

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, 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.

DEFENDANT COHEN'S ANSWER TO SECOND AMENDED COMPLAINT,
COUNTERCLAIMS, AND JURY DEMAND

Defendant Leonard Cohen ("Cohen"), by and through counsel, Bailey &
Peterson, A Professional Corporation, for his answer to the Second Amended
Complaint ("SAC") states:

Cohen denies the argumentative “Nature of the Action” preface to and the headings in the SAC.

1. Cohen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 and therefore denies the same.

2. Cohen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 and therefore denies the same.

3. Cohen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 and therefore denies the same.

4. Cohen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 and therefore denies the same.

5. Cohen is without information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 and therefore denies the same.

6. Cohen admits the allegations contained in paragraph 6.

7. Cohen admits the allegations contained in paragraph 7.

8. Cohen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 and therefore denies the same.

9. Cohen states that paragraph 9 contains a legal conclusion to which no response is necessary in that the parties cannot create jurisdiction in this Court.

10. Cohen admits that he has subjected himself to the personal jurisdiction of this Court and denies the remaining allegations contained in paragraph 10.

11. Cohen denies the allegations contained in paragraph 11.

12. Cohen denies the allegations contained in paragraph 12.

13. Cohen denies the allegations contained in paragraph 13.

14. Cohen denies the allegations contained in paragraph 14.

15. Cohen denies the allegations contained in paragraph 15.

16. Cohen denies the allegations contained in paragraph 16.

17. Cohen admits venue and denies the remaining allegations contained in paragraph 17.

18. Cohen admits the allegations contained in paragraph 18.

19. Cohen admits the allegations contained in the first sentence of paragraph 19. Cohen denies the remaining allegations contained in paragraph 19.

20. Cohen admits that Lynch was hired to handle Cohen's business affairs. Cohen denies the remaining allegations contained in paragraph 20.

21. Cohen denies the allegations contained in paragraph 21.

22. Cohen denies the allegations contained in paragraph 22.

23. Cohen denies the allegations contained in paragraph 23.

24. Cohen denies the allegations contained in paragraph 24.

25. Cohen denies the allegations contained in paragraph 25.

26. Cohen denies the allegations contained in paragraph 26.

27. Cohen denies the allegations contained in paragraph 27.

28. Cohen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 and therefore denies the same.

29. Cohen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 and therefore denies the same.

30. Cohen is without information sufficient to form a belief as to the truth of the allegations of paragraph 30 and therefore denies the same.

31. Cohen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 and therefore denies the same.

32. Cohen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 and therefore denies the same.

33. Cohen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 and therefore denies the same.

34. Cohen admits the first sentence of paragraph 34. Cohen is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 34 and therefore denies the same.

35. Cohen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 and therefore denies the same.

36. Cohen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 36 and therefore denies the same. Cohen denies the remaining allegations contained in paragraph 36.

37. Cohen admits that there are three trusts and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 37 and therefore denies the same.

38. Cohen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 and therefore denies the same.

39. Cohen denies the allegations contained in paragraph 39.

40. Cohen denies the allegations contained in paragraph 40.

41. Cohen denies the allegations contained in the first sentence of paragraph 41. Cohen is without knowledge or information sufficient to form

a belief as to the truth of the remaining allegations contained in paragraph 41 and therefore denies the same.

42. Cohen admits that he began negotiations with Sony for the sale of his Artist Royalties in or about 1999 and that he was the Chairman, President, and majority shareholder of Blue Mist, owning 425 shares, while Lynch was the Assistant Secretary and minority shareholder of Blue Mist, owning 75 shares, or 15% of the company. Cohen denies the remaining allegations contained in paragraph 42.

43. Cohen denies the allegations contained in paragraph 43.

44. Cohen denies the allegations contained in paragraph 44.

45. Cohen lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 and therefore denies the same.

46. Cohen lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 and therefore denies the same.

47. Cohen denies the allegations contained in paragraph 47.

48. Cohen denies the allegations contained in paragraph 48.

49. Cohen denies the allegations contained in paragraph 49.

50. Cohen denies the allegations contained in paragraph 50.

51. Cohen denies the allegations contained in paragraph 51.

52. Cohen denies the allegations contained in paragraph 52.

53. Cohen denies the allegations contained in paragraph 53.

54. Cohen denies the allegations contained in paragraph 54.

55. Cohen denies the allegations contained in paragraph 55.

56. Cohen denies the allegations contained in paragraph 56.

57. Cohen denies the allegations contained in paragraph 57.

58. Cohen denies the allegations contained in paragraph 58.

59. Cohen denies the allegations contained in paragraph 59.

60. Cohen denies the allegations contained in paragraph 60.

61. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 61 and therefore denies the same.

62. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 62 and therefore denies the same.

63. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 63 and therefore denies the same.

64. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 64 and therefore denies the same.

65. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 65 and therefore denies the same.

66. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 66 and therefore denies the same.

67. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 67 and therefore denies the same.

68. Cohen admits the allegations contained in the first sentence of paragraph 68. Cohen is without knowledge or information sufficient to form a belief as the truth of the remaining allegations contained in paragraph 68 and therefore denies the same.

69. Cohen denies the allegations contained in paragraph 69.

70. Cohen denies the allegations contained in paragraph 70.

71. Cohen denies the allegations contained in paragraph 71.

72. Cohen admits signing a durable power of attorney on or about January 31, 2002, and denies any characterization of the power of attorney by Plaintiffs.

73. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 73 and therefore denies the same.

74. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 74 and therefore denies the same.

75. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 75 and therefore denies the same.

76. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 76 and therefore denies the same.

77. Cohen denies the allegations contains in paragraphs 77.a and 77.d. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 77.b, 77.c, and 77.e. and therefore denies the same.

78. Cohen denies the allegations in paragraph 78.

79. Cohen denies the allegations in paragraph 79.

80. Cohen denies the allegations in paragraph 80.

81. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 81 and therefore denies the same.

82. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 82 and therefore denies the same.

83. Cohen denies the allegations contained in paragraph 83.

84. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 84 and therefore denies the same.

85. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 85 and therefore denies the same.

86. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 86 and therefore denies the same.

87. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 87 and therefore denies the same.

88. Cohen denies the allegations contained in paragraph 88.

89. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 89 and therefore denies the same.

90. Cohen denies the allegations contained in paragraph 90.

91. Cohen denies the allegations contained in paragraph 91.

92. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 92 and therefore denies the same.

93. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 93 and therefore denies the same.

94. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 94 and therefore denies the same.

95. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 95 and therefore denies the same.

96. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 96 and therefore denies the same.

97. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 97 and therefore denies the same.

98. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 98 and therefore denies the same.

99. Cohen denies the allegations in paragraph 99.

100. Cohen admits transmitting an e-mail to Greenberg on or about October 21, 2004, and denies any characterization of that e-mail by Plaintiffs.

101 Cohen admits transmitting an e-mail to Greenberg on or about October 22, 2004, and denies any characterization of that e-mail by Plaintiffs.

Cohen denies the remaining allegations contained in paragraph 101.

102. Cohen denies the allegations contained in paragraph 102.

103. Cohen denies the allegations contained in paragraph 103.

104. Cohen denies the allegations contained in paragraph 104.

105. Cohen denies the allegations contained in paragraph 105.

106. Cohen denies the allegations contained in paragraph 106.

107. Cohen denies the allegations contained in paragraph 107.

108. Cohen denies the allegations contained in paragraph 108.

109. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 109 and therefore denies the same.

110. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 110 and therefore denies the same.

111. Cohen denies the allegations contained in paragraph 111.

112. Cohen denies the allegations contained in paragraph 112.

113. Cohen denies the allegations contained in paragraph 113.

114. Cohen denies the allegations contained in paragraph 114.

115. Cohen denies the allegations contained in paragraph 115.

116. Cohen denies the allegations contained in paragraph 116.

117. Cohen denies the allegations contained in paragraph 117.
118. Cohen denies the allegations contained in paragraph 118.
119. Cohen denies the allegations contained in paragraph 119.
120. Cohen denies the allegations contained in paragraph 120.
121. Cohen denies the allegations contained in paragraph 121.
122. Cohen denies the allegations contained in paragraph 122.
123. Cohen denies the allegations contained in paragraph 123.
124. Cohen denies the allegations contained in paragraph 124.
125. Cohen denies the allegations contained in paragraph 125.
126. Cohen denies the allegations contained in paragraph 126.
127. Cohen denies the allegations contained in paragraph 127.
128. Cohen denies the allegations contained in paragraph 128.
129. Cohen denies the allegations contained in paragraph 129.
130. Cohen denies the allegations contained in paragraph 130.
131. Cohen denies the allegations contained in paragraph 131.
132. Cohen denies the allegations contained in paragraph 132.
133. Cohen denies the allegations contained in paragraph 133.
134. Cohen denies the allegations contained in paragraph 134.
135. Cohen denies the allegations contained in paragraph 135.
136. Cohen denies the allegations contained in paragraph 136.
137. Cohen denies the allegations contained in paragraph 137.

138. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 138 and therefore denies the same.

139. Cohen denies the allegations contained in paragraph 139.

140. Cohen denies the allegations contained in paragraph 140.

141. Cohen denies the allegations contained in paragraph 141.

142. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 142 and therefore denies the same.

143. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 143 and therefore denies the same.

144. Cohen denies the allegations contained in paragraph 144.

145. Cohen denies the allegations contained in paragraph 145.

146. Cohen denies the allegations contained in paragraph 146

147. Cohen denies the allegations contained in the first sentence of paragraph 147. Cohen is without knowledge or information sufficient to form a belief as the truth of the remaining allegations contained in paragraph 147 and therefore denies the same.

148. Cohen denies that any delivery of documents to Plaintiffs by Lynch can be described as fortunate, because, upon information and belief, such documents would include Cohen's business records and personal

property. Cohen is without knowledge or information sufficient to form a belief as the truth of the remaining allegations contained in paragraph 148 and therefore denies the same.

149. Cohen denies the allegations contained in paragraph 149.

150. Cohen denies the allegations contained in paragraph 150.

151. Cohen denies the allegations contained in paragraph 151.

152. Cohen denies the allegations contained in paragraph 152.

153. Cohen denies the allegations contained in paragraph 153.

154. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 154 and therefore denies the same.

155. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 155 and therefore denies the same.

156. Cohen denies the allegations contained in paragraph 156.

157. Cohen denies the allegations contained in paragraph 157.

158. Cohen denies the allegations contained in paragraph 158.

159. Cohen denies the allegations contained in paragraph 159.

160. Cohen denies the allegations contained in paragraph 160.

161. Cohen denies the allegations contained in paragraph 161.

162. Cohen denies the allegations contained in paragraph 162.

163. Cohen denies the allegations contained in paragraph 163.

164. Cohen denies the allegations contained in paragraph 164.
165. Cohen denies the allegations contained in paragraph 165.
166. Cohen denies the allegations contained in paragraph 166.
167. Cohen denies the allegations contained in paragraph 167.
168. Cohen denies the allegations contained in paragraph 168.
169. Cohen denies the allegations contained in paragraph 169.
170. Cohen denies the allegations contained in paragraph 170.
171. Cohen denies the allegations contained in paragraph 171.
172. Cohen denies the allegations contained in paragraph 172.
173. Cohen denies the allegations contained in paragraph 173.
174. Cohen denies the allegations contained in paragraph 174.
175. Cohen denies the allegations contained in paragraph 175.
176. Cohen denies the allegations contained in paragraph 176.
177. Cohen denies the allegations contained in paragraph 177.
178. Cohen denies the allegations contained in paragraph 178.
179. Cohen denies the allegations contained in paragraph 179.
180. Cohen denies the allegations contained in paragraph 180.
181. Cohen denies the allegations contained in paragraph 181.
182. Cohen denies the allegations contained in paragraph 182.
183. Cohen denies the allegations contained in paragraph 183.
184. Cohen denies the allegations contained in paragraph 184.
185. Cohen denies the allegations contained in paragraph 185.

186. Cohen denies the allegations contained in paragraph 186.

187. Cohen denies the allegations contained in paragraph 187,

188. Cohen denies the allegations contained in paragraph 188.

189. Cohen denies the allegations contained in paragraph 189.

190. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in the first sentence of paragraph 190 and therefore denies the same. Cohen denies the remaining allegations contained in paragraph 190.

191. Cohen denies the allegations contained in paragraph 191.

192. Cohen denies the allegations contained in paragraph 192.

193. Cohen denies the allegations contained in paragraph 193.

194. Cohen denies the allegations contained in paragraph 194.

195. Cohen denies the allegations contained in paragraph 195.

196. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 196 and therefore denies the same.

197. Cohen admits the allegations contained in paragraph 197.

198. Cohen admits the allegations contained in paragraph 198.

199. Cohen incorporates by references his responses to paragraphs 1 through 198.

200. Cohen denies the allegations contained in paragraph 200.

201. Cohen denies the allegations contained in paragraph 201.

202. Cohen denies the allegations contained in paragraph 202.

203. Cohen denies the allegations contained in paragraph 203.

204. Cohen denies the allegations contained in paragraph 204.

205. Cohen denies the allegations contained in paragraph 205.

206. Cohen denies the allegations contained in paragraph 206.

207. Cohen denies the allegations contained in paragraph 207.

208. Cohen denies the allegations contained in paragraph 208.

209. Cohen denies the allegations contained in paragraph 209.

210. Cohen denies the allegations contained in paragraph 210.

211. Cohen denies the allegations contained in paragraph 211.

212. Cohen denies the allegations contained in paragraph 212.

213. Cohen denies the allegations contained in paragraph 213.

214. Cohen denies the allegations contained in paragraph 214.

215. Cohen denies the allegations contained in paragraph 215.

216. Cohen incorporates by reference his responses to paragraphs 1 through 215.

217. Cohen denies the allegations contained in paragraph 217.

218. Cohen denies the allegations contained in paragraph 218.

219. Cohen denies the allegations contained in paragraph 219.

220. Cohen denies the allegations contained in paragraph 220.

221. Cohen denies the allegations contained in paragraph 221.

222. Cohen denies the allegations contained in paragraph 222.

223. Cohen incorporates by reference his responses to paragraphs 1 through 222.

224. Cohen denies the allegations contained in paragraph 224.

225. Cohen denies the allegations contained in paragraph 225.

226. Cohen denies the allegations contained in paragraph 226.

227. Cohen denies the allegations contained in paragraph 227.

228. Cohen denies the allegations contained in paragraph 228.

229. Cohen denies the allegations contained in paragraph 229.

230. Cohen incorporates by reference his responses to paragraphs 1 through 229.

231. Cohen denies the allegations contained in paragraph 231.

232. Cohen denies the allegations contained in paragraph 232.

233. Cohen denies the allegations contained in paragraph 233.

234. Cohen denies the allegations contained in paragraph 234.

235. Cohen denies the allegations contained in paragraph 235.

236. Cohen incorporates by reference his responses to paragraphs 1 through 235.

237. Cohen denies the allegations contained in paragraph 237.

238. Cohen denies the allegations contained in paragraph 238.

239. Cohen denies the allegations contained in paragraph 239.

240. Cohen denies the allegations contained in paragraph 240.

241 Cohen incorporates by reference his responses to paragraphs 1 through 240.

242 Cohen denies the allegations contained in paragraph 242.

243. Cohen denies the allegations contained in paragraph 243.

244. Cohen denies the allegations contained in paragraph 244.

245. Cohen denies the allegations contained in paragraph 245.

246. Cohen denies the allegations contained in paragraph 246.

247. Cohen denies the allegations contained in paragraph 247.

248. Cohen denies the allegations contained in paragraph 248.

249. Cohen incorporates by reference his responses to paragraphs 1 through 248.

250. Cohen denies the allegations contained in paragraph 250.

251. Cohen denies the allegations contained in paragraph 251.

252. Cohen denies the allegations contained in paragraph 252.

253. Cohen denies the allegations contained in paragraph 253.

254. Cohen denies the allegations contained in paragraph 254.

255. Cohen denies the allegations contained in paragraph 255.

256. Cohen denies the allegations contained in paragraph 256.

257. Cohen denies the allegations contained in paragraph 257.

258. Cohen denies the allegations contained in paragraph 258.

259. Cohen incorporates by reference his responses to paragraphs 1 through 258.

260. Cohen denies the allegations contained in paragraph 260.

261. Cohen denies the allegations contained in paragraph 261.

262. Cohen denies the allegations contained in paragraph 262.

263. Cohen denies the allegations contained in paragraph 263.

264. Cohen incorporates by reference his responses to paragraphs 1 through 263.

265. Cohen denies the allegations contained in paragraph 265.

266. Cohen denies the allegations contained in paragraph 266.

267. Cohen denies the allegations contained in paragraph 267.

268. Cohen incorporates by reference his responses to paragraphs 1 through 267.

269. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 269 and therefore denies the same.

270. Cohen admits the allegations contained in paragraph 270.

271. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in the first sentence of paragraph 271 and therefore denies the same. Cohen admits the last sentence of paragraph 271.

272. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 272 and therefore denies the same.

273. Cohen is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 273 and therefore denies the same.

274. Cohen admits the allegations in paragraph 274.

275. Any allegation not expressly admitted is denied.

AFFIRMATIVE DEFENSES

1. The SAC fails to state claims upon which relief can be granted.

2. Plaintiffs' claims are barred by privilege.

3. Plaintiffs claims are barred by the doctrines of waiver and estoppel.

4. Plaintiffs' claims are barred under the doctrine of fair comment.

5. Plaintiffs' claims are barred by the substantial truth of statements made by Cohen.

7. On or about June 9, 2005, and before Cohen published any statements about Plaintiffs, Plaintiffs issued and disseminated a press release announcing the filing of their law suit in the Boulder County District Court, making themselves public figures for the purpose of the dispute between Cohen and themselves. Plaintiffs must prove their claims based upon defamation by clear and convincing evidence and must prove not only that statements by Cohen were false but also that they were made with malice.

8. Plaintiffs' claims are barred by the doctrine of unclean hands.

9. Plaintiffs damages, if any, are barred by their failure to mitigate damages.

10. Plaintiffs' damages, if any, are caused by their own actions.

11. Plaintiffs' claims are barred by the doctrine of justification.

12. Plaintiffs' claims are barred by the doctrine of invited comment.

13. Plaintiffs lack standing to sue under the Colorado Organized Crime Control Act.

14. Plaintiffs' interpleader claim is subject to *res judicata*.

WHEREFORE, Cohen prays that the Court:

(1) Enter judgment in his favor and against Plaintiffs on Plaintiffs' first nine claims for relief, dismissing the claims with prejudice and awarding Cohen his costs and attorney's fees;

(2) On Plaintiffs' claim for interpleader, order the Clerk of the Court to disburse the principal and interest of the money held in the Court's registry to Cohen; and

(3) Such other, further relief as the Court deems appropriate.

COUNTERCLAIMS

Cohen, by and through counsel, Bailey & Peterson, A Professional Corporation, for his counterclaims against Plaintiffs and Counterclaim Defendant, Timothy Barnett, states and alleges as follows:

Parties

1. Cohen is an individual and a citizen of Canada.
2. Neal Greenberg ("Greenberg") is an individual and a citizen of the State of Colorado or the State of New York, is a principal of the corporate Plaintiffs, and holds a license as an investment advisor.
3. Timothy Barnett ("Barnett") is an individual and a citizen of the State of Colorado and a vice president of Tactical Allocation Services, Inc. and holds a license as an investment advisor.

4. Natural Wealth Real Estate, Inc., d/b/a Agile Advisors, is, on information and belief, a Colorado corporation, with its principal place of business located in Boulder, Colorado.

5. Tactical Allocation Services, LLC, d/b/a Agile Allocation Services, LLC, is, on information and belief, a Colorado limited liability company with its principal place of business located in Boulder, Colorado.

6. Agile Group, LLC is, on information and belief, a Delaware limited liability company with its principal place of business located in Boulder, Colorado.

7. Greenberg & Associates Securities, Inc., d/b/a Agile Group, is, on information and belief, a Colorado corporation, with its principal place of business located in Boulder, Colorado. (These counterclaims will refer to the entities in paragraphs 4 through 7 collectively as the “Agile Group.”).

Jurisdictional Allegations

8. The Court has diversity jurisdiction over these counterclaims under 28 U.S.C. § 1332 in that the amount in controversy exceeds \$75,000 and the case involves citizens of a state and a citizen of a foreign country.

General Allegations

9. Before 1997, Cohen had three royalty-producing assets that provided him with the bulk of his income:

- Leonard Cohen Stranger Music, Inc. (“LCSMI”), a music publishing company that owned the copyrights to his substantial song catalogue;
- Artist royalties (“Artist Royalties”) payable pursuant to his Recording Agreement with SONY Music dated 1967, as amended;

- Writer's royalties ("Writer's Royalties") Cohen received from the public performance of his songs, payable pursuant to Cohen's Writer's Agreement with LCSMI, pursuant to which he earned the customary writer's share (50%) of mechanical and performance royalties.

10. In or about 1996 or 1997, Kelley Lynch ("Lynch") introduced Cohen to Greenberg and the Agile Group. Greenberg and Lynch proposed that Cohen transfer his stock investment accounts to Greenberg's Agile Group. Greenberg introduced Cohen to Richard Westin ("Westin"), a lawyer and tax professor, for the alleged purpose of creating a vehicle that would avoid or reduce income taxes payable from the stream of income generated by the royalty-producing assets. Greenberg, who holds himself out as expert in creating tax-efficient investments and estate planning, worked with Lynch and Westin to sell LCSMI in 1997.

11. The proceeds from the 1997 sale of LCSMI were used to fund the Cohen Family Charitable Remainder Trust and the Sabbath Day Charitable Remainder Trust, which Greenberg and the Agile Group administered. Cohen, as a shareholder of LCSMI, also received proceeds that he invested with the Agile Group.

12. Greenberg worked with Lynch and Westin to sell the Artist Royalties in 2001. Cohen intended the proceeds of the 2001 sale to fund his retirement and to provide for the benefit of his children. The purpose of both of the 1997 and the 2001 sales was to create a current fund of money that could be conserved and grown for Cohen's benefit. Greenberg, Barnett, and the Agile Group knew and understood Cohen's investment and estate-planning objectives.

13. The sales price for the Artist Royalties was \$8 million. The transaction costs associated with the sale, however, were in excess of \$3 million, or more than 35% of the gross sales price.

14. The proceeds from the 2001 sale of the Artist Royalties, at the recommendation of Greenberg and the Agile Group, with support of Westin, were unnecessarily monetized and placed in a corporate entity, Traditional Holdings, LLC ("THLLC"), under the control of Lynch. THLLC issued a private annuity contract to Cohen with the intention that the funds would be for Cohen's benefit during his lifetime and any remaining funds would go to Cohen's children. Through the structure designed by Greenberg, the Agile Group and Westin, Lynch (instead of Cohen's two adult children) was put in a position to control the funds that were to fund the annuity contract. Cohen and Westin established this structure without Cohen's knowledge or consent. Cohen expected to receive regular reports from the Agile Group regarding the status of the funds in THLLC that had been invested by the Agile Group for his benefit in order to know the status of the investments. Greenberg and the Agile Group understood that the proceeds from the 2001 sale, invested with the Agile Group, would fund THLLC's obligation to pay the private annuity to Cohen. Greenberg and the Agile Group knew that Cohen wanted those funds protected from loss and wanted true, accurate and complete status reports regarding the fund that would pay his private annuity.

15. The Agile Group's recommendation to sell the Artist Royalties and the execution of the recommendation was negligent for, among other reasons:

- it failed to take into account the significant transaction costs incurred in setting up the structure;
- it unnecessarily monetized a highly secure income stream from the Artist Royalties;
- Greenberg and the Agile Group did not explain the transaction to Cohen;
- Contrary to well established principles of estate planning, it placed Lynch, instead of Cohen's heirs, in control of THLLC, the obligor on the private annuity; and
- it failed to provide adequate checks on Lynch to prevent her from dissipating the funds that would pay Cohen's annuity.

16. The consequences of the Agile Group's negligent recommendation and execution was that Cohen sold a valuable asset, the Artist Royalties, worth at least \$8 million, and only received proceeds of approximately \$5 million which were then put into an alleged tax saving structure that was so poorly designed that Cohen's business manager could steal the bulk of those funds that the Agile Group had invested for Cohen's benefit.

17. The Agile Group placed proceeds from the 2001 Sale in an account known as the THLLC account and invested in the "Agile Safety Fund", a fund composed of stocks, bonds and annuities. As explained on the Agile Group's website, "The Agile Investment Process has been designed to seek absolute returns with significant capital protection that is not correlated to general market conditions." Greenberg had touted to Cohen the relative safety of the Agile Safety Fund as compared to the stocks and bonds in which Cohen had previously been invested. Given his age and the fact that these proceeds reflected the value of his life work, Cohen wanted capital protection so that the funds would be available for his retirement and for his children.

18. At Lynch's request, the Agile Group connected the THLLC account invested in the Agile Safety Fund with a money market account. As a result, Lynch was able to draw on the money market account. Each time Lynch initiated a transfer of money from the Agile Safety Fund to the money market account, she required that the Agile Group sell the securities in the Agile Safety Fund account and transfer the proceeds, usually by outgoing wire, to the money market account. Thus, Greenberg, Barnett, and the Agile Group were aware of each withdrawal from the account.

19. The Agile Group knew that in managing the accounts in this way, it was facilitating the liquidation of Cohen's assets in the Agile Safety Fund by Lynch, Cohen's agent. Greenberg, Barnett and the Agile Group knew or should have known that Cohen's stated interest in long term

preservation of capital to fund his annuity was materially at risk and that Lynch's withdrawal of money for her own benefit, as described below, was contrary to Cohen's interests and stated desire to protect the capital in the funds for his retirement and the benefit of his two adult children.

20. Nevertheless, Lynch withdrew large sums of money from the account and she acknowledged to the Agile Group that the withdrawals were for her own benefit and use.

21. Lynch advised the Agile Group that her withdrawal of money from the Agile Safety Fund were "loans" to herself and that she would pay them back. Lynch told the Agile Group that because she would pay back the loans there was no need for the Agile Group to report to Cohen a decline in value of the account as a result of Lynch's withdrawals. In an e-mail to Greenberg from Lynch on January 23, 2003, Lynch advised Greenberg:

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

22. Lynch directed the Agile Group to treat these withdrawals as loans to her and not to report them to Cohen at all. The Agile Group never received documentation for these loans or maintained copies of any promissory notes evidencing the loans as part of the assets about which they were reporting on a monthly basis. Nevertheless, the Agile Group acceded to

Lynch's request and treated the withdrawals as loans and valued them in the account at their principal amount when reporting the value of the assets to Cohen so that he had no idea that, in fact, the withdrawals had taken place.

23. Throughout 2003, Lynch withdrew funds from the accounts for her own use, and the Agile Group never received any loan documentation. Recognizing the need for some type of documentation to support Lynch's claims that the withdrawals were loans, the Agile Group requested copies of promissory notes from Lynch; however, she never provided any.

24. After Lynch withdrew over \$1.1 million from the account in 2003, the Agile Group, over Greenberg's signature, mailed a letter on January 16, 2004 to Lynch's office address. The letter warned Cohen and Lynch that "you are spending too much money...at this point, you only have an estimated \$2.1MM left in capital in Traditional Holdings LLC. The rest consists of loans to you and Kelley." The letter stated further:

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

25. The Agile Group's January 16, 2004, letter warning of the "desperate situation" reflects the Agile Group's belief that Cohen must not have understood what was happening to his money and the transactions in the account intended to fund his private annuity. However, the Agile Group also knew or had reason to believe that Cohen was unlikely to actually receive the letter because Lynch would intercept it. The Agile Group

contacted Lynch directly -- but not Cohen -- to confirm that she and Cohen received the letter. Barnett sent an e-mail to Lynch (without a copy to Cohen) on February 3, 2004, stating:

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

26. Lynch responded that she received the letter but that Cohen was traveling and she did not know when he would return. Although the Agile Group had Cohen's e-mail address, it did not send the warning directly to Cohen. Lynch, of course, did not forward the Agile Group's letter to Cohen. However, the Agile Group by that time knew enough about Lynch's wrongful conduct and her express wishes to keep her withdrawals secret from Cohen. Under the circumstances the Agile Group should have taken affirmative steps to contact Cohen directly, without using Lynch as an intermediary.

27. Between January 2004 and June 2004, Lynch withdrew approximately \$810,000 in fourteen "loans" from the THLLC account. The Agile Group had not heard from Cohen in response to their January 2004 letter. The Agile Group recognized that Lynch's acts were directly contrary to Cohen's investment objectives for the funds. As a result, the Agile Group sent another letter to Cohen and Lynch, again at Lynch's office, reporting that: "you are currently down to \$845,539 in Traditional Holdings...you are spending approximately \$210,000 per month." The Agile Group further stated:

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

Although by this time, the Agile Group must have understood that they were dealing with a faithless agent in Lynch, who was acting contrary to Cohen's express objectives to preserve the funds in the account for his retirement and for his children, the Agile Group took no steps to make sure that it communicated this information directly to Cohen. Instead, the letter was sent to business offices, manned by Lynch and never presented to Cohen. The Agile Group was in direct contact with Cohen by e-mail and had Cohen's home telephone number, but Greenberg, Barnett, and the Agile Group failed to provide Cohen with the advice that it deemed important enough to put in a letter.

28. The Agile Group's conduct represents a gross violation of its fiduciary duties to Cohen to protect his assets in the light of the circumstances that should have led Greenberg, Barnett and the Agile Group to understand that Lynch was looting the account contrary to the wishes and expectations of Cohen.

29. Beginning in mid-December 2001, the Agile Group regularly began to send Cohen "monthly portfolio performance" reports by e-mail to Cohen. In an e-mail from Neal Greenberg to Cohen dated December 18, 2001, Greenberg reported that Cohen's balance "amongst all accounts," which

included the THLLC investment account and the two charitable remainder trusts, was approximately \$7.5 million.

30. Each month thereafter, the Agile Group regularly sent Cohen a monthly portfolio performance report by e-mail, which typically included a brief summary of general financial market conditions, the prior month's portfolio performance, including any loss or gain on Cohen's managed portfolio, an aggregate total value of Cohen's investment accounts managed by the Agile Group, the mandatory quarterly payouts from the Cohen Family Charitable Remainder Trust, and also miscellaneous withdrawals from Cohen's investment account to pay for taxes, legal or other professional fees, including the Agile Group's investment management fees.

31. In early 2002, the monthly portfolio performance report sent by the Agile Group by e-mail to Cohen itemized all withdrawal transactions that had occurred from Cohen's investment accounts in the previous month. For example, in an e-mail sent March 12, 2002, in addition to reporting the aggregate balance of Cohen's investment portfolio, the Agile Group reported two large disbursements from Cohen's accounts: the first for taxes and the second for real estate purchases that Cohen made for his family. Cohen was already aware of these withdrawals as Cohen had requested them.

32. The Agile Group invited and encouraged reliance by Cohen on e-mail reports as to the status of his investment accounts. In 2002, Greenberg suggested a protocol to Lynch and Cohen whereby Greenberg would send an

e-mail confirmation of withdrawal requests from Cohen's investment accounts. In an e-mail dated March 18, 2002, Greenberg wrote to Lynch, with a copy to Cohen and Tim Barnett of the Agile Group, of his proposed practice of sending a confirmation e-mail every time a disbursement request is made:

Dear Kelley,

For clarity, I thought it would be helpful to e-mail you a confirmation every time a disbursement is made.

In the future, I will give a summary for the year each time you request a disbursement if you think that would be helpful. Let me know otherwise.

Withdrawal request March 18, 2002. \$50,000.

Cohen was also copied on several subsequent such disbursement confirmation e-mails sent in April 2002.

33. For the next few months, the Agile Group routinely sent e-mails to Lynch, with a copy to Cohen, confirming withdrawals by amount and purpose. Cohen responded to many of these emails, either asking a question about a disbursement or thanking the Agile Group for the information.

34. After this initial series of "withdrawal confirmations" via e-mail in March and April 2002, the Agile Group continued to send monthly portfolio performance reports by e-mail to Cohen describing the status of the accounts. However, the Agile Group stopped copying Cohen on e-mail confirmations as to withdrawals or stopped sending them altogether.

35. Beginning in December 2002, the Agile Group began to send out the monthly e-mail reports to Cohen on Barnett's e-mail account and using Greenberg's first name or initials in the salutation.

36. The effect of the Agile Group's actions and omissions was that Cohen was never made aware of the extraordinary and highly unusual withdrawals that Lynch was taking from the THLLC account without Cohen's knowledge or permission beginning in January 2003.

37. The Agile Group had cultivated Cohen's reliance on brief e-mails as the primary form of informing Cohen about the status and value of his accounts. Although the Agile Group sent out written monthly statements, these were sent to Lynch at her offices and not directly to Cohen. Because Cohen was receiving what he believed to be accurate and complete status reports from the Agile Group from e-mails, he never requested or even knew about the monthly statements. Moreover, Greenberg, Barnett and the Agile Group' account status reports sent by e-mail did not contain any written warning that the reader should not rely on the e-mail reports or that more detailed and accurate reports were available and being sent to Lynch.

38. Cohen justifiably relied on the monthly portfolio performance reports sent by Greenberg, Barnett, and the Agile Group to Cohen's e-mail address. Greenberg, Barnett, and the Agile Group knew that Cohen relied on these reports, because he responded to them.

39. While the Agile Group continued to report trust payouts, tax payments, withdrawals for general expenses and the Agile Group's investment account management fees in these monthly portfolio performance e-mail reports, Greenberg, Barnett and the Agile Group did not report the withdrawals, characterized as "shareholder loans," initiated by Lynch for her own use.

40. Beginning in early 2003, Lynch's withdrawal requests from the THLLC account increased in both frequency and magnitude. In 2003, the Agile Group, unbeknownst to Cohen, allowed Lynch to withdraw over \$1.1

million from the THLLC investment account, averaging \$88,000 per month. In 2004, Lynch continued to make extraordinary withdrawal requests of the Agile Group from the THLLC account, and withdrew a total of nearly \$1.3 million through the end of October 2003, averaging \$108,000 per month. These loans were not documented.

41. Other than approximately \$592,000 attributable to withdrawals that Cohen took out to purchase real estate for his children, Lynch's withdrawals dissipated the invested funds in the THLLC account from a starting value of \$4.7 million in December 2001, to a little under \$150,000 by October 2004. Over nearly a three-year period, the Agile Group, by allowing Lynch to withdraw millions of undocumented "shareholder loans," effectively administered the change in composition of the vast bulk of the THLLC investment portfolio from profit-earning and interest bearing securities to valueless, undocumented "shareholder loans" made to Lynch.

42. The Agile Group even allowed Lynch to withdraw a \$15,000 "shareholder loan" for her benefit from the THLLC investment account on October 27, 2004, after Cohen had instructed Greenberg, Barnett and the Agile Group unequivocally through e-mails sent October 21 and 22, 2004 that Lynch no longer represented him as his business manager and not to respond to any of her instructions regarding his investment accounts.

43. The Agile Group's monthly portfolio performance e-mails sent to Cohen consistently stated that the total value of Cohen's investment accounts (THLLC, Sabbath Day CRT and the Cohen Family CRT) managed by the Agile Group was in excess of \$5 million and assured him that the proceeds from the sale of the Artist Royalties were safe, despite periodic broad market declines. During the time period that the Agile Group sent monthly portfolio e-mails, from December 2001-October 2004, of the \$5 million total managed

by Agile, approximately \$0.5 million was in the Sabbath Day CRT account, and a little over \$1 million was in the Cohen Family CRT account. By October 2004, Greenberg, Barnett and the Agile Group were still reporting by e-mail to Cohen that the value of his managed investment accounts was approximately \$5 million, when in actuality, only roughly \$150,000 of capital remained in the THLLC investment account. Together with the remaining \$1.5 million in the two CRTs, Cohen's portfolio was in reality, only worth \$1.6 million, not the \$5 million as reported by the Agile Group.

44. During 2003-2004, as Lynch's outstanding "shareholder loans" accumulated, the same time period during which Lynch was withdrawing an average of \$100,000 per month in undocumented, unsecured loans, the Agile Group's monthly portfolio performance report e-mails sent to Cohen reported that the total value of Cohen's investment portfolio was actually *increasing*.

45. Cohen relied on each of the foregoing e-mails in his belief that the Agile Group had as promised kept his retirement savings invested in "safe and secure" securities. The extent of Cohen's reliance on these e-mails is illustrated in an e-mail communicated from Cohen to Tim Barnett of the Agile Group in late October 2004. In an e-mail dated October 26, 2004, Cohen inquired as to the status of the September 2004 Performance e-mail and thanked them for "keeping in touch." In that same e-mail with a subject line "September 2004 Performance?", Cohen wrote Tim Barnett:

Dear Tim,
Just a reminder.
Haven't received the September 2004 Performance statement.
Thanks for keeping touch.
Leonard Cohen.

Performance Statements sent by e-mail to Leonard Cohen

Ending Balance (12/31/03): \$5,230,399

Ending Balance (1/31/04): \$5,230,593
Ending Balance (2/27/04): \$5,226,152
Ending Balance (3/31/04): \$5,210,828
Ending Balance (4/30/04): \$5,167,184
Ending Balance (6/30/04): \$5,139,687
Ending Balance (8/31/04): \$5,097,547

46. Cohen in this e-mail restated the valuations of his investment accounts previously reported to him by e-mail, in the belief that his money was invested safely and prudently as he had requested. Cohen had no idea that the funds had been “invested” as undocumented “shareholder loans” to Lynch. Barnett failed to respond to Cohen’s e-mail. As of October 2004, there remained only \$150,000 in the THLLC investment account.

47. While the Agile Group never reported Lynch’s “shareholder loans” in the monthly e-mails to Cohen, the Agile Group itemized these “shareholder loans”, albeit without identifying who was the borrower of such loans, in monthly statements sent by regular mail addressed to Cohen at Lynch’s Stranger Management business address. Cohen saw such a report for the first time following the termination of Lynch in October 2004. Cohen had never previously seen such a report and relied solely on the monthly e-mail investment reports that the Agile Group had established as the mode of direct communication with Cohen and on which Cohen relied for understanding the value of his portfolio under Greenberg’s management.

48. Prior to sending these monthly e-mails to Cohen, however, the Agile Group sent “drafts” to Lynch before e-mailing them on to Cohen, so that Lynch could edit, monitor and censor the information that was reported by

the Agile Group in the e-mails to Cohen about his investment accounts. In an e-mail exchange between Tim Barnett of Agile and Lynch on February 20, 2003 regarding the "January 2003 Performance Draft" being prepared for Cohen's consumption, Lynch told Barnett that with regard to a \$100,000 check written by Lynch that the "100k is what needs to be discussed with Neal [Greenberg] and should be listed as a Shareholder Loan *and not deducted* [from the THLLC account balance]." (Emphasis added.) Barnett responded on February 21: Of course I am happy to list the transaction activity in any way you'd like." Barnett also responded that, as Lynch had requested, he would characterize the \$100,000 taken out of the THLLC account as a shareholder loan. The \$100,000 shareholder loan to Lynch was not reported in the "January 2003 Performance" e-mail sent to Cohen on Monday, February 24, 2003.

49. Lynch continued to make disbursement requests from the THLLC account, and the Agile Group, per Lynch's instructions, continued not to report them to Cohen in his monthly portfolio e-mail updates and did not deduct the loan amounts from the aggregate portfolio value reported to Cohen. For example, in an e-mail from Barnett of Agile to Lynch regarding the "April 2003 Performance Draft" dated May 22, 2003, Barnett reported to Lynch that:

I've included the \$25,000 and \$150,000 disbursements from Traditional Holdings in April as shareholder loans. I've further adjusted the total amount of shareholder loans by the

repayment of \$26,363 from the proceeds of the stock sales in the Waterhouse account owned by the Cohen Family Trust.

50. Both the \$25,000 and \$150,000 shareholder loans were withdrawn by Lynch. These shareholder loans to Lynch are not reported to Cohen in the “April 2003 Performance” e-mail report sent to Cohen on May 23, 2003. These shareholder loans to Lynch were not deducted from the aggregate portfolio value reported to Cohen.

51. The Agile Group's misrepresentations and omissions in its monthly performance reports e-mails to Cohen misled Cohen into believing that his accounts were worth more than, in fact, they were worth and failed to advise him of the loans that Lynch was making to herself with Cohen's funds. The Agile Group knew this information was material to Cohen as acknowledged in their letters to Cohen warning of the dissipation of his funds but which were sent to Lynch's business address and intercepted by Lynch.

52. Cohen began to understand the structure and ownership of THLLC only in late 2004, when Greenberg reported that he thought Lynch owned THLLC and declined to provide information to Cohen regarding the company. Had Cohen understood the structure, costs, and risks designed by Greenberg and the Agile Group into the THLLC transaction, Cohen—nor any other reasonable person—would not have gone forward with the transaction.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

53. Cohen incorporates by reference that allegations contained in paragraphs 1 through 52, inclusive.

54. Cohen and the Agile Group entered into written and oral agreements that included the following terms, among others:

a. The Agile Group would faithfully protect funds and assets for Cohen's benefit and keep them safe and secure;

b. The Agile Group would exercise prudence and sound judgment in its handling of funds, keeping them safe;

c. The Agile Group would faithfully report all transactions in the accounts to Cohen;

d. The Agile Group would bring to Cohen's attention any activities or transactions in the accounts that the Agile Group believes or had reason to believe was contrary to Cohen's interests; and

e. The Agile Group would take reasonable care in protecting Cohen's capital and preserving it from losses whether from market action or any other action.

55. The Agile Group breached these terms and promises, among others, by the following acts:

a. Permitting Lynch to withdraw funds from the accounts for her own purposes under the guise of loans without any documentation that the loans were genuine or approved;

b. Permitting Lynch to withdraw millions of dollars when the Agile Group knew or should have known that she was acting contrary to the interests and expectations of her principal, Cohen;

c. Failing to communicate with Cohen directly and advising him of the Lynch's conduct but instead communicating the Agile Group's concerns through Lynch even though the Agile Group had every reason to believe that Lynch would not communicate the concerns to Cohen and even though the Agile Group had the means to communicate directly with Cohen;

d. Failing to report accurately and completely to Cohen regarding the transactions in his account;

e. Failing to follow Cohen's directions and instructions; and

f. Misrepresenting the value of the assets in his account by not deducting the withdrawals taken by Lynch but instead valuing them as loans worth their face amount even though the Agile Group never had any loan documentation evidencing the loans or any reason to believe that Lynch could or would repay the loans.

56. As a direct and proximate result of the Agile Group's breaches of contract, Cohen has been damaged in an amount to be proved at trial but no less than the amounts withdrawn by Lynch and not reported to Cohen, plus interest.

SECOND CLAIM FOR RELIEF
(Breach of Fiduciary Duty against Greenberg, Barnett, and the Agile Group)

57. Cohen incorporates by reference the allegations contained in paragraphs 1 through 56, inclusive.

58. The Agile Group, Greenberg, and Barnett as investment advisors and brokers, acted a fiduciaries to Cohen in respect to the investment and maintenance of Cohen's accounts and in the administration of the private annuity.

59. The Agile Group, Greenberg, and Barnett held a position of trust with respect to Cohen, were entrusted with conserving and caring for his assets, had superior access to information regarding his assets, and engendered his reliance upon them to hold his assets safely, obtain information regarding his assets, and report information regarding his assets accurately to him.

60. The Agile Group, Greenberg, and Barnett breached their fiduciary duties to Cohen as financial advisors and custodians of most of his assets.

61. As a proximate cause of breach of fiduciary duties by Greenberg, Barnett and the Agile Group, Cohen was damaged in an amount to be proved at trial, plus interest and attorney's fees.

62. The breaches of fiduciary duty by Greenberg, Barnett, and the Agile Group were attended by circumstances of fraud, malice, and willful and wanton behavior, justifying the imposition of punitive damages.

THIRD CLAIM FOR RELIEF
(Fraud)

63. Cohen incorporates herein the allegations of paragraphs 1 through 62, inclusive.

64. Greenberg, Barnett, and the Agile Group, with knowledge of or reckless disregard for the truth, disseminated or approved the false statements contained in the monthly e-mail reports as alleged above, which were misleading in that they failed to disclose material facts that Greenberg, Barnett, and the Agile Group had a duty to disclose and that were necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

65. The facts were material to Cohen, and Cohen was ignorant of the falsity of the statements.

66. Greenberg, Barnett, and the Agile Group concealed or failed to disclose the material facts with the intent that Cohen take a course of action that he might not take if he knew the actual facts.

67. Cohen's reliance on the statements and omissions by Greenberg, Barnett, and the Agile Group was reasonable.

68. Cohen has suffered damages in that, he relied on the false and misleading statements sent to him by Greenberg, Barnett, and the Agile Group and that reliance impaired Cohen's ability to make decisions regarding the purchase, sale or value of the securities in his portfolio with the Agile Group.

69. The acts by Greenberg, Barnett, and the Agile Group were attended by circumstances of fraud, malice, and willful and wanton behavior, justifying the imposition of punitive damages.

FOURTH CLAIM FOR RELIEF
(Negligent Misrepresentation)

70. Incorporates by reference the allegations contained in paragraphs 1 through 69.

71. Greenberg, Barnett, and the Agile Group gave false information to Cohen in their monthly e-mail reports to him as alleged above.

72. Greenberg, Barnett, and the Agile Group gave such information to Cohen in the course of the business and profession of Greenberg, Barnett, and the Agile Group.

73. Greenberg, Barnett, and the Agile Group gave the information to Cohen for his guidance and use in a business transaction or transactions.

74. Greenberg, Barnett, and the Agile Group were negligent in obtaining or communicating the information.

75. Greenberg, Barnett, and the Agile Group gave the information to Cohen with the intent that he would act or not act in reliance on the information.

76. Cohen justifiably relied upon those misrepresentations to his detriment. Moreover, Cohen's reliance was reasonable based upon Greenberg, Barnett, and the Agile Group's use of e-mails to advise Cohen of the status of the accounts and their failure to advise Cohen that the e-mails that they were inaccurate, incomplete and should not be relied upon.

77. As a direct result of Cohen's reliance on the misrepresentations by Greenberg, Barnett, and the Agile Group, Cohen suffered pecuniary loss and was injured in an amount to be proved at trial, plus interest.

78. The acts of Greenberg, Barnett and the Agile Group were attended by circumstances of fraud and wanton and willful behavior, justifying the award of punitive damages.

FIFTH CLAIM FOR RELIEF
(Professional Negligence)

79. Cohen incorporates herein the allegations contained in paragraphs 1 through 78, inclusive.

80. The Agile Group undertook to advise Cohen regarding the royalty-producing assets owned by Cohen, and therefore owed Cohen a duty to make reasonable recommendations regarding the royalty-producing assets.

81. The Agile Group's recommendation to sell the royalty-producing assets was not reasonable and was negligent because, without limitation: it failed to take into account the significant transaction costs incurred in setting up the structure; it unnecessarily monetized a highly secure income stream from the Artist Royalties; Greenberg and the Agile Group did not explain the transaction to Cohen; contrary to well established principles of estate planning, it placed Lynch, instead of Cohen's heirs, in control of THLLC, the obligor on the private annuity; and it failed to provide adequate checks and controls on Lynch to prevent her from dissipating the funds that would pay Cohen's annuity.

82. The Agile Group undertook to structure the sale of the royalty-producing assets owned by Cohen, and therefore owed Cohen a duty to structure the sale in a manner that benefited Cohen and not Lynch.

83. The Agile Group's execution of its recommendation and its structure of the sale of the royalty-producing assets was not reasonable and was negligent because, as a result of the structure, a highly secure income stream from the Artist Royalty with a then-present value of approximately \$8 million was devalued and ultimately lost. Cohen would have remained in control of the economic benefits of the royalty-producing assets had the Agile Group not made its recommendation to sell the assets or had not executed the recommendation in the manner in which it did.

84. As a direct result of the Agile Group's negligence, Cohen has been damaged in an amount to be proved at trial, plus interest.

85. The acts by Greenberg, Barnett, and the Agile Group were attended by circumstances of fraud, malice, and willful and wanton behavior, justifying the imposition of punitive damages.

SIXTH CLAIM FOR RELIEF
(Aiding and Abetting Breach of Fiduciary Duty Against Greenberg, Barnett,
and the Agile Group)

86. Cohen incorporates by reference the allegations contained in paragraphs 1 through 85, inclusive.

87. Lynch was a fiduciary of Cohen in that she held a position of trust as his agent and business manager.

88. Lynch violated her fiduciary obligations by withdrawing money from THLLC and using it for her own purposes and not for the purposes and ends intended by Cohen when he agreed to set up THLLC and the private annuity.

89. Greenberg, Barnett, and the Agile Group knowingly participated in Lynch's breach of fiduciary duty by, without limitation:

a. Sending Cohen monthly e-mail reports regarding the assets of THLLC that did not disclose the withdrawals made by Lynch and that varied materially from the reports sent to Lynch;

b. Submitting to Lynch for editing and censoring the monthly e-mail reports that Greenberg, Barnett, and the Agile Group sent to Cohen regarding his assets under management by the Agile Group;

c. Not obtaining from Lynch promissory notes evidencing her "loans" from THLLC and including these undocumented "loans" in their representations of the value of THLLC's asset;

d. Relying on Lynch to communicate to Cohen the dire concerns expressed by Greenberg, Barnett, and the Agile Group regarding the rate that THLLC's assets were being spent; and

e. Continuing to send to Lynch financial reports that contained more complete statements of the financial condition of THLLC.

90. Greenberg, Barnett, and the Agile Group were aware of their role in Lynch's tortious activity. Through their acts, Greenberg, Barnett, and

the Agile Group knowingly and substantially assisted and participated in, and were substantial factors in causing, Lynch's violations, including her breach of fiduciary duties.

91. Cohen was damaged by the actions and inactions of Greenberg, Barnett, and the Agile Group in an amount to be proved at trial, plus interest.

92. The acts by Greenberg, Barnett, and the Agile Group were attended by circumstances of fraud, malice, and willful and wanton behavior, justifying the imposition of punitive damages.

SEVENTH CLAIM FOR RELIEF
(Aiding and Abetting Fraud Against Greenberg, Barnett, and the Agile Group)

86. Cohen incorporates by reference the allegations contained in paragraphs 1 through 93, inclusive.

94. Lynch concealed material facts from Cohen that she had a duty to disclose with the intent to create a false impression in Cohen's mind and with the intent that Cohen not take actions that he would have taken if he had known the actual facts.

95. As a result of Lynch's concealment of her "shareholder loans" from THLLC, her failure to forward to Cohen copies of correspondence from Greenberg, Barnett, and the Agile Group regarding their concerns over the rate of withdrawals from THLLC, her failure to document her "shareholder

loans,” and her editing e-mails from Greenberg, Barnett, and the Agile Group, Lynch was able to loot the assets from THLLC.

96. Greenberg, Barnett, and the Agile Group knowingly participated in Lynch’s fraud by, without limitation:

a. Sending Cohen monthly e-mail reports regarding the assets of THLLC that did not disclose the withdrawals made by Lynch and that varied materially from the reports sent to Lynch;

b. Submitting to Lynch for editing and censoring the monthly e-mail reports that Greenberg, Barnett, and the Agile Group sent to Cohen regarding his assets under management by the Agile Group;

c. Not obtaining from Lynch promissory notes evidencing her “loans” from THLLC and including these undocumented “loans” in their representations of the value of THLLC’s asset;

d. Relying on Lynch to communicate to Cohen the dire concerns expressed by Greenberg, Barnett, and the Agile Group regarding the rate that THLLC’s assets were being spent; and

e. Continuing to send to Lynch financial reports that contained more complete statements of the financial condition of THLLC.

97. Greenberg, Barnett, and the Agile Group were aware of their role in Lynch’s tortious activity. Through their acts, Greenberg, Barnett, and the Agile Group knowingly and substantially assisted and participated in,

and were substantial factors in causing, Lynch's violations, including her fraud on Cohen.

98. Cohen was damaged by the actions and inactions of Greenberg, Barnett, and the Agile Group in an amount to be proved at trial, plus interest.

99. The acts by Greenberg, Barnett, and the Agile Group were attended by circumstances of fraud, malice, and willful and wanton behavior, justifying the imposition of punitive damages.

EIGHTH CLAIM FOR RELIEF

(Negligence against Greenberg, Barnett and the Agile Group)

100. Cohen incorporates by reference the allegations contained in paragraphs 1 through 99, inclusive.

101. Greenberg, Barnett, and the Agile Group undertook to advise Cohen regarding the status of his accounts with the Agile Group independent of any contract or agreement between Cohen and Greenberg, Barnett, or the Agile Group.

102. The monthly e-mail status reports contained information that was irrelevant to the true status of Cohen's assets with the Agile Group and did not contain information that Cohen needed to understand the true status of Cohen's assets with the Agile Group.

103. Greenberg, Barnett, and the Agile Group were negligent in the preparation of the monthly e-mail status reports that they sent to Cohen.

104. Cohen was injured as a direct and proximate result of the negligence of Greenberg, Barnett, and the Agile Group in an amount to be proved at trial, plus interest.

105. The acts of Greenberg, Barnett, and the Agile Group were attended by circumstances of fraud, malice, and willful and wanton behavior, justifying the imposition of punitive damages.

NINTH CLAIM FOR RELIEF
(Accounting)

106. Cohen incorporates by reference the allegations contained in paragraphs 1 through 107, inclusive.

107. The money invested by Cohen through the Agile Group has been wasted and depleted.

108. Cohen is unable to determine the amount of moneys lost while it was in possession of the Agile Group without a full and accurate accounting of the funds held, transactions made, and disbursements made.

109. The Agile Group should account to Cohen and provide access to its account books for such accounting by Cohen.

110. The Agile Group is obligated to pay Cohen the costs of professional accounting fees incurred as a result of such accounting.

WHEREFORE, Defendant Leonard Cohen prays that the Court grant judgment in his favor and against the counterclaim defendants, jointly and severally, in amounts to be proved at trial, but including principal and pretrial interest on such damages, that the Court order the Agile Group to

account to Cohen and award Cohen the accounting fees incurred, and that the Court award Cohen his attorney's fees, costs of suit, and such other further relief as the Court deems appropriate.

COHEN DEMANDS A TRIAL TO A JURY OF SIX.

DATED this 30th day of June, 2006.

Respectfully submitted,

BAILEY & PETERSON,
A Professional Corporation

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2006, I served true and correct copies of the foregoing DEFENDANT COHEN'S ANSWER TO SECOND AMENDED COMPLAINT, COUNTERCLAIMS, AND JURY DEMAND electronically on the following:

R. Daniel Sheid
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Kelley Lynch
tseringma@gmail.com

s/ Linda J. Simmons