UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-V-1233-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,

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.

AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs Greenberg & Associates, Inc., d/b/a Agile Advisors Inc.; Tactical Allocation Services, LLC, d/b/a Agile Allocation Services LLC; Agile Group, LLC; Greenberg & Associates Securities, Inc., d/b/a Agile Group; and Neal R. Greenberg (individually or collectively, "Greenberg"), by and through their attorneys, Brownstein Hyatt & Farber, P.C., for their complaint against Defendants Leonard Cohen, Robert Kory, John Doe Nos. 1-25, and Kelley Lynch (collectively, "Defendants") state with knowledge as to their own acts and statements, and upon information and belief as to the statements and actions of others, as follows.

NATURE OF THE ACTION

This action presents a remarkable situation in which a Colorado broker-dealer and investment advisor of spotless professional reputation and proven track record is compelled to seek legal recourse against one of its own clients. Greenberg manages and invests over $550 million on behalf of hundreds of clients, most of whom are citizens of Colorado. Its performance consistently and for many years has exceeded market standards, which has propelled its steady growth. Nothing is more essential to a trusted investment advisor and financial manager, like Greenberg, than these two things – reputation and performance.

Defendants Leonard Cohen, a noted recording artist, and his girlfriend's ex-husband, an attorney named Robert Kory (who is best known for a failed effort to build an "Oz" theme park on a reclaimed hazardous waste site in Kansas), have threatened and taken actions, including through use of fraudulent means and statements, and other tortious conduct, irreparably to damage Greenberg's reputation, and are using those threats and actions to extort millions of dollars. They already have taken similar action to "crush" others who stand in the way of their scheme, and thus their threats against Greenberg are credible and serious.

Confronted with an ultimatum to quietly agree to private settlement of false claims against him, or face disastrous consequences to his business and reputation through publication of such falsehoods by a famous celebrity, Greenberg is compelled to file the instant action to seek injunctive and other urgent and necessary relief, including monetary damages resulting from the threat of sham prosecution, and being subjected to severe emotional distress. Detailed allegations of Kory and Cohen's conspiracy to commit extortion against Greenberg, their fraudulent statements and acts in furtherance of that scheme, and other tortious conduct, and Greenberg's claims for damages and prayer for relief flowing therefrom, are set forth below.

In addition, Cohen has made clear that Cohen asserts rights over approximately $150,000 in investment funds managed by Greenberg that belong to Traditional Holdings, LLC, a Kentucky entity managed and 99.5% owned by Kelley Lynch, Cohen's former manager, and 0.5% owned by Cohen. Because Lynch also claims interest in these funds, Greenberg asserts an interpleader claim against Cohen and Lynch as nominal defendants asserting competing claims over these funds.

PARTIES

1. Greenberg & Associates, Inc., d/b/a Agile Advisors Inc., is a Delaware corporation with its principal place of business in Boulder, Colorado.

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

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

4. Greenberg & Associates Securities, Inc., d/b/a Agile Group, is a Delaware corporation with its principal place of business in Boulder, Colorado.

5. Neal R. Greenberg, is a Colorado resident.

6. Greenberg & Associates, Inc., d/b/a Agile Advisors Inc.; Tactical Allocation Services, LLC, d/b/a Agile Allocation Services LLC; Agile Group, LLC; Greenberg & Associates Securities, Inc., d/b/a Agile Group; their principal, Neal R. Greenberg; and their employees, are all referred to in this Complaint, either separately or collectively, as "Greenberg."

7. Leonard Cohen ("Cohen") is a citizen of Canada, residing in Los Angeles, California.

8. Robert Kory ("Kory") is a citizen of the United States, residing in Los Angeles, California.

9. Kelley Lynch ("Lynch") is a citizen of the United States, residing in Los Angeles, California.

JURISDICTION AND VENUE

10. Diversity jurisdiction exists because this case involves citizens of different states and the amount in controversy exceeds $75,000.

11. Personal jurisdiction exists over each Defendant because the claims alleged arise from the transaction of business in Colorado by each Defendant directly and/or through designated and authorized agents, the commission of tortious acts by Defendants Kory and Cohen, either in person or by a designated and authorized agent, causing injury to Plaintiffs in Colorado, and because the Defendants are subject to general jurisdiction in Colorado.

12. Defendant Cohen has had repeated and ongoing contacts with Colorado for many years through performance and sale of recordings of his music in Colorado.

13. Cohen and Lynch, as set forth below, purposefully and repeatedly availed themselves of the benefits and protections of Colorado, both personally and through agents, through their regular communications, associations, and contractual activities with Greenberg in Colorado from 1996 through at least November 2004.

14. Kory purposefully and repeatedly availed himself of the benefits and protections of Colorado through numerous telephone conferences with Greenberg in Colorado, solicitation of business and professional information from Greenberg in Colorado, and the direction of legal and professional correspondence to Greenberg in Colorado from November 2004 through at least June 2005, which contacts were not merely as an agent on behalf of Cohen but also integral to his own and Cohen's scheme to extort millions of dollars from Greenberg.

15. Cohen and Kory independently are subject to personal jurisdiction due to their tortious actions against Greenberg, detailed below, which actions were intended to cause, and did cause, foreseeable injury to Greenberg in Colorado. In addition to the other tortious acts detailed below, in furtherance of his own and Cohen's tortious scheme to extort millions of dollars from Greenberg, Kory and Cohen contracted and paid for a conference room at the Courtyard by Marriott Denver International Airport hotel and invited Greenberg and its counsel to attend a meeting there on June 5, 2005 for the purpose of obtaining acquiescence to their scheme. Kory and Cohen failed to appear for the meeting and canceled the reservation only after exposure of their scheme and after Greenberg had incurred significant expense preparing for and traveling to the meeting.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred, or in a substantial part of property that is the subject of the action is situated, in this District.

GENERAL ALLEGATIONS

Cohen and Lynch

17. Cohen is a renowned songwriter and singer who has been, and continues to be, prominent in the musical world.

18. Lynch was Cohen's manager and agent for approximately 20 years, until late 2004. Throughout this 20-year agency relationship, Lynch and Cohen maintained an on-again off-again intimate relationship.

19. Throughout this 20-year period, Lynch handled all of Cohen's business affairs and much of his personal affairs. One of Lynch's primary roles – as designated by Cohen – was to act as a buffer between Cohen and the public, and as a gate keeper with respect to obtaining access to Cohen.

20. Throughout their 20-year relationship, Cohen repeatedly affirmed to the public and to those working on his business affairs (including, but not limited to, those working on his music matters, sales and investments) that Lynch handled all of these issues on his behalf, and that they were to treat Lynch as his exclusive agent and representative. He provided her with various special and durable powers of attorney to those ends.

21. Since at least 1995, and at least until late 2004, Cohen maintained two business addresses in Los Angeles, California. Cohen's mailing address was 419 Larchmont, Suite 91, Los Angeles, California 90004 (the "Larchmont Address"). The Larchmont Address is a post office box only. Its purpose was to create yet another buffer between Cohen and those seeking his attention as to public, business and music matters.

22. Cohen's other business address was located at 1044 South Keniston, Avenue, Los Angeles, California 909019 (the "Keniston Address"). Cohen and Lynch maintained desks and work areas at the Keniston Address. All of Cohen's business affairs were conducted at the Keniston Address.

The First Sony Sale and Creation of the Trusts

23. As a result of Cohen's success as a songwriter and singer, and under Lynch's management, Cohen generated millions of dollars worth of royalties and other intellectual property assets (together, "Cohen's IP" or "IP").

24. From the early 1990s, impressed with a new strategy used by other Hollywood celebrities to cash in on their future revenue streams from IP rights and increase short-term

income (called a "Pullman" or "Bowie" bond, after the artist David Bowie who first used it), Cohen, through Lynch, has worked aggressively with advisors, including Greg McBowman, to auction off some of his IP to the highest bidder.

25. In or about 1996, representing that certain of these IP interests were held by a shareholder corporation of his creation named Leonard Cohen Stranger Music, Inc. ("Stranger"), Cohen commenced negotiations to sell Stranger to Sony Music International ("Sony") for $6.3 million (the "First Sony Sale").

26. Cohen directed Lynch to be involved in, and made Lynch responsible for handling, every aspect of the negotiations and proposed sale on Cohen's behalf.

27. Anticipating the influx of funds from this First Sony Sale, Lynch sought investment advice, on Cohen's behalf, from Greenberg and others. Greenberg, however, had no role in Cohen's decision to effectuate the First Sony Sale, or in any other decision by Cohen to sell his IP.

Greenberg

28. Greenberg is a successful investment firm headquartered in Boulder, Colorado. Greenberg currently employs about 30 persons in Boulder. Greenberg manages approximately $550 million in investments for over 400 clients, most of whom reside in Colorado. Greenberg's investment performance consistently has exceeded market standards and has propelled its steady growth. Greenberg's president and founder, Neal R. Greenberg, has been a financial and investment advisor for more than 20 years. Neal R. Greenberg has maintained a high reputation for results and integrity.

29. To discuss Cohen's investment options for the proceeds from the anticipated sale, Lynch arranged for Cohen to meet and have dinner with Greenberg in 1996. Lynch explained to Greenberg that it was a rare and great honor for Greenberg to have a personal audience with Cohen.

30. During this dinner, and at Cohen's request, Greenberg discussed ways in which Cohen could structure the investments of his proceeds from the First Sony Sale so as to reduce tax consequences and yet generate substantial income.

31. Greenberg, however, is not an accountant or a tax lawyer. Financial Planning Agreement, Paragraph 1.) For this reason, among others, Cohen began working with, and began to be represented by, a creative tax attorney and law professor from the University of Kentucky, Richard Westin. Cohen also had other advisors and consultants working with him on business, music and tax matters, including Greg McBowman and Ken Cleveland, as well as Stuart Fried and other attorneys at the law firm of Grubman Indursky & Schindler, P.C. All of these advisors dealt principally with Lynch on Cohen's behalf.

32. Ultimately, Cohen decided to transfer some of the income from the First Sony Sale into charitable remainder trusts. On October 30, 1996, Cohen established three trusts: the Sabbath Day Charitable Trust (the "Sabbath Day Trust"), the Cohen Family Charitable Trust (the "Cohen Family Trust"), the Cohen Remainder Trust (the "Remainder Trust") (collectively, the "Trusts").

33. Approximately $5 million of the proceeds from the First Sony Sale were transferred to the Trusts. Cohen retained Greenberg to invest the Trust's assets. Greenberg was instructed, however, that Lynch would oversee the Trusts on Cohen's behalf and that Lynch would handle all Trust-related communications on Cohen's behalf. Greenberg was instructed to send all Trust-related communications to the Larchmont Address.

34. These Trusts significantly decreased Cohen's up-front tax exposure, and also enabled him to draw down considerable funds to maintain his extravagant "celebrity" lifestyle. Greenberg calculated that Cohen could receive approximately $300,000 annually from the Trusts without drawing on the principal. As both the trust maker and the trustee, however, Cohen had authority to withdraw Trust money, including principal.

35. Greenberg was highly successful in investing the Trusts' assets. Greenberg's success, however, was tempered by Cohen's consistent and prolific spending. Cohen (through Lynch) repeatedly withdrew large amounts of the Trust assets. On repeated occasions, Greenberg notified Cohen (both directly and, as instructed, through Lynch) that Cohen was spending more than recommended from the Trusts, and thus was draining down the Trusts' principal. On one such occasion, on April 13, 2001, Greenberg wrote to Cohen:

> I am writing to you to discuss the income withdrawals you've received from your portfolio and to provide you with some helpful guidelines for the future. When we originally constructed your portfolio in 1997, you may remember that we had extensive conversations about how much you required for your annual living expenses. Accordingly, we budgeted for withdrawals of $300K/year. From the beginning of 1998 through the end of March 2001, we have earned you nearly $2.5MM, however you've spent $3.6MM or an average of about $1.1MM per year.
>
> Kelley has assured me that much of this money went towards business investments that will provide you some return in the future. . . . At your current rate of withdrawals, you may continue to spend down your investments.
>
> . . . . Please feel free to contact me anytime at (303) 440-6500 should you have any additional questions or concerns.

36. Cohen and Lynch responded to these warnings with additional demands for money, or with complaints about the message. For example, during a telephone conversation with Greenberg in June 2000, Lynch asked that Greenberg "stop saying that Leonard is spending

too much. Leonard would be really offended to hear this. Expenses are higher right now due to withholding of royalties and expenses associated with [the] new album."

The Second Sony Sale

37. In or about 1999, Cohen put more of his IP up for auction. In 1999, Sony and Cohen (through Lynch) negotiated for a second sale of IP to Sony for about $8 million gross (the "Second Sony Sale"). The artist royalties to be sold were represented by Cohen as being held by another Cohen entity, Blue Mist Touring Co., Inc. ("Blue Mist"). Cohen 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.

38. As always, Lynch handled all of the negotiating and communication responsibilities with Sony on Cohen's behalf.

39. Cohen (through Lynch) asked Westin and, in the Spring of 2000, Greenberg, to provide advice about how to invest the anticipated proceeds from Second Sony Sale and minimize the sale's tax burden.

40. In June 2000, Greenberg prepared a memorandum to Cohen explaining the tax avoidance issues and comparing different investment scenarios. As with almost all submittals to Cohen, Lynch acted as an informational gatekeeper and did not permit Greenberg to forward the memorandum to Cohen until she had approved (and revised for Cohen's consumption) the memorandum's final version. Her direction to Greenberg was to "keep it simple [and] soothing [and not] too much at once."

41. In the memorandum, Greenberg compared and contrasted the benefits and disadvantages of different investment options, including the creation of additional charitable trusts and investing in government tax-free bonds.

Creation of Traditional Holdings

42. Cohen, however, elected not to use the trust option. Still seeking a means of avoiding personal income tax stemming from the sale, however, Lynch and Cohen's tax attorney, Westin, investigated other tax-friendly business structures.

43. While Lynch or Westin would telephone Greenberg occasionally to "pick his brain" about these issues, Westin and Lynch took the lead in formulating a strategy for handling the Second Sony Sale proceeds.

44. While Westin advised Cohen that he could help save a few tax dollars at the margins with a conservative approach, he also presented Cohen with an idea for starting a company, with Lynch, that would become the counterparty to Sony for the IP sale, and would in turn owe a long-term annuity obligation to Cohen. Cohen leapt at this opportunity to minimize

his tax burden, just as he had explored all possible means of reducing his taxes in years past, such as by seeking a tax credit for donating his papers to a Canadian museum, and using artifices in dealing with Sony to avoid paying any Canadian taxes (as a Canadian citizen) on his royalty income earned in Canada.

45. According to Westin's proposal, Cohen would not be involved in the IP sale personally and, therefore, would not owe taxes personally in the short-term, but would defer his tax obligations until the annuity payments started some years later. That way, he could sell off much of his songwriting credits and royalty rights up front for a hefty lump sum, yet pay lower taxes on a reasonable schedule, and at lower rates, years later.

46. Westin's proposed plan had the following basic components: A limited liability company – which eventually became Traditional Holdings, LLC ("Traditional Holdings") – would be created. Blue Mist would transfer certain record royalty assets to Traditional Holdings in exchange for a deferred annuity, to be paid to Cohen beginning in about 10 years. Traditional Holdings would then sell the assets it received from Blue Mist to Sony. The tax plan prevented Cohen, the annuitant, from owning more than a de minimus interest in Traditional Holdings. Therefore, Cohen would own less than 1%, and another person – who ultimately was Lynch – would own the remaining LLC interest (more than 99 percent).

47. Westin outlined this proposal to Cohen and Lynch both orally and in a series of letters and other written communications between October 2000 and December 2000. (Ex. 1.)

48. In these written communications, Westin explicitly warned Cohen that since the annuity plan gave significant transactional control to Lynch, and also potentially placed tax and other burdens upon her as majority shareholder, the plan would work only if Cohen and Lynch maintained (as they had in the past) a long-term relationship of personal and professional trust which would secure their mutual obligations as manager of the obligor (Lynch) and annuitant (Cohen). (Ex. 2.)

49. Cohen carefully reviewed, understood, and signed off on the ownership structure of Traditional Holdings – including the fact that Lynch owned 99 percent of Traditional Holdings' membership interests, so as (among other reasons explained by Westin) to avoid any suggestion of self-dealing. First, Cohen reviewed and executed the Traditional Holdings Operating Agreement and reviewed the detailed Articles of Organization, which documents set forth in detail the entity's ownership structure and managerial procedures. (Ex. 3.) Second, he participated, at his request, in conference calls with Greenberg and/or Westin and Lynch during which the structure was carefully reviewed. Third, he talked about it privately with Lynch, including when he forced her to discuss it with him while he took a bubble bath. Fourth, in addition to several explanatory faxes he received from Westin describing Traditional Holdings, Cohen communicated specific questions, through Lynch, relating to Traditional Holdings' ownership and transactional structure, which questions Westin answered, in a letter written directly to Cohen on December 4, 2000, and faxed by Westin (as with his prior memos) directly to Lynch and Cohen. (Ex. 2.)

50. Moreover, regardless of whether Lynch owned 1 percent or 100 percent of the shares of Traditional Holdings, Cohen knew that she still had authority – through a durable power of attorney and pursuant to her role as Traditional Holdings' manager – to act, and give directions, on Traditional Holdings' behalf. (See Operating Agreement and Articles of Organization (Ex. 3).) Likewise, no matter who owned the majority of shares of Traditional Holdings, the obligation to fulfill a deferred annuity obligation to Cohen remained the same. Thus, Cohen's interests in the firm (the long term annuity payments) were identical, no matter his purported ownership interest in the assets held and invested in the interim.

51. In December 2000, Westin created Traditional Holdings as a Kentucky limited liability company. Lynch was named as a manager. (Ex. 3.) Also in December 2000, Cohen signed a Private Annuity Agreement with Traditional Holdings which document set forth Traditional Holdings' annuity obligations to Cohen. (Ex. 4.) Lynch signed the Private Annuity Agreement on Traditional Holdings' behalf. Westin maintained and maintains that the company and its annuity contract with Cohen are legitimate under prevailing interpretations of the federal tax code.

52. To purchase her ownership interest in Traditional Holdings, Lynch was required to submit to Traditional Holdings a promissory note for $240,000. It was agreed that Lynch would receive regular payments from Traditional Holdings to pay down the $240,000 promissory note, and to cover tax liabilities, as well as a small salary to manage the company. (Exs. 2 and 3.)

53. As set forth in the Operating Agreement, Traditional Holdings was authorized to issue loans to its members, Cohen and Lynch, as long as the loans were paid back before the annuity obligations commenced. Any loans, however, also reduced the assets invested, and therefore reduced the investment returns.

54. Greenberg had no role or interest in Traditional Holdings whatsoever. On the contrary, Traditional Holdings hired Greenberg for the purpose of investing the assets that Traditional Holdings would receive from the Second Sony Sale. Greenberg's job was to manage and invest Traditional Holdings' assets well – the same function he performed for any other natural or corporate client. Greenberg was instructed to follow Lynch's directions as Traditional Holdings' manager and as Cohen's representative.

<u>**Closing of the Second Sony Sale**</u>

55. Between December 2000 and April 2001, Traditional Holdings remained unfunded pending the closing of the Second Sony Sale. Sony completed its due diligence and approved Traditional Holdings' role in the Second Sony Sale.

56. In April 2001, the Second Sony Sale was completed. The Sale's gross proceeds were approximately $8 million, less certain identified costs and expenses, and holdbacks for undelivered work.

57. Of these proceeds, Cohen already had requested and received $1 million as an advance in November 1999. Cohen was well aware of this $1 million advance because it became the subject of a tax dispute with the Internal Revenue Service in 2002. Cohen's accountants, including Ken Cleveland, managed to avoid the consequences of this tax dispute, however, by convincing Sony to withdraw and reissue its 1099 in an amount of $0. (Id.)

58. Of the remaining amounts of the Second Sony Sale proceeds, approximately $6.65 million was assigned to Traditional Holdings. Of this $6.65 million, the following amounts were paid to cover the costs involved in closing and negotiating the Second Sony Sale:

$350,000	Grubman Indursky & Schindler, P.C. (attorneys for Cohen)
$333,750	McBowman Consulting Group (consultants for Cohen)
$30,450	Epstein Backer & Green, P.C.
$1,101,250	Stranger Management (commissions to Lynch's company)

None of these listed expenses had anything to do with the formation of the annuity plan or with Traditional Holdings. Westin did receive a modest fee for work on the Traditional Holdings documents and for consulting with Sony on Cohen's and Traditional Holdings' behalf. Greenberg received no fees, and had no role in the transaction.

59. The Traditional Holdings assets were allocated among different funds and accounts that Greenberg managed. Some were investment funds and accounts. Others were intended to maintain liquidity in the event Cohen required money to cover expenses.

60. The communication process between Cohen and Greenberg with respect to Traditional Holdings continued in the same fashion as it had with respect to the Trusts – that is, Greenberg understood that Lynch would handle or screen all communications to Cohen, and that Greenberg was to send all written communications concerning Traditional Holdings to the Larchmont or Keniston Addresses.

61. In January 2002, Cohen executed an extremely broad Durable General Power of Attorney that gave Lynch essentially unfettered authority over Cohen's financial affairs. (Ex. 5.)

62. In February 2002, Lynch, on Traditional Holdings' behalf, executed with Greenberg a Financial Planning Agreement and a Tactical Allocation Services Investment Advisory Agreement. Paragraph 1(c) of the Investment Advisory Agreement obligated Cohen to provide Greenberg accurate information and provided that Greenberg was not required to verify information received from Cohen's representatives and agents. Paragraph 19 provided that Greenberg was permitted to follow the instructions given by any representative of the client (in this case, Lynch, as manager of Traditional Holdings) with respect to the disposition of assets, and that Greenberg would not be held liable for any such reliance.

63. For three and a half years, between April 2001 and October 2004, the pattern of communication between California and Colorado concerning Traditional Holdings followed the following pattern, as Cohen, through Lynch, directed:

a. Lynch managed every aspect of Traditional Holdings communicating with Greenberg employees in Colorado several times a week, and often several times a day;

b. Communications from Greenberg to Cohen either went directly to Lynch via e-mail, were sent to Lynch via e-mail for approval before being sent to Cohen, or were sent via mail to either the Larchmont or Keniston Addresses;

c. Lynch continued to manage all of Cohen's affairs with Greenberg (including anything to do with Traditional Holdings). Her responsibilities included distributions and loan requests, financial reporting, information requests, and virtually all other aspects of Greenberg's investments for Traditional Holdings and the Trusts;

d. Greenberg provided to Cohen regular monthly financial statements, which statements were sent – as Cohen had directed – to his Larchmont or Keniston Addresses. (See, by way of example only, Ex.6.) These regular financial statements explicitly detailed the deposits, withdrawals, and loans from Traditional Holdings accounts, and the financial performance of the investments for Traditional Holdings and the Trusts. (Id.);

e. At Lynch's direction, Greenberg also prepared a monthly e-mail to Cohen concerning the status and performance of Cohen's investments as a whole. (See id.) At Lynch's direction, however, these e-mail summaries did not attempt to describe the day-to-day activities of Traditional Holdings or the status of loans to Traditional Holdings' members, leaving the more detailed information for the written monthly reports. Lynch monitored and revised the summaries so they would include only the information that, according to Lynch, Cohen wished to receive; and

f. At Lynch's request, and purportedly for tax purposes, Westin, Cohen's attorney, also received from Lynch Traditional Holdings information, including updated information concerning the amounts and dates of the Traditional Holdings loans.

64. No sooner had Traditional Holdings been funded, however, than Cohen – just as he had done with his trust assets from the First Sony Sale, and notwithstanding Greenberg's prior warnings about draining down investment money – began to dissipate the Traditional Holdings funds, jeopardizing his own long-term annuity interests as well as the Company's legitimacy.

Greenberg was immediately alarmed by Cohen's desire and tendency to treat this company like his personal piggybank, out of which he could borrow or take distributions against his own annuity benefits to buy houses and cars, among other things.

65. For example, almost immediately after funding, Cohen took out a loan for $50,000. This was followed, during 2001 and 2002 alone, by loans to Cohen (through directives that Lynch, as Cohen's agent, issued as Traditional Holdings' manager to Greenberg's offices in Colorado) to cover such things as tax liabilities, houses for Cohen's son and his current girlfriend and living expenses. (Id.) Pre-litigation investigation has confirmed that these 2001-2002 loans to Cohen – amounting to over $1 million – were deposited into Cohen's personal bank account at City National Bank. (Id.)

66. In March 2002, on one of the few occasions when Greenberg was permitted to speak with Cohen directly by telephone, Cohen "admitted he was spending too much and seemed a little shaken when I reminded him how much he had just spent on gifts to friends."

67. Lynch repeatedly assured Greenberg that the loans from Traditional Holdings were being properly documented with Westin's assistance. Westin – Cohen's attorney and tax advisor – also was aware of and in regular communication with Lynch concerning the shareholder loans and other aspects of the affairs and management of Traditional Holdings. (Id.)

68. In the March 5, 2002 Traditional Holdings Board Meeting Minutes, prepared at Westin's direction, provides "that the level of borrowing was undesirable and expressed their asset that further borrowing was discouraged, even though the borrower's [Cohen's] credit and collateral were good."

69. Cohen, however, gave no sign that he had any intention of abating his spending habits. In an e-mail to Lynch dated March 4, 2002, Cohen thanked Lynch for "keeping [him] informed," and instructed her to "give lots of money to everyone."

70. Without exception, it was Lynch, as Traditional Holdings' manager, who issued directives to Greenberg in Colorado to release money for loans. Although Lynch, as manager, had full authority to withdraw the money, she consistently represented that the loans were being made on Cohen's behalf and for his benefit.

71. In addition to these loans to Cohen, Lynch made Greenberg aware in 2001 and 2002 that she too was taking a certain amount of loans from Traditional Holdings, with Cohen's permission. In 2001 and 2002, these disclosed loans to Lynch amounted to about $70,000, of which $60,000 was repaid. (See id.)

72. In 2003 and 2004, Lynch continued to direct Greenberg in Colorado to release Traditional Holdings money for loans to cover Cohen's personal and business expenses. These requests generally would take one of two transactional forms. Sometimes Lynch would request that funds be wired from one of Traditional Holdings' investment accounts directly to a bank account (for example, to Cohen's bank account at City National Bank). On other occasions,

Lynch would request that funds be wired from a Traditional Holdings investment account to one of Traditional Holdings checking accounts from which Lynch, as manager, had full check-writing authority. (See id.) Greenberg did not, and had no reason to receive copies of any checks from these Traditional Holdings accounts, and therefore had no information – other than what it learned from Lynch and what it understood based on Cohen's past spending practices – about how the money was ultimately being spent, or whether it was being spent at all.

73. Lynch, as Traditional Holdings' manager, had apparent, actual, and implied authority to make all of these requests. While Cohen's personal signature was at times required to withdraw funds from, or maneuver funds between, the investments held by the Trusts, at no time was his personal signature required to effectuate a investment transfer, loan, or withdrawal from Traditional Holdings. With very few exceptions, Lynch, as Cohen's agent, informed Greenberg that these Traditional Holdings loans were being made to pay Cohen's personal or business expenses. (See id.)

74. Because these shareholder loans were to be repaid, and to protect the entity's integrity for tax purposes, the shareholder loans, on the advice of Richard Westin, were properly characterized as Traditional Holdings assets when calculating the entity's value.

75. In 2003 and 2004, Greenberg became increasingly concerned about the number and amount of loans Lynch was directing for Cohen's expenses.

76. As before, Greenberg continued to warn Cohen that his spending was seriously draining his investments. In addition to the regular monthly reports and statements that Greenberg sent to Cohen – which listed all of the loans that Traditional Holdings was making to Cohen –Cohen and Lynch also received information concerning the dates and amounts of loans directly from Traditional Holdings' funds and bank accounts.

77. Although it held no responsibility for the internal affairs or financial health and future of Traditional Holdings and its annuity obligations, but only to manage the funds that Traditional Holdings invested through Greenberg, Greenberg continued to try to steer Cohen onto a safer course. Indeed, in an attempt to emphasize the seriousness of the situation, Greenberg continued to send separate and explicit warning letters addressed directly to Cohen. In one of these warning letters, dated January 16, 2004, Greenberg notified Cohen that (a) Traditional Holdings had only $2.1 million in remaining capital; and (b) considering how quickly Cohen was spending money, "I think you should consider your situation quite desperate." The letter continued:

> [A]t the rate funds are being withdrawn, you will run out in a few years . . . . If you spend all of the capital, you would be destitute except for the income from the charitable trusts and any income from your music. I URGE YOU TO CURB YOUR SPENDING. It is at a very dangerous level.

(Ex. 7.)

78. Greenberg followed this letter with an e-mail to Lynch seeking to confirm that Cohen received and understood the letter, and requesting an opportunity to sit down with Cohen personally to discuss these issues. Lynch responded that the letter was received and understood. (Id.)

79. On June 25, 2004, Greenberg sent Cohen a second letter, via Federal Express, that contained even more dire warnings. (Ex. 8) Greenberg offered to fly to Los Angeles to discuss Cohen's "quite desperate" situation with him personally. (Id.)

80. Greenberg had no incentive to encourage the continued loans from Traditional Holdings. On the contrary, its fees to clients for its investment services were and are based on the amount of funds under management. Thus, the conversion of Traditional Holdings' assets into short-term loan obligations had the effect of decreasing (not increasing) Greenberg's fees, and brought no corresponding or offsetting financial benefits.

The Pending Third Sony Sale

81. Lynch, on Cohen's behalf, sent to Colorado e-mail responses to Greenberg's warnings, defending the loans, giving assurances that all of the loans were proper and documented, and assuring that they would be paid off when Cohen received the money from another upcoming Sony transaction.

82. Indeed, beginning in 2003, Cohen (through Lynch) informed Greenberg of yet a third sale to Sony (the "Third Sony Sale"). According to Lynch, the Third Sony Sale would result in upwards of $7.8 million to Cohen.

83. As Cohen's representative, Lynch communicated with Greenberg in Colorado about investment options for these anticipated funds. While Greenberg was interested to see the annuity obligation to Cohen re-funded through one means or another, Greenberg held no stake in the Third Sony Deal. Indeed, he advised Cohen in June 2004 that, net of taxes, the proceeds from this anticipated sale would be insufficient to restock Traditional Holdings. (Ex. 7.)

84. As part of Cohen's preparation to close the Third Sony Sale, Lynch and Westin prepared loan schedules for the payback of the Traditional Holdings loans from 2001 and 2002 and forwarded those schedules to Greenberg. These schedules listed the majority of these loans going to Cohen with a lesser amount going to Lynch. (Id.) Lynch proposed that Cohen pay back these 2001-2002 loans with an initial payment from the Sale that, according to Lynch, was imminent. (Id.) Lynch stated that Cohen's loans from 2003 and 2004 would be paid back with a later, larger, Sale installment. (Id.)

Cohen Fires Lynch

85. In October 2004, Cohen and Lynch had a major falling out, the details of which remain unknown to Greenberg. As a result of this falling out, the Third Sony Sale – which appeared to be on the verge of consummation – never happened.

86. On October 21, 2004, Cohen personally contacted Greenberg by e-mail and informed Greenberg that Lynch was "busy with other aspects of 'my career,'" and therefore Cohen had "relieved her of all financial responsibilities." Cohen further stated that Lynch "need not be copied on your statements or reports," and that Cohen's new accountant would "be in touch."

87. On October 22, 2004, Cohen sent another e-mail to Greenberg stating that Lynch "no longer represents me," and directing Greenberg not to "respond to any of her instructions." (Id.) Lynch's termination letter, according to Lynch, was backdated to precede the release of Cohen's most recent album, "Dear Heather."

88. On or about October 24, 2004, Cohen again communicated directly with Greenberg stating that his business address was no longer the Larchmont or Keniston Addresses. Cohen gave Greenberg a new address for communication – 5042 Wilshire Blvd. #8435, Los Angeles, California. With allegations flying fast and furious from Cohen – and later Kory – that Lynch was forging Cohen's signatures, astonishingly, the first request for Greenberg to change Cohen's record address came by voice mail from an unknown person to Greenberg's general mailbox. Greenberg, through Kory, demanded an original signature from Cohen on a document verifying the new address.

89. Given Lynch's position as manager for Traditional Holdings, and learning of the apparent schism between Lynch and Cohen, Greenberg became concerned about whether it should legally follow Cohen's or Lynch's instructions concerning Traditional Holdings accounts. On October 24, 2004, Greenberg communicated with Westin – Cohen's lawyer and the attorney who had created Traditional Holdings – and inquired: "Does Leonard in your view have equal authority over the accounts that we manage? What if there are contradicting directive on those accounts that we manage? For example if KL says 'take money out' and LC says don't take money, what is your view, if you are allowed to tell me." Westin confirmed that because Cohen held a membership interest in Traditional Holdings, Greenberg could share information with him about Traditional Holdings' investments. Westin could not answer the issue of conflicting directives, and instead referred Greenberg to Traditional Holdings' governing documents (drafted by Westin), which documents provided little, if any, guidance on the issue. (Ex. 3)

90. At or about this same time (October 22-24, 2004) Cohen phoned Greenberg. Cohen said that he thought Lynch had been taking money from Traditional Holdings without Cohen's authorization. He claimed that Lynch was using the money to support a gigolo and to fund shopping sprees at Neiman Marcus, and suggested that Lynch and Westin may have colluded to defraud him. When Greenberg reminded Cohen that Westin had warned Cohen in 2000 that "the biggest risk" from Westin's tax avoidance plan "was that Lynch would own his assets and he would have lost control," Cohen remembered that initial warning. Cohen also represented to Greenberg for the first time that Cohen had never received any of Greenberg's subsequent written warnings about his excessive spending, and that Lynch "must be intercepting his mail."

91. Cohen turned to his counsel Westin, and another lawyer, Robert Kory (the former husband of Cohen's girlfriend), to assist in the matter.

92. Westin and Kory, through communications to Greenberg, placed pressure on Greenberg that anything short of immediate and total dedication to Cohen's requests would carry legal consequences. Greenberg sought neutrally to assist both Lynch and Cohen to ascertain all details of the transaction history relating to the Traditional Holdings' accounts. Senior executives at Greenberg's firm in Colorado spent over a hundred hours of their time, at no charge, working with third party banks and funds to obtain copies of checks, statements, and other financial papers, as well as reproducing and organizing account histories from Greenberg's own files.

93. Some of the third-party information that Greenberg obtained through its efforts consisted of check copies that Lynch, as Traditional Holdings' manager, had written from the Traditional Holdings checking account. From these checks, it could be determined that Lynch had made out many of the checks to herself. Lynch's representations, however, that the loan funds borrowed from Traditional Holdings, including the funds represented by these checks, were used primarily to pay for Cohen's personal and business expenses, neither could be confirmed nor disconfirmed.

94. Based on these checks, Greenberg calculated that, of the loan money withdrawn from Traditional Holdings:

a. $2,084,518 had been deposited into Cohen's personal bank account;

b. Lynch personally had outstanding loans of approximately $293,000, which loans she had represented to Greenberg had been disclosed and agreed to by Cohen;

c. Lynch had been paid approximately $135,000 to cover obligations associated with her position as Traditional Holdings' manager and majority owner (see paragraph 46 above); and

d. Approximately $2.5 million had been (a) transferred to a Traditional Holdings' checking account, after Lynch had represented to Greenberg that these amounts were needed to cover Cohen's personal and business expenses; and (b) then withdrawn by Lynch using checks written by her and made out to her (the "<u>Unaccounted For Funds</u>").

<u>The Conspiracy and Fraud</u>

95. In early communications following Cohen's discharge of Lynch in late October 2004, Cohen wholly blamed Lynch for the depletion of the Traditional Holdings accounts. At

the same time, Lynch denied any wrongdoing, blaming Cohen for his extravagant habits. Both Lynch and Cohen communicated to Greenberg that Greenberg bore none of the blame.

96. Indeed, Cohen and Kory repeatedly thanked Greenberg for its cooperation and, after close review of Greenberg's investment performance, Kory praised Greenberg's investment work on Cohen's behalf. To this day, Cohen has not withdrawn from Greenberg any of his funds under management.

97. Greenberg, however, fearing becoming embroiled in a controversy between Lynch and Cohen, made clear to both of them, through counsel, that his assistance in helping obtain information about the transactional history was premised on reassurances that his integrity and performance would be acknowledged and recognized.

98. While Cohen told Greenberg on more than one occasion that Cohen believed Lynch had used the loan structure to misappropriate money, Cohen was keenly aware that pursuing Lynch was a risky, and likely counterproductive, proposition. For example:

a. Her abrupt termination frustrated Lynch's ability to make good on any loans through her share of receipts from the Third Sony Sale, the "Dear Heather" album, a pending sale of original lithographs, or other sources, and left her in a precarious financial position;

b. Cohen had no proof that Lynch used material sums of money from Traditional Holdings for purposes unrelated to their professional and personal relationships; indeed, Lynch often co-mingled her personal Amex account with business affairs on Cohen's behalf, or with personal matters she handled for his family members. Indeed, neither Cohen nor Kory has confirmed nor disconfirmed whether the Unaccounted For Funds were (a) spent to cover Cohen's business or personal expenses; (b) spent on Lynch's personal or business expenses; or (c) spent at all. Nor have Lynch, Cohen or Kory taken any steps to seek judicial or law enforcement assistance to discover what, if anything, happened to the Unaccounted For Funds.

c. In November 2004, Lynch was asked by Kory to appear without the benefit of counsel at a meeting with Cohen, Kory, and Richard Cisneros of the Grubman firm acting as counsel for Cohen, and to sign certain legal documents related, inter alia, to unwinding Traditional Holdings, on the spot. Lynch refused to do so without benefit of counsel, and subsequently received advice from a variety of legal, accounting and tax professionals, including but not limited to Dale Burgess, Dianne DiMascio, and an IRS officer named Betzer, that she was wise not to sign because such action could have been fraudulent. According to Lynch, and upon information and belief, such possible improprieties included, but are not limited to, the retention by Blue Mist and other persons or entities of IP that should have passed through Traditional Holdings to Sony, the failure to reference or deletion of the annuity obligation, loan obligations, and other important matters on Traditional Holdings' corporate tax returns, and Lynch's and Cohen's failure to properly document Traditional Holdings' transactions;

d. Lynch claims that she has substantial, unsatisfied interests in Cohen's business entities and/or intellectual property. If Cohen were to attempt to recover money from Lynch, she would likely assert counterclaims alleging that Cohen owes her, and has never paid, substantial amounts of money; and

e. Lynch has intimate knowledge of all of Cohen's legal, personal and financial affairs and has made known to Kory and Cohen that certain financial and personal improprieties that would prove embarrassing to Cohen's carefully-cultivated public persona would become public knowledge should Kory cause them to become at issue by filing a lawsuit.

99. Because any attempt to recover money from Lynch was likely to be both futile and treacherous, Cohen, Kory, and uncharged co-conspirators including Betsy Superfon, Steve Lindsay, and John Doe Nos. 1-25 – fully recognizing the irreparable harm that would occur to Greenberg from an allegation of mismanagement – conspired against Greenberg by devising a scheme that, if successful, would extort, not just the Unaccounted For Funds, but also millions more, from targets they perceived to be easy and deeply-pocketed – Greenberg and its insurer, as well as Westin and his insurers.

100. In other words, Greenberg was selected as a target not on the basis of any genuine potential for liability to Cohen, but rather out of the perception that Greenberg, out of fear for his reputation, would prove an easy target to shake down. In Kory's words, Greenberg either "could pay up or lose his license."

101. Thus, for example, although the attorneys and accountants involved in the Second Sony Sale structured and received hefty fees for that transaction, which Kory charges were excessive, Kory and Cohen decided not to pursue any of those persons because they would not be easy targets, and because many of them – principally Sony and its law firm and advisors – continue to do business with Cohen profitably. Instead, Kory and Cohen would go after Greenberg, who had no role whatsoever in that Sony transaction and received no benefit therefrom.

102. After Greenberg had fully cooperated with Cohen and Kory concerning the amounts borrowed from Traditional Holdings – and after repeated assurances that Cohen was not blaming Greenberg for anything but was merely investigating Lynch's management of Traditional Holdings – Cohen and Kory began to suggest that Greenberg was at fault after all, though nothing arose in the course of the investigation that colorably showed Greenberg's

knowledge of, participation in, or ability to derive benefit from, whatever transpired between Cohen and Lynch in connection with Traditional Holdings.

103. On November 5, 2004, Cohen began this campaign of extortion by asking Greenberg over the telephone to see if Greenberg's insurance policy covers him, and whether he could use the insurance to make some kind of settlement of these issues. He told Greenberg to "be a man" and contact his insurance company.

104. Two days later, in a November 7, 2004 e-mail from Cohen to Greenberg, Cohen re-emphasized to Greenberg that it would be easier to recover his losses through Greenberg rather than Lynch, stating: "Please do talk to the insurer. A great deal of suffering can be avoided."

105. Cohen and Kory, with affirmative support from Steve Lindsay, Betsy Superfon and John Does 1-25, all acting toward a common end each for their own purposes, carried out this scheme with full knowledge and awareness that it had been Cohen who – knowing Lynch better than anyone, and being fully warned of the possible consequences – had voluntarily relinquished to Lynch all control of his financial and business affairs, had insisted that Lynch handle all of his directives and communications with Greenberg, and had flatly refused on numerous occasions to deal with Greenberg and Traditional Holdings directly. Indeed, Cohen communicated directly with Greenberg only on few occasions of Cohen's own choosing, and not otherwise.

106. When Greenberg informed Cohen that he had no responsibility for the Unaccounted For Funds, Cohen and Kory – knowing that the mere implication of impropriety could damage Greenberg's business irreparably – began to threaten to publish false statements about Greenberg with the intent of harming it, such as by indicating that unless Greenberg obtained insurance funds to satisfy Lynch's alleged obligations to Cohen, Cohen would go out on tour to promote his new album and give interviews to reporters in which he would insinuate that he was touring because he had been bankrupted by improprieties of Greenberg and other financial advisors.

107. Kory knew full well that, from Greenberg's perspective, once a celebrity were to raise such allegations of fraud and breach of duty against him, the damage effectively already would be done, no matter the ultimate outcome. (See Ex. 9, newspaper article and picture that Kory attached to his April 10, 2005 demand letter with the suggestion that Greenberg would "find it interesting.") Kory was counting on this. Thus, his communications with Greenberg through counsel continually spoke soothingly of mediation as a sensitive and sensible alternative to irreparable harm to his reputation through adverse publicity. Kory was taking his marching orders from Cohen, who told Greenberg early on to "be a man" and go after his insurance company for money to repay Cohen for his own profligacy and/or misplaced trust in Lynch.

108. These threats of publication caused, or threatened to cause, a significant loss of business to Greenberg, caused him to incur significant expenses, and inflicted significant emotional distress upon him. Specifically, Greenberg already wrongfully has been forced to

enlist significant help from counsel and to divert enormous time and resources from his own business to fend off Cohen and Kory's extortionist scheme, and has been damaged severely in his business and property, and threatened with significantly greater damage.

Pressuring Lynch to Join Conspiracy

109. Cohen and Kory began to pressure Lynch to assist in their extortion scheme. Specifically, they requested that she testify that Greenberg knew that Lynch was withdrawing money from Traditional Holdings improperly, and that Greenberg approved of Lynch's action, profited from it, and concealed it purposefully from Cohen. Cohen and Kory sought to obtain this testimony knowing that the testimony would be false.

110. Lynch's cooperation in their extortion scheme was critical for another reason. Kory believed that he both could use Lynch as a witness against Greenberg, and buy or coerce her silence at the same time. Since Cohen's would-be claims against Greenberg were fabrications, and since Cohen, to a far greater extent and far more justifiably than Greenberg under the circumstances, feared for his public reputation, it was essential that his campaign to extort money from Greenberg be waged outside the public eye, i.e., the courts and the media.

111. Thus, Kory pressed for private "mediation" as an alternative to a public lawsuit, knowing full well that with Lynch's cooperation and silence, many of the documents concerning Cohen's financial affairs – documents that indubitably show his total trust and reliance upon her, his aggressive tactics to avoid taxes at all costs, and his desire to capitalize on and benefit from all of his intellectual property during his lifetime to fuel an extravagant lifestyle – would not be the subject of discovery. Thus, his phony allegations about Greenberg would stand unrebutted. Kory believed that in an informal mediation, Cohen could have his cake and eat it too. Kory would never have to prove that Lynch owed any money to Cohen, yet he could assert claims regarding money she purportedly owed. It would, he believed, be Cohen's word against Greenberg's, resulting in a compromise award at worst.

112. Put differently, by deliberate omission of critical facts then known only to Cohen and himself and Lynch, and by efforts to retain Lynch's complicity in keeping those critical facts concealed, Kory knowingly and deliberately misrepresented Cohen's objectives and sophistication as an investor, Cohen's long history of aggressive tax management, his long history of exploitation of his IP for immediate gain and profit, his profligacy, and the degree to which he purportedly relied upon Greenberg for guidance and investment advice, so as falsely to portray Greenberg as responsible for matters and decisions for which, in fact, he bore no responsibility whatsoever.

113. Cohen also affirmatively misrepresented to Greenberg that Lynch had simply forged his signature on various documents, knowing full well (as borne out by his subsequent actions – such as purporting to state claims based on agreements with Greenberg bearing his signature, and revoking a power of attorney bearing his signature) that she had not done so, or had signed with his full authority.

114. Cohen likewise falsely asserted that at no time had he authorized any of the shareholder loans from Traditional Holdings, and made various accusations against Lynch for which he had no basis, all in a knowing effort falsely to implicate Greenberg in wrongful actions. As one example, he claimed never to have known, prior to November 2004, that Lynch was the majority shareholder of Traditional Holdings, thereby to imply that he had been deceived by Greenberg and Westin. He also denied receiving information about Lynch's role as managing the obligation to pay his annuity, and denied ever receiving any information from Greenberg other than some monthly email summaries, even though he was able easily to retrieve Greenberg's other written warnings, reports and correspondence from his own Keniston office address in 2004, and was reported by Lynch regularly to have visited the office, reviewed his mail, and discussed Traditional Holdings' loans and other affairs with her on a regular basis.

115. Further, Kory affirmatively misrepresented to Greenberg the reasons for which he was enlisting Greenberg's diligent assistance in researching the disposition of funds belonging to Traditional Holdings. Kory not only was seeking to determine how all these funds had been spent (which to this day he still has not done), but in fact was seeking to manufacture a pretext for asserting claims and a high damage figure against Greenberg. In particular, Kory has asserted that Greenberg is responsible for the loss of $8 million, which figure includes many millions of dollars which he knows that Cohen, in fact, received.

116. Perhaps the most outrageous and dangerous misrepresentation by both Kory and Cohen is that they are in a position to assert claims against Greenberg related to funds misappropriated by Lynch from Traditional Holdings, even while they have been prepared (to this day) to admit to or agree with Lynch that she owes Cohen nothing. Thus, Kory and Cohen are "coming after" Greenberg to take financial responsibility for an admittedly nonexistent debt!

117. In short, with Lynch's cooperation, Cohen and Kory planned to make claims against Greenberg and recover Cohen's alleged losses, as well as the money Cohen himself undeniably received, from Greenberg and its insurance carrier. With Lynch's then-attorney, Dianne DiMascio, in support of an arrangement between her and Cohen, Kory felt confident enough in January 2005 to tell Greenberg's counsel that Lynch was then of the view that she, along with Cohen, was a victim of the misconduct of Greenberg and Westin. This representation was false, and while Kory hoped it might become true should a "deal" with Lynch be struck, he knew it to be false at the time he made it, and intended Greenberg, through counsel, to rely upon it.

Offering Lynch Settlement In Return For Her Cooperation

118. Cohen and Kory have continually sought, alternatively, to purchase or to coerce Lynch's cooperation in their deceptive scheme to extort money from Greenberg through a "mediation" and "settlement."

119. In response to Cohen's and Kory's early efforts to have Lynch sign off on documents relating to Traditional Holdings and its outstanding loans, Lynch retained an attorney named Diane DiMascio, Esq. ("DiMascio").

120. By December 2004, Cohen and Kory were promising Lynch leniency if she would retract her position regarding Greenberg's innocence and to join Cohen in accusing Greenberg of wrongdoing. In a demand letter from Kory to DiMascio, Kory wrote:

> I want to reemphasize my position that I am willing to work with you as part of a settlement between Mr. Cohen and Ms. Lynch in going after Westin's and Greenberg's insurers as a source of restitution.

121. On January 11, 2004, Kory wrote to DiMascio, telling her that "properly framed letters to Greenberg and to Westin would cause their insurance companies to show up."

122. Cohen and Kory scheduled a meeting with DiMascio, with Kory proposing that Cohen and Lynch both be present to endorse a final agreement and "secure full cooperation."

123. Lynch declined to attend the meeting in person. Instead, DiMascio went on Lynch's behalf in early February 2005, after which she reported to Lynch: **"[Kory and Cohen] want your cooperation in pursuing the Agile Group [Greenberg] and Richard Westin. In this regard, they seem to want you to acknowledge that you knew that Neal [Greenberg] and Richard wanted to defraud Leonard and that you approved their conduct."** (emphasis added)

124. Repeatedly, from at least November 2004 through April 2005, Kory, on behalf of Cohen, made known to Lynch, directly, through counsel, through Steve Lindsay (the father of Lynch's youngest child), through Lynch's accountant Dale Burgess, and through others among her friends and relations, that he had extraordinary negotiating authority from Cohen to "forgive" any obligations of Lynch, to treat them as a gift, to make additional payments to her or her family members (including disguised as "palimony" on the pretext that Cohen is the father of one of her children), to make good on Lynch's shares of IP rights or legal entities, or even to dedicate a hefty percentage to her of whatever funds could be extorted from Greenberg and other advisors with her cooperation.

125. Kory tried to do this directly in late spring 2005 when he met Lynch for lunch and tried to persuade her to work with Kory and Cohen to "go after" Greenberg.

126. Cohen and Kory also worked indirectly. They recruited Lynch's erstwhile friend and longtime "friend" of Steve Lindsay, Betsy Superfon, a person of some notoriety due, among other reasons, to her entrepreneurship in the telephone sex trade. On numerous occasions Kory has used Lindsay and Superfon to try to "broker" deals with Lynch, and to "turn her" against Greenberg through highly disparaging – and false – statements. In one such conversation, in May 2005, Superfon, according to Lynch, called Greenberg "the kingpin" and a "criminal" and pleaded with Lynch to cooperate with Kory and Cohen for "[her] heart, [her] health, and [her] kids" and recommended that Lynch "get out of this." Superfon promised that she could "settle this for [Lynch] immediately," and stated that "Leonard and Kory [are] trying to get you out of this situation." When asked why Kory and Cohen were going after Greenberg, Superfon responded: "Because he has got the deepest pockets and insurance. One plus one equals two.

Very Straightforward." When Lynch requested a settlement agreement in writing during a later conversation, Superfon, according to Lynch, stated that when she asked Kory to fax Lynch a settlement, Kory said "you can't fax this kind of a deal. It has to be discussed."

127. Through Lindsay, Superfon and other relatives and acquaintances, Kory and Cohen delivered the message that giving in to Cohen's wishes would be in Lynch's best interest. Cohen contacted Lynch's employees at her greeting card company, Lynch's adolescent son, and even her spiritual advisor. In each instance, Cohen communicated the same message: Lynch should settle with Cohen by providing testimony against Greenberg. When Cohen communicated this message, he knew that Greenberg had done nothing wrong with respect to Traditional Holdings, and thus the testimony he was seeking would be false.

128. When these tactics to draw Lynch into their civil conspiracy proved futile, Cohen and Kory – according to Lynch – turned to far more aggressive means to obtain her cooperation. Indeed, as heard by other witnesses, Kory and Cohen vowed to "crush her," and planned to use restraining orders and other means to prevent her from serving as a credible witness regarding both Cohen's affairs and specifically in regard to the conspiracy into which they had tried without success to draw her.

129. Consistent with that vow and plan, and according to Lynch and other witnesses, and on information and belief, Kory and Cohen's tactics to terrorize, silence, or disparage Lynch have included, but were not limited to, the following:

a. contacting City National Bank, where Lynch, Lynch's son, and Lynch's father, all had personal banking accounts, and convincing City National Bank to put a freeze on all three of the Lynchs' accounts;

b. alleging that Lynch's father and mother were depositing funds for Lynch in secret offshore bank accounts, even while, in fact, Lynch's mother was suffering from Alzheimer's and had moved to Texas to be in the care of her other daughter in light of Lynch's precarious financial circumstances;

c. threatening Lynch that she would go to jail if she did not cooperate, and having her younger son's father, Steve Lindsay, repeat these threats in the child's presence;

d. threatening to "go to child services," encouraging Steve Lindsay to file legal action to remove Lynch's younger (and his) son from her custody, and submitting affidavits (from Kory and Superfon) supporting that effort;

e. in a coordinated fashion with Lindsay's child custody petition, encouraging or directing Steve Lindsay to call in a warning to the LAPD (not related to Traditional Holdings, but on some other, unknown pretext) that caused a SWAT team to descend, guns drawn, on Lynch's home, resulting in her being handcuffed and taken, in her bathing suit, involuntarily to a hospital psychiatric ward and medicated without her consent, before being released the next day, during which time Kory attempted to persuade Lynch's older son, Rutger, to sell Lynch's house and provide $3 million; and

f. paying two paroled convicts to make statements that they had observed Lynch's older son brandishing a gun and threatening to kill someone.

130. These and other tactics have brought Lynch to the point of physical and emotional collapse, as well as financial ruin.

131. Kory and Cohen's scheme to force Greenberg into a contrived mediation without discovery or publicity might have succeeded, had not Lynch refused to cooperate, and instead made the unilateral decision to provide to Greenberg's legal counsel a variety of documents and other information that they might never have seen otherwise, all making clear that Kory and Cohen have clear knowledge that the core allegations they might like to raise against Greenberg are entirely false and pretextual, as detailed above. (Ex. 10.) Fortunately, Lynch has turned over not only historical files, but the details of Kory's illicit offers made to her through attorney Dianne DiMascio, through accountant Dale Burgess, and through other intermediaries, and has shared every detail of Kory's attempts to negotiate with or threaten her in order to obtain false testimony against Greenberg.

132. As Cohen and Kory continued and heightened their efforts to bribe or coerce Lynch into giving false testimony against Greenberg, they continued to take steps in furtherance of their extortion scheme. In particular, after repeatedly inviting Greenberg to provide notice to his insurance company of pending claims, they forwarded a demand letter to Greenberg's counsel on April 10, 2005. In it, Kory, on Cohen's behalf, purported to state claims against "the Agile Group, Neal Greenberg and his partners" for violations of state and federal statutory law, and state common law.

133. The demand letter is replete with demonstrably false statements designed to damage Greenberg's reputation. These false statements – known to be false when Cohen and Kory made them – include, by way of example only, the following:

a. Cohen and Kory allege that Greenberg "proposed the sale of Cohen's 'illiquid assets,' including Cohen's various royalty interests," and contends that "Cohen was convinced by [Greenberg] of the financial necessity to sell off his royalty interests during his lifetime . . . ." The evidence is incontrovertible, however, that Cohen decided to sell his royalty interests years before he even met Greenberg. (See ¶¶ 23-27 above.)

b. Cohen and Kory allege that Greenberg is liable for "actual damages of at least $8 million" which is even greater than the total amount of proceeds from the Second Sony Sale. Cohen and Kory, however, made this allegation with full knowledge that Cohen had received at least $1 million in advance of the Sale closing (see above ¶¶ 56-57), that the gross proceeds had been reduced by specific costs and charges, that well over $ 1 million had been paid out to third parties to cover closing costs from the Sale (¶ 57), and that Cohen had received at least $2 million of the remainder into his personal bank account (¶ 94);

c. Cohen and Kory allege that Greenberg did not "warn" Cohen that Lynch owned the controlling Traditional Holding ownership. Cohen and Kory, however, made this allegation knowing full well that Cohen reviewed the Traditional Holdings governing documents (detailing that arrangement), that he repeatedly received and understood both oral and written explanations of this very fact, and that Greenberg was not the party behind the formation or structure of Traditional Holdings. (See ¶¶ 31, 44-54 above.)

d. Cohen and Kory allege that Greenberg somehow knew that Lynch was using the loan money for her own purposes, without Cohen's knowledge, and that Greenberg concealed and purposefully misled Cohen concerning the loan status. Cohen and Kory make this baseless allegations even though they themselves have no knowledge about how the Unaccounted For Funds were treated, or whether they were spent at all, and have no facts – none – supporting any allegation that Greenberg had any reason to believe that Lynch was having loans issued for any purpose other than those benefiting Cohen, or that Cohen was not receiving the monthly written letters and statements fully disclosing the loan status. Indeed, Cohen and Kory know, or should know, that such allegations are false. (see above ¶¶ 63-84).

e. Kory and Cohen's contentions that Greenberg acted in breach of some fiduciary obligation to Cohen are farcical. On the one hand, they assert that Greenberg, without regard to Cohen's best interests, sought to maximize the amount of Cohen's assets under his control. This is absurd on its face, because Greenberg's investments performed outstandingly well for Cohen. On the other hand, they assert that Cohen's best interests only could be served by Greenberg acting to preserve the assets under his control, rather than allow Cohen to convert assets of Traditional Holdings into shareholder loans or distributions. This too is absurd on its face – aside from the fact that all such loan directives were made by Traditional Holdings' manager and Cohen's exclusive agent – because Greenberg in no way stood to benefit from such withdrawals, and never would have placed his own and his firm's standing at risk by condoning improper or unauthorized dissipation of a client's funds.

f. Cohen and Kory knew, or should have known, not only that they had no facts to support a fiduciary duty claim, but also that their allegations have been barred by the governing three-year statute of limitations. Specifically, Cohen and Kory's admit in the in the April 10, 2005 demand letter, that Cohen knew of Lynch's ownership interest in Traditional Holdings as of May 2002, and Cohen admitted, over the phone, to Greenberg, in March 2002 that he understood that only $6.6 million of the Second Sony Sale proceeds were available for investment. (Ex. 10)

g. Cohen and Kory, after initially suggesting to Greenberg merely that he, like Cohen, bore some measure of responsibility for failing earlier to suspect impropriety in connection with the Traditional Holdings shareholder loans, subsequently, in the so-called claim letter, made very serious allegations of fraud under federal and state statutory, and the common law.

h. They made these allegations solely to pressure Greenberg into an unjustifiable "settlement," knowing full well that each and every element of a fraud claim would be entirely unprovable, including because:

1) in the context of all information provided and disclosures made by Greenberg, there was no misstatement or omission of any material fact;

2) not only did Greenberg not have motive, as understood both by federal and state laws governing fraud claims, to deceive Cohen, but he had every motive in the world to be ethical, diligent and truthful (and in fact at all times was);

3) there was no representation or omission "in connection with" the purchase or sale of any security, as defined and required by securities laws and regulations governing fraud claims;

4) Greenberg had no grounds to believe that his short, monthly email summaries to Cohen concerning his invested assets would be the sole source of information on which Cohen would rely concerning those assets, particularly his shareholder loans (which were detailed elsewhere but not in those short emails); and

5) Cohen, given all else he knew or should have known, could not reasonably have relied on those emails to present a detailed picture of his assets under investment with Greenberg.

134. The myriad of demonstrable falsehoods in the demand letter provide ample evidence that its purpose was not to demand compensation for a claimed wrong, but to extort money by threatening to damage Greenberg's reputation. Indeed, Cohen and Kory knew full well that, from Greenberg's perspective, once a celebrity were to raise such allegations of fraud

and breach of duty against him, the damage effectively already would be done, no matter the ultimate outcome.

The Scheduled June 5, 2005 Meeting

135. In an effort to bring their scheme full circle, and to pressure Greenberg into paying for Cohen's alleged losses, Kory and Cohen arranged a meeting with Greenberg and counsel in Denver, Colorado on June 5, 2005.

136. Greenberg, through counsel, agreed to the meeting on the condition that if Kory and Cohen failed to come to the meeting, or the parties were unable to reach a settlement at the meeting, that Greenberg would have little choice but to commence litigation immediately.

137. On or about June 2, 2005, Kory contacted Kyle Bremen of the Courtyard by Marriott Denver International Airport hotel's sales office and contracted to reserve a conference room at the hotel for June 5, 2005.

138. On June 3, 2005, Greenberg, as promised, provided Kory with a draft complaint outlining, in detail, the facts underlying Greenberg's role with Traditional Holdings and the facts demonstrating that Greenberg had acted appropriately, professionally, and in good faith with respect to Traditional Holdings' investments.

139. The draft complaint also demonstrated Greenberg had been informed about, and now was award of, Kory's and Cohen's scheme to use intimidation and undue pressure Lynch to provide false testimony against Greenberg.

140. On June 4, 2005, having learned that their scheme had been disclosed, and notwithstanding the fact that they knew that Greenberg's national counsel already had arrived in Denver for the June 5^{th} meeting, Kory cancelled the reservations with the Denver hotel, cancelled the planned meeting, and thereafter refused phone calls from Greenberg's national counsel. This lawsuit commenced the next day when the Complaint was filed in Boulder County District Court. Kory and Cohen have since removed it to this Court.

Competing Claims For Traditional Holdings Funds Currently Under Greenberg's Management

141. Beginning in July 2005, Lynch began making repeated demands that Greenberg immediately release to her 99.5 % of the remaining Traditional Holdings funds. Lynch asserted that these funds belonged to her as Traditional Holdings' majority owner or, alternatively, as the controlling partner in a common law partnership created upon Traditional Holdings' dissolution under Kentucky law.

142. At the same time, Cohen claims that these remaining Traditional Holdings belong to him.

FIRST CLAIM FOR RELIEF
(Civil Conspiracy)

143. Greenberg incorporates by reference the above allegations above as if fully set forth herein.

144. Cohen, Kory, and John Doe Nos. 1-25, entered into a conspiracy that had, as its object, to extort or otherwise obtain money unlawfully (or to obtain money lawfully using unlawful means), from Greenberg and the insurers of Greenberg.

145. Cohen, Kory, and John Doe Nos. 1-25 reached a meeting of minds on the object of the conspiracy – to extort or otherwise obtain money unlawfully (or to obtain money lawfully using unlawful means), from Greenberg and the insurers of Greenberg.

146. In furtherance of the conspiracy, Cohen, Kory, and John Doe Nos. 1-25 committed one or more overt, unlawful acts, including but not limited to (a) attempting to suborn perjury through threats and bribery, (b) attempting to extort money, (c) threatening to defaming and disparaging Greenberg unlawfully (and actually doing so); and (d) damaging Greenberg in its business.

147. As a result of the conspiracy, Cohen, Kory, and John Doe Nos. 1-25 have damaged Greenberg, in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
(Outrageous Conduct)

148. Greenberg incorporates by reference the above allegations as if fully set forth herein.

149. Cohen, Kory, and John Doe Nos. 1-25 intentionally or recklessly caused severe emotional distress to Greenberg.

150. The severe emotional distress to Greenberg was caused by extreme and outrageous conduct.

151. The extreme and outrageous conduct by Cohen, Kory, and John Doe Nos. 1-25 was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency in the eyes of an average member of the community.

152. The severe emotional distress suffered by Greenberg has injured him, in an amount to be proven at trial.

<u>THIRD CLAIM FOR RELIEF</u>
(Civil Extortion)

153. Greenberg incorporates by reference the above allegations as if fully set forth herein.

154. Cohen, Kory, and John Doe Nos. 1-25, without legal authority, and with the intent to induce Greenberg to perform an act against its will, made a substantial threat to cause economic hardship to, or damage to the reputation of, Greenberg.

155. Cohen, Kory, and John Doe Nos. 1-25 threatened to cause economic hardship to, or damage to the reputation of, Greenberg by causing an unlawful act to be performed, or by invoking action by a third party whose interests are not substantially related to the interests pursued by Cohen, Kory, and John Doe Nos. 1-25. The substantial threats by Cohen, Kory, and John Doe Nos. 1-25 have injured Greenberg, in an amount to be proven at trial.

<u>FOURTH CLAIM FOR RELIEF</u>
(Defamation)

156. Greenberg incorporates the above allegations herein by reference.

157. Consistent with their prior threats, Cohen and Kory knowingly have published false information concerning Greenberg in the public domain with the intent and effect of damaging Greenberg's good will and reputation.

158. In particular, on or after June 6, 2005, Kory and Cohen published or caused to be published defamatory statements concerning Greenberg, which statements included, without limitation, the following statement, or substantially similar statements, found on the Website addressed as <u>http://www.leonardcohenfiles.com/latest.htm</u> :

> The suit filed by the Agile Group Monday, June 6, 2005 is completely ***consistent with Agile's reckless disregard for its client and his investments.***
>
> We had hoped to reach an out-of-court settlement with Agile that returned to Mr. Cohen some portion of the retirement money the firm was authorized to administer on his behalf. Instead, in the middle of negotiations to determine Agile's responsibilities to Mr. Cohen to compensate him for ***money lost under their management***, Agile launched a ***surprise attack*** in an ***effort to besmirch the reputation of one of its notable clients.***
>
> Agile ***repeatedly failed to alert Mr. Cohen to true account balances while allowing improper and unauthorized withdrawals by Cohen's former business manager.*** In doing so, Agile failed to protect Mr. Cohen's

> interests and retirement savings and ***knowingly misled him by providing inaccurate financial reports.***
>
> We will of course file a counter suit that lays out in detail how ***Agile acted in a reckless way*** that violated the firm's fiduciary responsibilities towards Cohen and consequently resulted in the loss of Mr. Cohen's retirement savings.

(Emphasis added.)

159. As detailed above, this statement is materially false and libelous. Indeed, when they published this statement, Cohen and Kory knew that there was no factual basis for asserting that Greenberg in any way acted negligently or in reckless disregard for its client's interests and investments, or for asserting that Greenberg breached any fiduciary duty or misled Cohen with inaccurate financial statements; and they knew that Greenberg certainly followed established and sufficient procedures to apprise Cohen of the status of his investments at all times. Indeed, prior to the scheduled June 5 meeting, Greenberg forwarded to Kory voluminous sets of business records incontrovertibly establishing Greenberg's faithful performance of all duties and obligations, and Kory and Cohen were in possession of all these materials when they published the foregoing statement.

160. Cohen and Kory also knew, when they published the above statement, of the significant adverse impact such statements from a well known public figure like Cohen would have on Greenberg's personal and business reputation. Indeed, Cohen and Kory sought to rely on the threat of such adverse impact to coerce Greenberg to pay for something for which it held no responsibility and then – when that didn't work – carried out that threat to punish Greenberg for failing to play the scapegoat. (See ¶¶ 106-08 above.)

161. Cohen and Kory also knew, when they published the above statement, that the parties were not "in the middle of negotiations" on June 6, 2005, and that the lawsuit in no way comprised "a surprise attack." Indeed, they knew that Greenberg's counsel had informed them that the June 5, 2005 meeting was to be a last ditch attempt to avoid litigation, and that if Kory and Cohen refused to resolve the matter, or if they reneged on their agreement to come to the meeting, that Greenberg – unable to prevail in a contest of trading public accusations with a well-known and popular music figure -- would have little choice but to commence litigation. Kory and Cohen also knew, at the time they published the above statement, that it was they, not Greenberg, who canceled the meeting at the last minute with full knowledge that such a move would force Greenberg's hand.

162. The above statement, and other defamatory statements, were communicated to and understood by third parties, and have harmed Greenberg's reputation in the community and among its client and potential client base.

163. As a result of these defamatory statements, Greenberg has been damaged, actually and specially, in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF
(Interpleader)

164. Greenberg incorporates by reference the above allegations as if fully set forth herein.

165. As of June 30, 2005, Greenberg managed funds amounting to approximately $149,500 for Traditional Holdings (the "Traditional Holdings Funds").

166. Greenberg has no interest in the Traditional Holdings Funds.

167. Lynch claims that 99.5 % of the Traditional Holdings Funds belong to her and has demanded that Greenberg immediately distribute those funds to her. Cohen claims that the Traditional Holdings Funds belong to him.

168. Because of the conflicting positions and demands of Lynch and Cohen, Greenberg is, or may be, exposed to double or multiple liability with respect to the Traditional Holdings Funds.

169. Subject to the Court's direction in the matter, and Greenberg's obligations to comply with procedures governing the withdrawal of the Traditional Holdings Funds from their current investment funds, Greenberg is prepared to pay the Traditional Holdings Funds into the Registry of the Court pending resolution of this issue.

170. The interpleader of Lynch and Cohen, and claims by them to the Traditional Holdings Funds, is therefore appropriate.

PRAYER FOR RELIEF

ACCORDINGLY, Greenberg prays for entry of judgment in its favor and against Cohen and Kory, as follows:

a. For entry of judgment against Cohen and Kory and in favor of Greenberg for all actual, compensatory, emotional distress, punitive or other damages incurred by Greenberg as a result of Cohen and Kory's wrongful conduct;

b. For temporary and permanent injunctive relief enjoining Cohen and Kory, or any of their non-party co-conspirators, from publishing or disseminating false information concerning Greenberg for the purpose of disparaging him and damaging his professional and personal reputation;

c. For an order interpleading into this Court all disputes between Cohen and Lynch concerning the assets of Traditional Holdings;

d. For an order restraining Cohen and Lynch from instituting or prosecuting a proceeding in any court other than this Court seeking the assets of Traditional Holdings;

e. For a declaration and judgment of this Court, binding upon Cohen and Lynch, resolving all disputes between them concerning the Traditional Holdings Funds;

f. For an order discharging Greenberg from any liability arising out of the dispute between Lynch and Cohen concerning the disposition of Traditional Holdings Funds, and discharging Greenberg from the interpleader portion of this case;

g. For all costs, expenses, and attorneys' fees incurred by Greenberg in this action;

h. For pre- and post-judgment interest;

i. For an order that all information concerning, reflecting or relating to communications among the defendants and other identified conspirators concerning the purposes of, or in furtherance of, their scheme to defraud and extort money from Greenberg be turned over, under the "crime fraud" exception; and

j. For such other and further relief as this Court deems appropriate.

JURY DEMAND

Plaintiffs demand a jury trial on all issues so triable.

DATED this 2nd day of August, 2005.

RESPECTFULLY SUBMITTED,

**Original signature of David S. Chipman on file at offices of BH&F*

David S. Chipman, #25784
Meghan W. Martinez, # 26295
BROWNSTEIN HYATT & FARBER, P.C.
410 Seventeenth Street, Suite 2200
Denver, Colorado 80202-4437
Telephone: (303) 223-1100
Facsimile: (303) 223-1111
E-mail: dchipman@bhf-law.com
mmartinez@bhf-law.com
ATTORNEYS FOR PLAINTIFFS

Of Counsel:

Sherab Posel, Esq.
POSEL LAW OFFICES
8 Verdi Avenue
Tuckahoe, NY 10707

Plaintiffs' address:

4909 Pearl East Circle Suite 300
Boulder, CO 80301-9989

CERTIFICATE OF SERVICE

I hereby certify that on this 2ND day of August, 2005, a true and correct copy of the foregoing **AMENDED COMPLAINT AND JURY DEMAND** was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

bailey@b-p-law.com
livingston@b-p-law.com

and I hereby certify that I have served the document to the following non CM/ECF participants as indicated below:

Via FedEx and facsmilie

n/a

Via US Mail

n/a

s/ David S. Chipman
David S. Chipman, #25784
Brownstein Hyatt & Farber, P.C.
410 17th Street, 22nd Floor
Denver, CO 80202-4437
T:(303) 223-1100
F:(303) 223-1111
dchipman@bhf-law.com
Attorney for Plaintiffs

EXHIBIT 1

cc: Ken, You need to speak with Richard Westin. Kelley

FAX TRANSMISSION

RICHARD A. WESTIN, ESQ.
3141 WARRENWOOD WYND
LEXINGTON, KY 40502
859-335-1938
FAX:859-268-8017

CONFIDENTIAL AND PRIVILEGED

To:	Leonard Cohen an Kelley Lynch	**Date:**	October 10, 2000
Fax #:		**Total pages**	2
From:	Richard A. Westin		
Re:	Sony Deal		

I just got off the phone with Greg concerning the fax he sent, which is logical an sensible. In the course of the conversation we agreed:

1. Ken Cleveland should be asked to do a simple study based on Leonard's last year's tax return making some "high" an "low" assumptions concerning the sale of stock. One might assume:

- 100% stock
- 50% stock and 50% ordinary income from the sale of the album
- 20% album an 80% stock
- All a sale of assets.

There could be endless variations, but it is not necessary to go through them. The idea is to get a dollar-based sense of the stakes that tie to taking some stock versus no stock (in which case all the proceeds are ordinary income. I can coach Ken on how to approach the calculations. My guess is that it will not be a headache for him because I imagine he has Leonard's tax data in a program that generates tax returns, including the California part.

2. There will have to be at some time in the future an effort to allocate expenses incurred in the Blue Mist and LC Investments sales as between capital gain an ordinary income. The goal would be to come up with an allocation that was tilted in favor of reducing ordinary income. That can wait.

3. Leonard might want to consider two strategies to soften the blow of taxes on the Blue Mist sale.

- Sell some assets to a foreign life l insurance company in exchange for a deferred annuity

FACSIMILE MESSAGE

TO:

NAME Leonard Cohen

FACSIMILE NUMBER 323-935-9947

NUMBER OF PAGES (INCLUDING THIS ONE) 3

FROM:

RICHARD A. WESTIN

3141 WARRENWOOD WYND. LEXINGTON, KY 40502

TELEPHONE NUMBER: 859-335-1938

FACSIMILE NUMBER: 859-268-8017

TIME AND DATE: 11:30 pm November 20 2000

This facsimile message is sent in confidence and may be privileged and is for the addressee only. If you are not the intended recipient, please notify the sender immediately and preserve the confidentiality of this message.

MESSAGE: A proposal is attached.

PROFESSOR RICHARD A. WESTIN, ESQ.
3141 WARRENWOOD WYND
LEXINGTON, KY 40502
859-335-1938
(FAX) 268-8017

Mr. Leonard Cohen, President
c/o Stranger Management
419 North Larchmont, Suite 91
Los Angeles, CA 90004

November 19, 2000

Re: Tax Matters

Dear Mr. Cohen,.

The proposal for your disposition of assets, other than those that qualify for capital gain treatment is at heart, as follows:

1. You will sell the assets to a newly-formed company that Kelley will control and have 1% of, but which your children will have large stakes (totaling 99%) in.
2. The sale will be for a private annuity, meaning a stream of payments -- all of which are ordinary income -- beginning in as many years as you wish, and ending at your death. The payments will likely be on the order of $600,000 per year. That is an extremely rough number, and I am just offering it to give you an idea of the order of magnitude.
3. The company will sell the assets that you would have sold to the ultimate buyers. There will be no income tax when it does so.
4. Kelley will contribute a small amount of money for her 1% interest and should get a management fee for her services. There is plenty of flexibility as to what the appropriate fee should be.
5. It is expected that your children will in a year's time or so contribute part of their interests in the company I described to a trust, which will give you further income.
6. There will be no estate tax on your death on any assets aside from what you retain out of the $600,000 (plus further income from the proposed trust).
7. There will be an income tax to the company at your death, but it will be a bargain compared to the estate tax.
8. To make the company more solvent, the children will contribute notes for about $150,000 each, but the flow of income from the company will easily pay off those notes.
9. Kelley will be able to control how much money is actually distributed from the company to the children. You will be free to advise her on what your wishes are.

Some delicacy will have to be exercised if the distributions are not pro rata.

10. A manager will have to be appointed to make sure that the money in the company is well-managed in order that the company be able to make the payments called for by the private annuity.

Some caveats are in order. The structure is novel and must be put in place before a contract is entered into or is a sure thing. Neal and I think that the proposal works, but there are no guarantees. The IRS could attack the deal by claiming the real seller to say, Sony, was yourself and the rest of the deal was a contribution to an LLC. In other words, the IRS can attempt to unwind the deal. That could be bad because the logical next step would be for the IRS to claim that the money that actually went to the LLC was a gift from you made indirectly to your children, thereby attracting significant gift taxes. I will provide you with an opinion that the deal works. That should eliminate any penalties, but despite my august station, it may do nothing to discourage a Revenue Agent from pressing the theories I just described.

In order to get Neal wrapped in attorney-client privilege, it is important that I get a letter from you (by fax is fine) authorizing me to hire Neal to act on your behalf, with Neal reporting to me when I seek his financial and consulting advice. The letter should suggest that this has been the understanding all along, but we just now decided to formalize the arrangement.

If you decide you would rather just pay the taxes, I can give you a little help at the margins. It is obviously your decision. It is unfortunate that the buyers are not interested in buying stock or LLC interests, but I gather that cannot be helped.

I can prepare the papers for all this very quickly. I hope we get to hear your new album soon.

Sincerely yours,

Richard A. Westin

EXHIBIT 2

PROFESSOR RICHARD A. WESTIN
3141 WARRENWOOD WYND
LEXINGTON, KY 40502
TEL. 589-335-1938
FAX 589-268-8017

By Fax and Mail

PRIVILEGED AND CONFIDENTIAL

December 4, 2000

Ms. Kelley Lynch
Stranger Management, Inc.
419 North Larchmont, Suite 91
Los Angeles, CA 90004

Mr. Leonard Cohen
Stranger Management, Inc.
419 North Larchmont, Suite 91
Los Angeles, CA 90004

RE: Private Annuity and LLC

Dear Kelley and Leonard,

Here is the answer to your E-mails and a summary of the proposed plan:

E-Mail answers:

1. **Why use a trust?** The trust is the only way to get the assets back to LC from KL for his use without taking away tax benefit.
2. **Why do the children need to be beneficiaries?** They don't need to be beneficiaries at all. While LC is alive, he should be the only beneficiary. After he dies, the assets go to whoever he wishes; his children or otherwise. That depends on the terms of the trust
3. **Doesn't the LLC shares go into L's estate?** No. Because trust owns assets. LC can access funds from the trust for his use. If and to the extent he held the LLC shares directly, they would go be in his estate.

Plan summary:

1. **Forming an LLC:** Together, LC and KL form an LLC each owning approximately .5% and 99.5% respectively. KL receives a payment of $24,000 per year[1] and in return owes $17,500 per year to the LLC in payment on a $240,000 note.

2. **Sell assets to LLC then to SONY:** LC sells the assets to the LLC for a private annuity. LLC hopefully sells the assets to SONY. Annuity payments start in 11 years and go monthly for LC's life. The payment will be approxiamately $110-130,000 per month[2]. A sale to Sony would attract very little tax.

3. **KL forms a trust:** In a year or so KL can give her growth shares to a trust for LC's benefit[3]. He is the beneficiary while he is alive. After he dies, the trust goes to his heirs. Hence, the LLC owns all of the assets, while the trust owns the LLC (except for KL's income shares).

4. **KL can sell back her income shares:** KL can sell her income shares back to the LLC after year 5 for $200,000. This protects KL (see below).

5. **LC agrees to protect KL against losses.** This can be arranged by a private agreement.

6. **How LC gets money:** If LC needs money, he could use assets from the trust (which gets them from the LLC). This could be done in a variety of ways, such as by lending to LC.

7. **Which assets should LC use?** It is better for LC's taxes if he uses up his existing personal assets before using the LLC money. This results in a greatly reduced estate tax burden.

8. **BENEFITS:** There are two main benefits to this plan. 1. We put off the income tax to LC on the sale until future years or entirely depending on when LC dies. 2. We totally avoid estate tax on these assets[4].

ISSUES:

1. **Possible argument by the IRS:** The IRS may argue that there never really was a sale by the LLC, that in fact LC sold the assets to SONY. As long as there is no current contract with SONY, it is a tough position for them to take, but not impossible.

2. **Kl has the risk that the LLC loses most of its money:** If so, KL still owes the LLC on her debt, while the LLC would be unable to make payments to KL. This is highly

---

[1] KL has $235,000 worth of income shares that are entitled to $24,000 per year of payments.
[2] This is a very rough approximation. We haven't run formal calculations at all and this could be off by quite a bit.
[3] This will use a small amount of KL's death tax exemption. If KL uses up some of her exemptions, the LC or the trust can pay her extra estate tax. Or the income to KL (see #12 below) from the LLC in the first year can be a compensatory payment making it up to KL for the use of some of her estate tax exemption.
[4] Except for the .5% interest LC retains.

unlikely. If the LLC makes even a small amount of money over the next 5 years, KL is fine and after 5 years, can wipe out most or all of the debt with her right to sell her shares back to the LLC for $200,000. Meanwhile, LC can protect her against this risk with a guarantee.

3. **LC must trust KL:** LC must trust KL to give her shares to the trust in a year. Also, KL has the right to take income until her shares go to the trust, and LC must trust that she won't take more than KL and LC agree to. Finally, LC must trust that KL will manage these assets in accordance with his wishes.

4. **KL must trust LC to act in accord with any guarantee.**

5. **KL has taxable income from the LLC in year 1:** We estimate about $350,000 of taxable income to KL. KL can take some of this money for her taxes and additional money to satisfy expected salary needs as well. Further, if there is any use of KL's death tax exemption, she could get paid for that as well.

I hope this helps. I will file the LLC Articles today on Kentucky to get things underway. It is a cheap filing. We need to do it to make the rest of the deal work. Please treat this letter as entirely confidential.

Best regards,

Richard A. Westin

EXHIBIT 3

FROM : RUESTIN PHONE NO. : 606265801. APR. 12 2001 09:55AM P2

COMMONWEALTH OF KENTUCKY

John Y. Brown III
Secretary of State

Certificate of Existence

I, JOHN Y. BROWN III, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

TRADITIONAL HOLDINGS, LLC

is a limited liability company duly organized and existing under KRS Chapter 275, whose date of organization is December 18, 2000.

I further certify that all fees and penalties owed to the Secretary of State have been paid; that articles of dissolution have not been filed; and that the most recent annual report required by KRS 275.190 has been delivered to the Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 12th day of April, 2001.

John Y. Brown, III

JOHN Y. BROWN III
Secretary of State
Commonwealth of Kentucky
LLawrence/0507173

Dec-07-04 02:08pm From-GRUBMAN INDURSKY SCHINDLER T-195 P.17/17 F-123

KL00306

0507175.06

John Y. Brown III
Secretary of State
Received and Filed
12/18/2000 12:51 PM
Fee Receipt: $40.00
Pcraine - LAOO

TRADITIONAL HOLDINGS, LLC

ARTICLES OF ORGANIZATION

ARTICLE I
FORMATION AND POWERS

§ 1.1 Name

(a) In General. The name of the Limited Liability Company is: Traditional Holdings, LLC

§ 1.2 Date of Dissolution

(a) In General. The latest date on which the Limited Liability Company is to dissolve is December 30, 2050.

§ 1.3 Purpose

(a) In General. The purpose of the Limited Liability Company is to engage in any lawful act or activity for which a Limited Liability Company may be organized under the laws of Kentucky.

§ 1.4 Initial Registered Office. Initial Business Office and Registered Agent

(a) Name an address. The name and address of the initial registered office is 3141 Warrenwood Wynd, Lexington. KY 40502. The name and mailing address of the initial business office is 3141 Warrenwood Wynd. Lexington, KY 40502. The initial agent for service of process on the Limited Liability Company is Richard A. Westin, 3141 Warrenwood Wynd, Lexington, KY 40502.

§ 1.5 Powers

(a) In General. The Limited Liability Company shall have all the powers of a natural person in carrying out its business activities, including, without limitation, the power to:

(1) Transact its business, carry on its operations, qualify to do business, and have and exercise the powers granted by this title in any state, territory, district, possession, or dependency of the United States, and in any foreign country.

(2) Sue, be sued, complain and defend any action, arbitration, or proceeding, whether judicial, administrative, or otherwise, in its own name.

(3) Adopt, use, and at will alter a company seal; but failure to affix a seal does not affect the validity of any instrument.

(4) Make contracts and guarantees, incur liabilities, act as surety, and borrow money.

(5) Sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of all or any part of its property and assets.

(6) Purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal

in and with any interest in real or personal property, wherever located.

(7) Lend money to and otherwise assist its members and employees.

(8) Issue notes, bonds, and other obligations and secure any of them by mortgage, deed of trust, or security interest of any or all of its assets.

(9) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of any person, or direct or indirect obligations of the United States or of any government, state, territory, governmental district, or municipality, or of any instrumentality of any of them.

(10) Invest its surplus funds, lend money from time to time in any manner which may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its Articles of Organization, and take and hold real property and personal property as security for the payment of funds so loaned or invested.

(11) Be a promoter, stockholder, partner, member, manager, associate, or agent of any person.

(12) Indemnify or hold harmless any person.

(13) Purchase and maintain insurance.

(14) Issue, purchase, redeem, receive, take, or otherwise acquire, own, hold, sell, lend, exchange, transfer, or otherwise dispose of, pledge, use, and deal in and with its own bonds, debentures, and other securities.

(15) Pay pensions and establish and carry out pension, profit-sharing, bonus, share purchase, option, savings, thrift, and other retirement, incentive, and benefit plans, trusts, and provisions for all or any of the current or former members, managers, officers, or employees of the Limited Liability Company or any of its subsidiary or affiliated entities; and to indemnify and purchase and maintain insurance on behalf of any fiduciary of such plans, trusts, or provisions.

(16) Make donations, regardless of specific benefit to the Limited Liability Company, to the public welfare or for community, civic, religious, charitable, scientific, literary, educational, or similar purposes.

(17) Make payments or donations or do any other act, not inconsistent with this title or any other applicable law, that furthers the business and affairs of the Limited Liability Company.

(18) Pay compensation, and pay additional compensation, to any or all managers, officers, members, and employees on account of services previously rendered to the Limited Liability Company, whether or not an agreement to pay such compensation was made before such services were rendered.

(19) Insure for its benefit the life of any of its members, managers, officers, or employees, insure the life of any member for the purpose of acquiring at his or her death the interest owned by such member, and continue such insurance after the relationship terminates.

(20) Do every other act not inconsistent with law that is appropriate to promote and attain the purposes set forth in its Articles of Organization.

§ 1.6 Contribution

(a) Initial. The members shall make the following initial contribution to become members:

Kelley Lynch: $240,000 30-year note.

Leonard Cohen: $25.

(c) Form. The contributions may be in money, property, services, or other obligation to contribute money or property or to render services.

ARTICLE II

MEMBERSHIP

§ 2.1 In General

(a) Initial. The initial membership of the Limited Liability Company shall be:

Kelley Lynch: 100% of Class B common shares and 99.5% of Class A common shares, costing
- $235,025 for Class B common shares;
- $4,975 for Class A common shares

Leonard Cohen: .5% of Class A common shares, for $25 in cash

§ 2.2 Admission of Members

(a) New Members. The admission of new members to the Limited Liability Company shall be limited as follows: as determined by a majority vote of the then members.

§ 2.3 Promises and Contributions

(a) Excused From Obligation.
(1) A member is not excused from an obligation to the Limited Liability Company to perform any promise to contribute cash or property or to perform services because of death, disability, dissolution, or any other reason except as provided in the Operating Agreement.
(2) If a member does not make the required contribution of property or services, then, at the option of the Limited Liability Company, the Limited Liability Company shall have the following rights after 30 days notice:

(A) The right to specific performance.

§ 2.4 Obligation To Contribute

(a) By Members. The obligation of a member to make a contribution or return money or property paid or distributed in violation of this section may be compromised only by the unanimous vote of the members.

§ 2.5 Membership Rights

(a) Preemptive rights. There are no preemptive rights.

(b) Voting. Each member who owns Class B shares has two votes; each member with Class A shares has one vote; provided that such voting shall be exercised only in the following instances:

(1) Whenever a matter is put to all of the members for their consideration.

(c) Restrictions on the Limited Liability Company's Right to Issue Future Certificates. The following restrictions upon the Limited Liability Company's right to issue certificate shall apply:

(d) Redemption (Call) by the Limited Liability Company. The Limited Liability Company shall have the following absolute right to redeem Class B common certificate upon the following conditions:

(1) Price. The price for the shares of Class B common shares shall be $125,000.

(2) The $240,000 note shall have been paid off in full.

(3) Class B shares can be "put" to the Limited Liability Company after 5 years from the date hereof have elapsed for $200,000.

§ 2.6 Members' Rights and Obligations

(a) In General. A member may lend money to and transact other business with the Limited Liability Company and, subject to other applicable law, a member has the same rights and obligations with respect thereto as a person who is not a member.

(b) Remuneration. No member is entitled to remuneration for acting in the Limited Liability Company business as a member, subject to the entitlement of managers or members winding up the affairs of the Limited Liability Company to reasonable compensation and the rights of managers to reasonable compensation generally. Officers are entitled to salaries.

§ 2.7 Relations

(a) In General. Except as provided below, relations among members and between the members and the Limited Liability Company are governed by these Articles of Organization and the Operating

Agreement.

(b) Effect. The effect of the provisions of these Articles of Organization may be varied as among the members or as between the members and the Limited Liability Company by the Operating Agreement, except such provisions may not:

(1) Eliminate the right of a member to assert that a provision in the Operating Agreement governing the termination of that member's interest and the return of that member's contribution was unreasonable under the circumstances existing at the time the agreement was made.

(2) Vary the following voting requirements or voting rights.

(3) Provide for an amendment of the Articles of Organization by a vote of less than a majority in interest of the members.

(4) Eliminate the power of members to vote on a dissolution of the Limited Liability Company and on a merger of the Limited Liability Company.

(5) Vary the following rights: Upon the request of a member or a holder of an economic interest, for purposes reasonably related to the interest of that person as a member or a holder of an economic interest, a manager shall promptly deliver to the member or holder of an economic interest, at the expense of the Limited Liability Company, a copy of the information required to be maintained by Kentucky law and any written Operating Agreement of the Limited Liability Company.

§ 2.8 Information

(a) In General. Each member, manager, and holder of an economic interest has the right, upon reasonable request and for purposes reasonably related to the interest of that person as a member, manager, or holder of an economic interest, to each of the following:

(1) To inspect and copy during normal business hours any of the records required to be maintained by Kentucky State law.

(2) To obtain from a manager, promptly after becoming available, a copy of the Limited Liability Company's federal, state, and local income tax or information returns for each year.

§ 2.9 Financial Statements

(a) Annual Report. The manager shall cause an annual report to be sent to each of the members not later than 120 days after the close of the fiscal year. That report shall contain a balance sheet as of the end of the fiscal year and an income statement and statement of changes in financial position for the fiscal year. The balance sheet can be a schedule to a Federal tax return.

(b) Income Statement. Members representing at least 5 percent of the voting interests of members, or three or more members, may make the written request to a manager for an income statement of the Limited Liability Company for the initial three-month, six-month, or nine-month period of the current fiscal year ended more than 30 days prior to the date of the request, and a balance sheet of the Limited Liability Company as of the end of that period. The statement shall be delivered or mailed to the members within 30 days thereafter. The income statement may be a Federal tax form.

§ 2.10 Assignments

(a) In General.
(1) A membership interest or an economic interest is assignable in whole or in part, provided, however, that no membership interest may be assigned without the consent of a majority in interest of the members not transferring their interests, as required pursuant to Kentucky law.
(2) Assignment of Economic Interest.
(A) An assignment of an economic interest does not of itself dissolve the Limited Liability Company.
(B) An assignment of an economic interest does not entitle the assignee to vote or participate in the management and affairs of the Limited Liability Company or to become or exercise any rights of a member; except as set forth in the Operating Agreement.
(3) An assignment of an economic interest merely entitles the assignee to receive, to the extent assigned, the distributions and the allocations of income, gains, losses, deductions, credit, or similar items to which the assignor would be entitled.
(4) Upon the assignment of all or part of an economic interest, the assignor shall provide the manager or member of the Limited Liability Company responsible for maintaining its books and records with the name and address of the assignee, together with details of the interest assigned. Upon receipt of that notice, the Limited Liability Company shall amend the list required by Kentucky law accordingly. Until the assignee of that interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights and powers of a member, including the right to vote which, in the case of a member who has assigned his or her or its entire economic interest in the Limited Liability Company, shall include the right to vote in proportion to the interest in current profits that the assigning member would have, had the assignment not been made.

(b) Assignee Member. Except to the extent assumed by agreement, until an assignee of an economic interest in the Limited Liability Company becomes a member, the assignee shall have no liability to the Limited Liability Company under Kentucky law solely as a result of the assignment. The assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

(c) Change In Membership Interest. The pledge of, or granting of, a security interest, lien, or other encumbrance in or against any or all of the membership interest of a member shall not cause the member to cease to be a member or to grant to anyone else the power to exercise any rights or powers of a member.

§ 2.11 Assignee's Admission As Member

(a) In General. An assignee of an interest in the Limited Liability Company may become a member only if a majority in interest of the other members votes in favor of the assignee's admission to the Limited Liability Company as a member.

(b) Rights. An assignee who has become a member has. to the extent assigned, the rights and powers. and is subject to the restrictions and liabilities, of a member under the Articles of Organization. any Operating Agreement, and this title. An assignee who becomes a member also is liable for the obligations of the assignor to make contributions as provided in Chapter 5 (commencing with Kentucky State Statute § 17200), and to return any unlawful distributions made to the assignee under Chapter 6 (commencing with Kentucky State Statute § 17250) or Chapter 8 (commencing with Kentucky State Statute § 17350). However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a member and that could not be ascertained from the Articles of Organization or Operating Agreement.

(c) Liability. Whether or not an assignee of a membership interest becomes a member, the assignor is not released from the assignor's liability to the Limited Liability Company under Chapter 5 (commencing with Kentucky State Statute § 17200) and Chapter 6 (commencing with Kentucky State Statute § 17250).

§ 2.12 Death or Incompetency of Member

(a) Individual. If a member who is an individual dies or is adjudged by a court of competent jurisdiction to be incompetent to manage the member's person or property, the member's executor, administrator. guardian, conservator. or other legal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power the member had under the Articles of Organization or an Operating Agreement to give an assignee the right to become a member.

(b) Corporation. If a member is a corporation, trust, or other, and the company is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

ARTICLE III

PROFITS AND LOSSES; ALLOCATION AMONG MEMBERS

§ 3.1 In General

(a) Allocation. The profits and losses of the Limited Liability Company shall be allocated among the members, and among classes of members, in the manner provided herein and in the Operating Agreement. If the Operating Agreement does not otherwise provide, profits and losses shall be allocated in proportion to the capital accounts of each member, subject to the preference granted to Class B common shares. The preference is as follows: Class B common shares shall, before any allocation to Class A, be allocated enough profit required each year to provide Class B common shares with profits sufficient to provide $24,000 per year to the collective holders of said class, cumulatively, each year until the 18th year, at which time the level shall rise to $31,250. In the case of a fractional year, a daily prorated portion of such $24,000 (then $31,250) shall first shall be allocated to Class B common. Once that preference is discharged all further income shall be allocated to Class B common shares.

MEMBERSHIP

§ 4.1 In General

(a) Method. After formation of the Limited Liability Company, a person may become a member:
(1) In the case of a person acquiring a membership interest directly from the Limited Liability Company, at the following time: upon full payment of the person's initial contribution and when the person becomes a party to the Operating Agreement.

(b) Termination. The Operating Agreement may provide for the termination in whole or in part of the membership interest or economic interest of a member in the Limited Liability Company. If a member's economic interest in the Limited Liability Company is terminated pursuant to the Operating Agreement, the member may demand and shall be entitled to receive a return of that member's contribution. Any provision in an Operating Agreement governing the termination of a member's interest and the return of a member's contribution shall be enforceable in accordance with its terms unless the member seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the agreement was made.

§ 4.2 Rights

(a) In General. The following classes of membership having the following relative rights, powers, and duties are hereby provided for:

§ 4.3 Voting

(a) Voting Rights. Each member can vote.

(b) Voting Basis. Voting by members shall be on a per capita basis, except that each owner of Class B shares gets two votes and each owner of Class A shares gets one vote.

(c) Majority. Notwithstanding any provision to the contrary in the Articles of Organization or Operating Agreement, in no event shall the Articles of Organization be amended by a vote of less than a majority in interest of the members.

(d) Dissolution or Merger. Notwithstanding any provision to the contrary in the Articles of Organization or Operating Agreement, members shall have the right to vote on a dissolution of the Limited Liability Company as provided by law.

§ 4.4 Meetings

(a) Place. Meetings of members may be held at any place, either within or without this state, selected by the person or persons calling the meeting

(b) Call For Meeting. A meeting of the members may be called by any manager or by any member or members representing more than 10 percent of the interests of members for the purpose of addressing any matters on which the members may vote.

(c) Notice.

(1) Whenever members are required or permitted to take any action at a meeting, the written notice of the meeting shall be given not less than 10 days nor more than 60 days before the date of the meeting to each member entitled to vote at the meeting. The notice shall state the place, date, and hour of the meeting and the general nature of the business to be transacted. No other business may be transacted at this meeting.

(2) Any report or any notice of a members' meeting shall be given either personally or by mail or other means of written communication, addressed to the member at the address of the member appearing on the books of the Limited Liability Company or given by the member to the Limited Liability Company for the purpose of notice, or, if no address appears or is given, at the place where the principal executive office of the Limited Liability Company is located or by publication at least once in a newspaper of general circulation in the county in which the principal executive office is located. The notice or report shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by other means of written communication. An affidavit of mailing of any notice or report in accordance with the provisions of this article, executed by a manager, shall be prima facie evidence of the giving of the notice or report.

(3) If any notice or report addressed to the member at the address of the member appearing on the books of the Limited Liability Company is returned to the Limited Liability Company by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the member at that address, all future notices or reports shall be deemed to have been duly given without further mailing if they are available for the member at the principal executive office of the Limited Liability Company for a period of one year from the date of the giving of the notice or report to all other members.

(4) Upon written request to a manager by any person entitled to call a meeting of members, the manager shall immediately cause notice to be given to the members entitled to vote that a meeting will be held at a time requested by the person calling the meeting, not less than 10 days nor more than 60 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the person entitled to call the meeting may give the notice or, upon the application of that person, the superior court of the county in which the principal executive office of the Limited Liability Company is located, or if the principal executive office is not in this state, the county in which the Limited Liability Company's address in this state is located, shall summarily order the giving of the notice, after notice to the Limited Liability Company affording it an opportunity to be heard. The court may issue any order as may be appropriate, including, without limitation, an order designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice.

(d) Adjournment. When a members' meeting is adjourned to another time or place, unless the Articles of Organization or the written Operating Agreement otherwise require, and except as provided in this subdivision. notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Limited Liability Company may transact any business that may have been transacted at the original meeting. If the adjournment is for more than 45 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

(e) Attendance. The actions taken at any meeting of members, however called and noticed, and wherever held, have the same validity as if taken at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the members entitled to vote but not present in person or by proxy, signs the written waiver of notice or consents to the holding of the meeting or approves the minutes of the meeting. All waivers, consents, and approvals shall be filed with the Limited Liability Company records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of the meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this title to be included in the notice but not so included, if the objection is expressly made at the meeting. Neither the business to be transacted nor the purpose of any meeting of members need be specified in any written waiver of notice.

(f) Participation. Members may participate in a meeting of the Limited Liability Company through the use of conference telephones or similar communications equipment, as long as all members participating in the meeting can hear one another. Participation in a meeting pursuant to this provision constitutes presence in person at that meeting.

(g) Approval of Actions. Any action approved at a meeting, other than by unanimous approval of those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

(h) Quorum.

(1) A majority in interest of the members represented in person or by proxy shall constitute a quorum at a meeting of members.

(2) The members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the loss of a quorum, if any action taken after loss of a quorum, other than adjournment, is approved by the following percentage of interests of members: 75%.

(3) In the absence of a quorum, any meeting of members may be adjourned from time to time by the vote of a majority of the interests represented either in person or by proxy, but no other business may be transacted, except as provided in paragraph (h)(2).

(I) Consents.

(1) Any action that may be taken at any meeting of the members may be taken without a meeting

if a consent in writing, setting forth the action so taken, is signed and delivered to the Limited Liability Company within 60 days of the record date for that action by members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all members entitled to vote thereon were present and voted.

(2) Unless the consents of all members entitled to vote have been solicited in writing: (I) notice of any member approval of an amendment to the Articles of Organization or Operating Agreement, a dissolution of the Limited Liability Company as provided by law.

(3) Any member giving the written consent, or the member's proxy holder, may revoke the consent by a writing received by the Limited Liability Company prior to the time that written consents of members having the minimum number of votes that would be required to authorize the proposed action have been filed with the Limited Liability Company, but may not do so thereafter.

(j) **Proxies.** The use of proxies in connection with this section will be governed in the same manner as in the case of corporations formed under the General Corporation Law.

(k) Members Entitled To Notices Or To Vote. In order that the Limited Liability Company may determine the members of record entitled to notices of any meeting or to vote, or entitled to receive any distribution or to exercise any rights with respect to any other lawful action, a manager, or members representing more than 10 percent of the interests of members, may fix, in advance, a record date that is not more than 60 days nor less than 10 days prior to the date of the meeting and not more than 60 days prior to any other action. If no record date is fixed:

(1) The record date for determining members entitled to notice of or to vote at a meeting of members shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(2) The record date for determining members entitled to give consent to Limited Liability Company action in writing without a meeting shall be the day on which the first written consent is given.

(3) The record date for determining members for any other purpose shall be at the close of business on the day on which the managers adopt the resolution relating thereto, or the 60th day prior to the date of the other action, whichever is later.

(4) The determination of members of record entitled to notice of or entitled to vote at a meeting of members shall apply to any adjournment of the meeting unless a manager or the members who called the meeting fix a new record date for the adjourned meeting, but the manager or the members who called the meeting shall fix a new record date if the meeting is adjourned for more than 45 days from the date set for the original meeting.

ARTICLE V

CERTIFICATES OF INTEREST

§ 5.1 In General

(a) Member or Assignee. The interest of a member or assignee in the Limited Liability Company may be evidenced by a certificate of interest issued by the Limited Liability Company, and other provisions not inconsistent with this title may be made with respect to the transfer of interests represented by those certificates or with respect to the form of those certificates.

(b) Authenticity. The certificate may be signed by a manager or officer of the Limited Liability Company, whose signature may be a facsimile. In case any manager or officer of the Limited Liability Company who has signed or whose facsimile signature has been placed upon a certificate has ceased to be a manager or officer before the certificate is issued, it may be issued by the Limited Liability Company with the same effect as if the person was a manager or officer at the date of issue. If a certificate is worn out or lost, it may be renewed on production of the worn out certificate or on satisfactory proof of its loss together with such indemnity as may be required by the manager or managers or a resolution of members.

ARTICLE VI

MANAGEMENT

§ 6.1 Amendment

(a) Manager's Responsibility. A manager shall promptly furnish to a member a copy of any amendment to the Articles of Organization or Operating Agreement executed by a manager pursuant to a power of attorney from the member.

§ 6.2 Officers

(a) In General. There shall be:
(1) A chairperson with the following rights and duties: to preside at meetings.
(2) A president with the following rights and duties: to be the principal operating official.
(3) A secretary with the following rights and duties: to record Minutes.

§ 6.3 Duties

(a) In General. An officer must be a member of the Limited Liability Company, and any number of offices may be held by the same person.

§ 6.4 Appointment

(a) In General. Officers, if any, shall be appointed in accordance with the written Operating Agreement or, if no such provision is made in the Operating Agreement, any officers shall be appointed by the managers and shall serve at the pleasure of the managers, subject to the rights, if any, of an officer under any contract of employment.

§ 6.5 Resignation

(a) Of Officer. Any officer may resign at any time upon written notice to the Limited Liability Company without prejudice to the rights, if any, of the Limited Liability Company under any contract to which the officer is a party.

§ 6.3 Appointment

(a) In General. Officers, if any, shall be appointed in accordance with the written Operating Agreement or, if no such provision is made in the Operating Agreement, any officers shall be appointed by the managers and shall serve at the pleasure of the managers, subject to the rights, if any, of an officer under any contract of employment. Upon written notice to the Limited Liability Company, any officer may resign at any time without prejudice to the rights, if any, of the Limited Liability Company under any contract to which the officer is a party.

§ 6.4 Management

(a) Managers. The business and affairs of the Limited Liability Company shall be managed by or under the authority of one or more managers who must be members.

Except as otherwise provided in the Articles of Organization or the Operating Agreement, if the members have appointed more than one manager, decisions of the managers shall be made by majority vote of the managers if at a meeting, or by unanimous written consent.

(1) Election of managers to fill initial positions or vacancies shall be by the affirmative vote of a majority in interest of the members.

(2). Any or all managers may be removed, with or without cause, by the vote of a majority in interest of the members at a meeting called expressly for that purpose. Any removal shall be without prejudice to the rights, if any, of the manager under any contract of employment.

(3) Any manager may resign as a manager at any time upon written notice to the Limited Liability Company, without prejudice to the rights, if any, of the Limited Liability Company under any contract to which the manager is a party.

(4) Unless they have earlier resigned or been removed, managers shall hold office until the expiration of the term for which they were elected or, if no term was provided, until their successors have been elected and qualified.

(b) Qualifications. The number and qualifications of managers are:

The President and Secretary

(c) Names. The names of the manager of the Limited Liability Company is Kelley Lynch (who shall at least initially also act as president, chairperson and secretary.

(d) Management. Management of the Limited Liability Company is vested in a manager or managers, and therefore:

(1) No member, acting solely in the capacity of a member, is an agent of the Limited Liability Company, nor can any member bind, nor execute any instrument on behalf of, the Limited Liability Company.

(2) Every manager is an agent of the Limited Liability Company for the purpose of its business or affairs, and the act of any manager, including, but not limited to, the execution in the name of the Limited Liability Company of any instrument for apparently carrying on in the usual way the business or affairs of the Limited Liability Company of which the person is the manager, binds the Limited Liability Company, unless the manager so acting has, in fact, no authority to act for the Limited Liability Company in the particular matter, and the person with whom the manager is dealing has actual knowledge of the fact that the manager has no such authority.

(e) Acts. No act of a manager or member in contravention of a restriction on authority shall bind the Limited Liability Company to persons having actual knowledge of the restriction.

(f) Authority. Notwithstanding the provisions of subdivision (e) of this section, and subject to law, any note, mortgage, evidence of indebtedness, contract, certificate, statement, conveyance, or other instrument in writing, and any assignment or endorsement thereof, executed or entered into between any Limited Liability Company and any other person, when signed by at least one managers, is not invalidated as to the Limited Liability Company by any lack of authority of the signing managers or manager in the absence of actual knowledge on the part of the other person that the signing managers or manager had no authority to execute the same.

§ 6.5 Liability

(a) Liability of Manager or Officer. No person who is a manager or officer or both a manager and officer of a Limited Liability Company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the Limited Liability Company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a manager or officer or both a manager and officer of the Limited Liability Company.

ARTICLE VII

DEALING WITH THIRD PARTIES

§ 7.1 Authority

(a) Authority of Officer. Subject to the provisions of law, any note, mortgage, evidence of indebtedness, contract, certificate, statement, conveyance, or other instrument in writing, and any assignment or endorsement thereof, executed or entered into between any Limited Liability Company and any other person, when signed by the chairperson of the board, the president or any vice president and any secretary, any assistant secretary, the chief financial officer, or any assistant treasurer of the Limited Liability Company, is not invalidated as to the Limited Liability Company by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same.

ARTICLE VIII

INDEMNIFICATION

§ 8.1 In General

(a) Indemnification of Individuals. Except for a breach of the duty set forth in Kentucky State Statutes § 17153, the Limited Liability Company shall indemnify any person, including, without limitation, any manager. member. officer, employee. or agent of the Limited Liability Company, against judgments, settlements. penalties. fines. or expenses of any kind incurred as a result of acting in that capacity.

§ 8.2 Insurance

(a) Insurance Purchased by Limited Liability Company. The Limited Liability Company shall have power to purchase and maintain insurance on behalf of any manager, member, officer, employee, or agent of the Limited Liability Company against any liability asserted against or incurred by the person in that capacity or arising out of the person's status as a manager, member, officer. employee. or agent of the Limited Liability Company.

ARTICLE IX

DISTRIBUTIONS

§ 9.1 In General

(a) To Members. Distributions of the money or property (which shall be by value) of the Limited Liability Company shall be made to the members and to any classes of members in the manner provided in the Operating Agreement, provided that distributions shall be made in proportion to the allocation of profits, always subject to the priority, described above, to Class B common shares up to $24,000/year for the first 17 years, and thereafter $31,250. The intention of this arrangement is that the Class B common shares shall be allocated cash to the extent possible, and as quickly as possible, to match the allocation of profits to such shares, and that if in the opinion of the Manager(s) at the time, there is sufficient cash, also from general capital.

Subject to law, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the Limited Liability Company with respect to the distribution. An Operating Agreement may provide for the establishment of a record date with respect to the sharing of profits and distributions from the Limited Liability Company, subject to the right of the holders of Class B to "put" their shares.

§ 9.2 Events Allowing Distribution

(a) Withdrawal or Dissolution. Except as provided in applicable law, a member is entitled to receive distributions from the Limited Liability Company before the withdrawal of that member from the company and before the dissolution and winding up of the company, subject to the limitations contained in Kentucky law, to the extent and at the times or upon the happening of the events specified in the Operating Agreement.

ARTICLE X

WITHDRAWALS; RESIGNATIONS; RETIREMENTS

§ 10.1 In General

(a) By Member.

(1) A member may withdraw, resign, or retire from the Limited Liability Company at the time or upon the happening of events specified in the Operating Agreement; otherwise, the member shall not have the right to withdraw, resign, or retire as a member of the Limited Liability Company. Notwithstanding any restriction upon the right of a member to withdraw, resign, or retire, a member may withdraw from the Limited Liability Company at any time by giving written notice to the other members.

(2) However the withdrawn member shall not be entitled to payment for the member's interest in the Limited Liability Company, and, beginning on the date of the withdrawal, the withdrawn member shall have only the right of a holder of an economic interest with respect to that withdrawn member's interest in the Limited Liability Company, and then only with respect to distributions, if any, to which a holder of an economic interest is entitled under the Operating Agreement of the Limited Liability Company, and the withdrawn member shall no longer be a member of the Limited Liability Company.

(3) If the withdrawal, resignation, or retirement is in violation of the Operating Agreement, the Limited Liability Company shall have the right to offset any damages for the breach of the Operating Agreement from the amounts, if any, otherwise distributable to the withdrawn member with respect to the withdrawn member's economic interest in the Limited Liability Company.

(b) List. Upon the withdrawal of a member, the list required to be kept pursuant Kentucky law shall be amended accordingly.

§ 10.2 Distributions

(a) Form. A member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from the Limited Liability Company in any form other than money.

(b) Proportionate Distribution. No member may be compelled to accept from the Limited

Liability Company a distribution of any asset in kind in lieu of a proportionate distribution of money being made to other members.

(c) Distribution of Asset. Except upon a dissolution and winding up of the Limited Liability Company, no member may be compelled to accept a distribution of any asset in kind.

§ 10.3 Conditions

(a) Obligations of Limited Liability Company. No distribution shall be made if, after giving effect to the distribution, either of the following occurs:

(1) The Limited Liability Company would not be able to pay its debts as they become due in the usual course of business; or

(2) The Limited Liability Company's total assets would be less than the sum of its total liabilities plus, unless the Operating Agreement provides otherwise, the amount that would be needed, if the Limited Liability Company was to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member receiving the distribution.

(b) Prohibitions. The Limited Liability Company may base a determination by the manager or managers (if there is more than one manager) that a distribution is not prohibited under subdivision (a) on any of the following:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances;

(2) A fair valuation; or

(3) Any other method that is reasonable under the circumstances. Any such judgement is final and cannot be the subject of an objection by any other member or manager

(c) Date of Distribution. Except as provided in subdivision (e), the effect of a distribution under subdivision (a) is measured as of (I) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or (ii) the date payment is made if it occurs more than 120 days after the date of authorization.

(d) Indebtedness.

(1) If terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, indebtedness of the Limited Liability Company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subdivision (b).

(2) If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(e) Obligation of Member. A member or assignee of a member is obligated to return a distribution from the Limited Liability Company to the extent that:

(1) The member or assignee had actual knowledge of facts indicating the impropriety of the distribution: and

(2) Immediately after giving effect to the distribution, all liabilities of the Limited Liability Company, other than liabilities to members or assignees on account of their interest in the Limited Liability Company and liabilities as to which recourse of creditors is limited to specified property of the Limited Liability Company, exceed the fair market value of the Limited Liability Company's assets, provided that the fair market value of any property that is subject to a liability as to which recourse of creditors is so limited shall be included in the Limited Liability Company assets only to the extent that the fair market value of the property exceeds this liability.

(f) Limitation. A cause of action with respect to an obligation to return a distribution pursuant to subdivision (e) is extinguished unless the action is brought within four years after the distribution is made.

§ 10.4 Liability

(a) For Distribution. A member or manager who votes for a distribution in violation of the Operating Agreement or Kentucky law is personally liable to the Limited Liability Company for the amount of the distribution that exceeds what could have been distributed without violating Kentucky law or the Operating Agreement if it is established that the member or manager did not act in compliance with Kentucky law.

(b) Unlawful Distribution. Each member or manager held liable under subdivision (a) for an unlawful distribution is entitled to compel contribution:

(1) From each other member or manager who could be held liable under subdivision (a) for the unlawful distribution.

(2) From each member for the amount the member received with knowledge of facts indicating that the distribution was made in violation of Kentucky law or the Operating Agreement.

(c) Limitation. A proceeding under this section is barred unless it is commenced within four years after the date on which the effect of the distribution is measured under Kentucky law.

ARTICLE XI

DISSOLUTION AND WINDING UP OF COMPANY AFFAIRS; CONDITIONS

§ 11.1 In General

(a) Conditions. The Limited Liability Company shall be dissolved and its affairs shall be wound up upon the occurrence of the first to occur of the following:

(1) At the following time December 30, 2050.

(2) As specified in the written Operating Agreement.

(3) By the vote of a majority of the members.

(4) Upon the death, bankruptcy, retirement, resignation, expulsion, or dissolution of any member who is a manager (in the case of the Limited Liability Company managed by one or more managers who are members), or any member (in the case of the Limited Liability Company managed by its members or by one or more managers who are not members), unless the business of the Limited Liability Company is continued by a vote of a majority in interest of the remaining members within 90 days of the happening of the event.

(5) Entry of a decree of judicial dissolution pursuant to Kentucky law.

§ 11.2 Distributions After Winding Up

(a) Among Members. After determining that all the known debts and liabilities of the Limited Liability Company in the process of winding up, including, without limitation, debts and liabilities to members who are creditors of the Limited Liability Company, have been paid or adequately provided for, the remaining assets shall be distributed among the members according to their respective rights and preferences as follows:

(1) To members in satisfaction of liabilities for distributions pursuant to Kentucky law.

(2) To members of the Limited Liability Company for the return of their contributions.

(3) To members in the proportions in which those members share in distributions.

(b) By the Court. If the winding up is by court proceeding or subject to court supervision, the distribution shall not be made until after the expiration of any period that has been prescribed by order of the court for the presentation of claims.

(c) Payments. The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if the payment has been provided for by either of the following means:

(1) Payment thereof has been assumed or guaranteed in good faith by one or more financially responsible persons or by the United States government or any agency thereof, and the provision, including the financial responsibility of the person, was determined in good faith and with reasonable care by the members or managers of the Limited Liability Company to be adequate at the time of any distribution of the assets pursuant to this section.

(2) The amount of the debt or liability has been deposited as provided in Kentucky law.

§ 11.3 Dissenting Interest

(a) In General. If the Limited Liability Company denies that a membership interest is a dissenting interest, or the Limited Liability Company and a dissenting member fail to agree upon the fair market value of a dissenting interest, then the member or any interested Limited Liability Company, within six months after the date on which notice of the approval of the reorganization by the requisite vote or consent of the members was mailed to the member, but not thereafter, may file a complaint in the superior court of the proper county to determine whether the interest is a dissenting interest, or the fair market value of the dissenting interest, or both, or to intervene in any action pending on such a complaint.

(b) Joined. Two or more dissenting members may join as plaintiffs or be joined as defendants in any action, and two or more actions may be consolidated.

(c) Issue. On the trial of the action, the court shall determine the issues. If the status of the membership interest as a dissenting interest is an issue, the court shall first determine that issue. If the fair market value of the dissenting interest is an issue, the court shall determine, or shall appoint one or more impartial appraisers to determine the fair market value of the dissenting interest.

ARTICLE XII

MISCELLANEOUS

§ 12.1 Information

(a) To Member. The Limited Liability Company shall send or cause to be sent to each member or holder of an economic interest, within 90 days after the end of each taxable year, such information as is necessary to complete federal and state income tax or information returns, and, in the case of the Limited Liability Company with 35 or fewer members, a copy of the Limited Liability Company's federal, state, and local income tax or information returns for the year.

§ 12.2 Delivery of Information

(a) By Court Order. In addition to any other remedies, a court of competent jurisdiction may enforce the duty of making and mailing or delivering the information and financial statements required by this section and, for good cause shown, may extend the time therefor.

(b) Failure to Comply. In any action under this section, if the court finds the failure of the Limited Liability Company to comply with the requirements of this section is without justification, the court may award an amount sufficient to reimburse the person bringing the action for the reasonable expenses incurred by that person, including attorneys' fees, in connection with the action or proceeding.

(c) Waiver. Any waiver of the rights provided in this section shall be unenforceable.

§ 12.3 Requests

(a) By Member. Any request, inspection, or copying by a member or holder of an economic interest may be made by that person or by that person's agent or attorney.

Signatures of Organizer:

Richard A. Westin:______________________________

FROM : RWESTIN PHONE NO. : 6062688017 DEC. 06 2000 01:01AM P3

POWER OF ATTORNEY

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, KELLEY LYNCH, OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DO CONSTITUTE AND APPOINT RICHARD A. WESTIN, OF LEXINGTON, FAYETTE COUNTY, KENTUCKY, MY LAWFUL ATTORNEY IN MY NAME, PLACE, AND STEAD TO SIGN MY NAME IN CONNECTION WITH SUBMITTING THE ARTICLES OF ASSOCIATION OF TRADITIONAL HOLDINGS, LLC WITH THE SECRETARY OF STATE OF THE STATE OF KENTUCKY AND TO EXECUTE ALL NECESSARY RECEIPTS, RELEASES, AND DISCHARGES THEREFOR. I GIVE AND GRANT TO THIS ATTORNEY FULL POWER AND AUTHORITY TO DO AND PERFORM ALL AND EVERY ACT AND THING WHATEVER REQUISITE AND NECESSARY TO BE DONE IN AND ABOUT THE PREMISES AS FULLY TO ALL INTENTS AND PURPOSES AS I MIGHT OR COULD DO IF PERSONALLY PRESENT IN CONNECTION WITH SAID SIGNATURE AND FILING.

I DO SPECIALLY AUTHORIZE MY ATTORNEY, RICHARD WESTIN, TO APPOINT AN ATTORNEY BY SUBSTITUTION AND HEREBY RATIFY AND CONFIRM ALL SUCH LAWFUL ACTS THAT MY ATTORNEY, *RICHARD A. WESTIN*, OR HIS SUBSTITUTE MAY DO OR CAUSE TO BE DONE BY VIRTUE HEREOF.

WITNESS MY HAND THIS 6TH DAY OF DECEMBER, 2000.

Kelley Lynch

KELLEY LYNCH

Joan Lynch

WITNESS

EXHIBIT 3 Cont'd

POWER OF ATTORNEY

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, LEONARD COHEN, OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DO CONSTITUTE AND APPOINT RICHARD A. WESTIN, OF LEXINGTON, FAYETTE COUNTY, KENTUCKY, MY LAWFUL ATTORNEY IN MY NAME, PLACE, AND STEAD TO SIGN MY NAME IN CONNECTION WITH SUBMITTING THE ARTICLES OF ASSOCIATION OF TRADITIONAL HOLDINGS, LLC WITH THE SECRETARY OF STATE OF THE STATE OF KENTUCKY AND TO EXECUTE ALL NECESSARY RECEIPTS, RELEASES, AND DISCHARGES THEREFOR. I GIVE AND GRANT TO THIS ATTORNEY FULL POWER AND AUTHORITY TO DO AND PERFORM ALL AND EVERY ACT AND THING WHATEVER REQUISITE AND NECESSARY TO BE DONE IN AND ABOUT THE PREMISES AS FULLY TO ALL INTENTS AND PURPOSES AS I MIGHT OR COULD DO IF PERSONALLY PRESENT IN CONNECTION WITH SAID SIGNATURE AND FILING.

I DO SPECIALLY AUTHORIZE MY ATTORNEY, RICHARD WESTIN, TO APPOINT AN ATTORNEY BY SUBSTITUTION AND HEREBY RATIFY AND CONFIRM ALL SUCH LAWFUL ACTS THAT MY ATTORNEY, *RICHARD A. WESTIN*, OR HIS SUBSTITUTE MAY DO OR CAUSE TO BE DONE BY VIRTUE HEREOF.

WITNESS MY HAND THIS 5TH DAY OF DECEMBER, 2000.

LEONARD COHEN

WITNESS

E ONLY) 575J 311754289 02-26-2001 TRAD B 1752431327 SS-4 (TELE-TIN)

Please use the label IRS provided when filing tax documents. If that isn't possible, use your EIN and complete name and address shown below to identify your account and to avoid delays in processing.

TRADITIONAL HOLDING LLC
% KELLEY LYNCH
LYNCH KELLEY MEMBER
3141 WARRENWOOD WYND
LEXINGTON KY 40502

If this information isn't correct, please correct it using the bottom part of this notice. Return it to the address shown so we can correct your account.

If you haven't already completed Form SS-4, Application for Employer Identification Number, we need you to do it now so your account record will be complete. You can get Form SS-4 at your local IRS office or by calling 1-800-TAX-FORM (1-800-829-3676). After you complete the Form SS-4, sign and date it and write your new EIN, 31-1754289, in the upper right hand corner. Please return it to us with the bottom part of this notice by 03-13-2001. We've enclosed an envelope for your convenience.

Keep this part for your records. CP 575 J (Rev. 1-2001)

Return this part with any correspondence so we may identify your account. Please correct any errors in your name or address.

CP 575 J

1752431327

Your Telephone Number ( ) - ____________ Best Time to Call ____________

DATE OF THIS NOTICE: 02-26-2001
EMPLOYER IDENTIFICATION NUMBER: 31-1754289
FORM: SS-4 (TELE-TIN)

INTERNAL REVENUE SERVICE
CINCINNATI OH 45999

TRADITIONAL HOLDING LLC
% KELLEY LYNCH
LYNCH KELLEY MEMBER
3141 WARRENWOOD WYND
LEXINGTON KY 40502