5040
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DeLancey, NY 13752
Telephone: (845) 676-4034
Email: poselaw@gmail.com

**ATTORNEYS FOR PLAINTIFFS AND
COUNTERCLAIM DEFENDANT**

CERTIFICATE OF SERVICE

I hereby certify that on October 19th, 2006, I electronically filed the foregoing **PLAINTIFFS' AND BARNETT'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO COHEN'S SECOND THROUGH EIGHTH COUNTERCLAIMS** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Randall M. Livingston (livingston@b-p-law.com)

I hereby certified that I served the foregoing document on the following non CM/ECF participants by e-mail and U.S. First Class Mail, postage prepaid to the following:

Kelley Lynch
2648 Mandeville Canyon Road
Los Angeles, CA 90049
tseringma@gmail.com

s/R. Daniel Scheid

Exhibit Z:
Richard Westin letter to Leonard Cohen
March 6, 2002

March 6, 2002 – Draft

See KL notes to Richard Westin and Cohen comments. Faxed to RW.

Dear Leonard,

I have now reviewed all the documents that were forwarded me in order to prepare the Traditional Holdings return. I would like to point out that I did not notice any sloppy record keeping and all the documents were delivered to me in a timely manner.

I would like to review the structure of TH at this time because it is ornate you may need further clarification. I will start at the beginning. TH came about as the result of Neal and myself being approached by Kelley at your request to search for a tax structure that would benefit you with respect to the Sony royalty buyout. At that time, you were looking at ordinary income that would have been taxed at the rate of 47%. Traditional Holdings purchased your royalty buy-out properties using a private annuity. A private annuity is a contract under which a person sells property in exchange for deferred payments that end when the seller dies. The deferred payments are payments to you (which I will address later in this letter) and it is these deferred payments that allow the tax to be deferred. The payments cease upon your death. Private annuities have been around for decades and are not controversial.

In the year 2011, you will begin receiving about \$38,000 a month for the remainder of your life. You will then pay taxes yearly on this amount at whatever the tax rate is on ordinary income.

You have therefore saved tremendously in taxes because you avoided the ordinary income tax of approximately \$3.5 million in the year of the sale and will pay taxes as you receive your deferred payments. In the interim, your money is invested and if well managed it is also growing.

All monies you take from TH until 2011 need to be documented as loans. This is why some confusion arose for Kelley in the year 2001 with respect to your personal tax return payment. Neal made the decision that the funds should come from TH and Kelley then contacted me in order to determine what paperwork, if any, was required. I had to prepare a note that was to be placed in the file with a copy of the return. It is important to have these “loans” documented by notes.

RW will prepare all loan documents. He is also handling matters related to the Sony 1099. RW and KC will discuss who will prepare the LCI and BMT returns.

To reiterate, TH obtained the properties with a private annuity in order to defer taxes. Kelley had to be brought in, and agreed to do so in order to help you, because you need a third party's involvement so that this transaction is not viewed as your selling something to yourself. The third party should not be a relative of yours therefore Kelley was selected. We had Kelley sign a promissory note in the amount of \$245,000 to TH which shows that she invested in TH. She is to receive \$24,000 a year for the first 17 years, then \$31,250 a year, which allows her to repay the note; and, \$20,000 a year which allows her to pay taxes on the amount she has received.

It complicates things for Kelley and possibly eats into her lifetime gift tax exemption that would benefit her children.

RW – advised that the promissory note payments total \$44,000/year. Addressed in corporate books and management agreement. Cohen, RW, and NG have discussed the profits to be allotted to me and this will be addressed in writing. Indemnity Agreement should be placed in corporate file.

It is possible that estate taxes will change in the future and Kelley will not suffer any penalties. To summarize, Kelley was brought into this situation in order to help you accomplish a beneficial tax structure.

Leonard asked if I would be responsible for payments on the promissory note in the event he died. Westin said no.

At this time, Kelley needs to begin repaying the note to TH. She must pay \$24,000 debt service on the note this year so that the entity remains legitimate. The way we anticipated handling this was to allocate \$240,000/year of TH profits to Kelley each year which allows her to pay the taxes on the income that has created for Kelley.

RW will advise KL how taxes will be handled on thos \$240,000/year allocation. He will prepare all necessary tax documents.

Unfortunately, because Kelley did not make the \$24,000 payment in 2001 (she was not aware that she had to do so), this may create hardship for her with respect to taxes. In order to resolve this situation, I propose that Kelley be allocated the sum of \$_____ for the years 2001 and 2002. Out of this amount, Kelley will pay the note (by writing a check to TH) and pay the taxes she incurs by receiving these monies from TH, which we will call a fee for the sake of simplicity.

It is often the case that once a structure has been established and taken out of the realm of theory, it takes time for all parties to understand what its function is and how it operates. I have basically raised three points here: (1) that a private annuity has been established in order to defer taxes; (2) you will eventually begin receiving monthly payments and until that time, all withdrawals from TH need to be documented as loans; (3) Kelley's participation was essential and requires a yearly payment to her which allows her to repay the note and the taxes she incurs because of the payment.

On a separate note, I am giving some thought to your gift tax situation. I understand that you are giving Adam approximately \$42,000 a year in support. This cancels out the possibility of gift him \$11,000 a year (which is now the yearly gift amount) with respect to the property you have purchased. I also understand that Anjani Thomas has been given sums possibly in excess of \$11,000 permitted yearly gift and need to rethink how the loan to her for the house should be handled.

LC asked RW to address gifts to Lorca – including mortgage payment he makes on the Melrose property. Chudd's firm advised that Cohen should have a lease with Lorca - \$55/sq. foot. Cohen decided against this.

I would like to take some time and review the larger picture of your gifts with Kelley - this would include your voluntary monthly gift to the children's mother which comes to \$45,600 per year.

Kelley has advised me that you would like to know if there is some way for you to give gifts to your children in a manner that does not create a gift tax. This is something Reeve Chudd and I need to think through.

Since my involvement in your tax planning, several entities have been created: two charitable remainder trusts (which I understand Neal will address with you separately), and Traditional Holdings. These three entities - the two charitable remainder trusts and TH are really the essence of your tax and estate planning.

Last year was a very complex year but going forward everything should be quite smooth and uncomplicated.

Richard

Cohen asked Westin if I could be compensated with 15% of LCI (as was the case with BMT). Westin advised that I should have been.

Westin advised us that TH bypasses Cohen's estate. The only entity assigned to Cohen's revocable family trust (probate) is LCI.

Followed up with Greenberg on memo he is preparing re. charitable remainder trusts. He will speak directly to RW re. Cohen's withdrawals from those accounts.

1 Kelley Ann Lynch
1754 N. Van Ness Avenue
2 Hollywood, California 90028
3 kelly.lynch.2013@gmail.com

4 In Propria Persona

5
6 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
7

8 Kelley Ann Lynch, an individual

Case No.

9 Plaintiff

10 vs.

11 Leonard Norman Cohen, an individual,
12 Robert B, Kory, an individual,
13 Michelle Rice, an individual,
and Does 1-25

14 Defendants
15

16
17 EXHIBITS
VOLUME II
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Exhibit AA:
Richard Westin letter to Kelley Lynch
dated March 6, 2002

Richard Westin

March 6, 2002

Dear Kelley,

I have now reviewed all the documents that were forwarded me in order to prepare the Traditional Holdings tax return.

I would like to review the structure of TH at this time because it is ornate and you may need further clarification. I will start at the beginning. TH came about as the result of Neal and myself being hired to assist Leonard with a tax structure that would benefit him with respect to the Sony royalty buyout. Leonard was looking at ordinary income that would have been taxed at the rate of 47%. Traditional Holdings purchased royalty buy-out properties* using a private annuity. A private annuity is a contract under which a person sells property in exchange for deferred payments that end when the seller dies. The deferred payments are payments to Cohen (which do not arise until 2011) and it is these deferred payments that allow the tax to be deferred. The payments cease upon Leonard's death. Private annuities have been around for decades and are not controversial.

In the year 2011, Leonard will begin receiving a monthly payment for the remainder of his life. All monies Leonard borrows from TH need to be documented as loans. I have also addressed this directly with Leonard.

To reiterate, TH obtained the properties* with a private annuity in order to defer taxes. You had to be brought in, and agreed to do so, because Leonard needed a third party's involvement so that this transaction is not viewed as LC selling something to himself.

You executed a promissory note in the amount of \$245,000 to TH which shows that you invested in TH. You will be able to repay this with the \$24,000 a year (for the first 17 years, then \$31,250 a year to repay the note); and, \$20,000 a year (to pay taxes on the amount note repayment amount received). Leonard provided you with an Indemnity Agreement to address some of your concerns.

I know this complicates things for you and possibly eats into you lifetime gift tax exemption that would benefit you children. There may be something Leonard personally can do to help or it is possible that estate taxes will change in the future

and you will not suffer any penalties. You were brought into this situation in order to help Leonard accomplish a beneficial tax structure and treatment and should not be affected adversely. This is also an investment for you.

We also anticipated allocating you \$240,000/year each year to help with taxes. You are to receive 100% of the profits. This is something Leonard, Neal, and I discussed when the issue arose in February. The Black Beauty contains the corporate records that address your distributions.

It is often the case that once a structure has been established and taken out of the realm of theory, it takes time for all parties to understand what its function is and how it operates. I have basically raised three points here: (1) that a private annuity has been established in order to help Leonard defer taxes; (2) you Leonard eventually begin receiving monthly payments and until that time, his withdrawals from TH need to be documented as loans; (3) your participation is essential and requires yearly payments for the note, taxes, and other distributions.

Since my involvement with Leonard Cohen, several entities have been created: two charitable remainder trusts and Traditional Holdings. I understand Neal will address the charitable remainder trusts directly with Leonard.

Last year was a very complex year but going forward everything should be quite smooth and uncomplicated. I hope this helps.

Richard

*Blue Mist Touring Company, Inc. IP.

See notes of conversations with LC and RW on LC's copy.

Exhibit CC:
Los Angeles Superior Court Complaint
Case No. BC338322

Original

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GIBSON, DUNN & CRUTCHER LLP
SCOTT A. EDELMAN, SBN 116927
2029 Century Park East
Suite 4000
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Telephone: (310) 552-8500
Facsimile: (310) 551-8741

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

*Case assigned to
Judge Kenneth
Freeman*

FILED
LOS ANGELES SUPERIOR COURT

AUG 15 2005

JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
BY J. SUNGA
J. SUNGA, DEPUTY

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

D. Get

LEONARD NORMAN COHEN, an individual; LEONARD COHEN INVESTMENTS, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

KELLEY A. LYNCH, an individual;
RICHARD A. WESTIN, an individual;
DOES 1 through 50, inclusive,

Defendants.

CASE NO. BC338322

COMPLAINT FOR:

- (1) BREACHES OF FIDUCIARY DUTY;
- (2) COMMON LAW FRAUD;
- (3) BREACH OF CONTRACT;
- (4) ACCOUNTING;
- (5) CONVERSION;
- (6) IMPOSITION OF CONSTRUCTIVE TRUST AND INJUNCTIVE RELIEF; AND
- (7) PROFESSIONAL NEGLIGENCE

DEMAND FOR JURY TRIAL

CIT/CASE: BC338322 LEA/REF#:
 RECEIPT #: CCH280104697
 DATE PAID: 08/15/05 04:10:53 PM
 PAYMENT: \$299.50 9310
 RECEIVED:
 CHECK: 299.50
 CASH:
 CHANGE:
 CAPS:

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

5 **SUMMARY OF THE COMPLAINT**

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

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

20 3. Kelley Lynch was Cohen's business manager for approximately seventeen
21 years until he fired her for cause in October 2004. Cohen fired Lynch upon his discovery that
22 she had been siphoning monies from his personal bank and investment accounts substantially
23 in excess of the 15% management compensation to which she was entitled. A preliminary
24 analysis shows that Lynch has wrongfully taken approximately over \$5 million of Cohen's
25 earnings over approximately seven years. When confronted by Cohen, Lynch admitted to
26 having taken "millions" because she had "got in over her head." However, Lynch has
27 wrongfully refused and continues to wrongfully refuse Cohen's requests for an accounting.
28

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

8 5. In late 1994, after completing a successful tour following his album release in
9 1993, Cohen decided to spend some time at the Mount Baldy Zen Center in Los Angeles,
10 California. Cohen remained there for nearly five years leading a life of rigorous religious
11 discipline. Cohen left the Zen Center in January 1999.

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

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

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

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

8 9. With the help of Greenberg and Westin, and under the guise of "saving taxes"
9 and "estate planning" for the benefit of Cohen's two children, she orchestrated the sale of
10 Cohen's music publishing company in 1997 (the "1997 Sale") and his Artist Royalties in
11 2001 (the "2001 Sale") for a combined total of over \$12 million, ostensibly to fund Cohen's
12 retirement. Also, with the help of Greenberg and Westin, and the complex transactions
13 invented by them, she retained control of almost all of the royalty sale proceeds.

14 10. Cohen believed that he had hired Westin and Greenberg to protect his
15 retirement savings, but in fact, they burdened the sales with transactions costs in excess of
16 \$4 million, and they devised unnecessarily complex corporate structures that allowed Lynch
17 to steal over \$5 million for her own benefit without Cohen's knowledge or consent.

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

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

28

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

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

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

21 16. Through the misrepresentations made by Defendants, Cohen believed that the
22 1997 Sale and the 2001 Sale were financially necessary. The fact is that Cohen's royalties
23 were ample to support his modest lifestyle. Lynch concealed the amount of Cohen's royalties
24 and her misappropriation of those royalties, thereby creating a sense of urgency to sell assets.
25 The sales of Cohen's intellectual property assets were only required to facilitate Lynch's
26 access to Cohen's funds and to generate large transactions fees for professionals.

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

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

3 18. This lawsuit also seeks to hold Westin liable for his professional negligence in
4 his representation of Cohen. Westin's nearly nine-year legal advisory relationship with Cohen
5 was rife with undisclosed conflicting professional loyalties in Westin's simultaneous
6 representation of Cohen, Lynch, and the various legal entities Westin formed on Cohen's
7 behalf. Westin concurrently represented both Cohen and Lynch in several transactions
8 without full disclosure or informed consent, when their respective interests as Artist and
9 business manager in such transactions were clearly conflicted. These transactions were to the
10 substantial detriment of one of Westin's clients, Cohen, and in substantial favor of his other
11 concurrent client, Lynch. Westin also drafted corporate organizational documents that were
12 favorable to Lynch's interests, rather than Cohen's, and gave Lynch extraordinary control
13 over Cohen's assets in a retirement vehicle established for Cohen's benefit but inexplicably
14 99.5% owned by Lynch. Additionally, Westin, a tax professor, failed to monitor the financial
15 conditions of the various corporate entities he formed for Cohen. By preparing and filing tax
16 returns for Cohen's various corporate entities, Westin had actual knowledge of Lynch's
17 misconduct and misappropriations. As Cohen's legal advisor, Westin had a duty to zealously
18 guard and protect Cohen's interests, and by failing to inform Cohen of Lynch's misconduct,
19 breached his duty to Cohen.

20 **THE PARTIES**

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

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

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

27
28

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

1
2
3 27. Upon the death of Machat, Lynch began working for Cohen as his personal
4 assistant. Gradually, Lynch came to oversee more and more aspects of Cohen's career,
5 including Cohen's financial affairs, fully assuming the role as Cohen's business manager.

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

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

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

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

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

10 **1997 Sale of Music Publishing Assets Through Stock Sale of**
11 **Leonard Cohen Stranger Music, Inc.**

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

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

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

28

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

6 **1998-2000 Failed Attempts to Structure a Sale of Artist Royalties**

7 **and Other Copyrights as Stock Sale**

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

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

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

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

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

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

13 41. Without consulting Cohen, Westin complied with Lynch's request on June 1,
14 1998 by drafting and providing Lynch a Waiver of Notice for a Special Meeting, the minutes
15 of a Special Meeting, and the proposed assignments for 1) the Writer's Share; 2) the
16 Performer's share; and 3) copyrights to Cohen's eleven published books. Westin also
17 provided Lynch a draft Stock Purchase Agreement.

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

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

1 Cohen's Writer's Share of Performance Income received from SOCAN was signed by Cohen
2 as Assignor and President of Blue Mist and dated December 29, 1999. Similarly,
3 assignments were executed by Cohen for Artist's Record Royalty rights on December 29,
4 1999 and the Master Tapes of 1979, 1988, and 1993 Live Performances on December 28,
5 1998.

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

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

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