

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

BARRY J. BELMONT, PHILADELPHIA
FINANCIAL SERVICES, LLC, THOMAS J.
KELLY, JR., FRANCES R. KELLY and GARY O.
PEREZ,

Plaintiffs,

v.

MB INVESTMENT PARTNERS, INC.,
CENTREMB HOLDINGS, CENTRE PARTNERS
MANAGEMENT, LLC, ROBERT M. MACHINIST,
MARK E. BLOOM, RONALD L. ALTMAN,
LESTER POLLACK, WILLIAM M. TOMAI,
GUILLAUME BÉBÉAR, P. BENJAMIN
GROSSCUP, THOMAS N. BARR, CHRISTINE
MUNN and ROBERT A. BERNHARD,

Defendants.

CIVIL ACTION NO.:
09-cv-04951

**MOTION OF DEFENDANTS MB INVESTMENT PARTNERS, INC., ROBERT
M. MACHINIST, P. BENJAMIN GROSSCUP, THOMAS N. BARR, CHRISTINE
MUNN AND ROBERT A. BERNHARD TO DISMISS AMENDED COMPLAINT**

Defendants MB Investment Partners, Inc., Robert M. Machinist, P. Benjamin
Grosscup, Thomas N. Barr, Christine Munn and Robert A. Bernhard (collectively, the
“MB Defendants”), pursuant to Fed. R. Civ. P. 12(b)(6), hereby respectfully move this
Honorable Court to dismiss Counts I, III and IV asserted against them in the Complaint
filed by the Plaintiffs for the reasons set forth in the attached memorandum of law filed in
support of this Motion.

REQUEST FOR ORAL ARGUMENT

The MB Defendants believe that oral argument on the subject matter of this motion will assist the Court in evaluating the merits of same and therefore they hereby request a hearing on the above motion.

/s/ Edward D. Kutchin

Edward D. Kutchin

Dated: April 13, 2010

KUTCHIN & RUFO, P.C.

ECKERT SEAMANS CHERIN &
MELLOTT, LLC

By: /s/ Edward D. Kutchin

Edward D. Kutchin (pro hac vice)
Kerry R. Northup (pro hac vice)
Kutchin & Rufo, P.C.
Two Center Plaza, Suite 620
Boston, MA 02108-1906
(617) 542-3000
ekutchin@kutchinrufo.com
knorthup@kutchinrufo.com

By: /s/ Peter J. Hoffman

Peter J. Hoffman
Maureen P. Fitzgerald
Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place
50 South 16th Street, 22nd Floor
Philadelphia, PA 19102
(215) 851-8400
phoffman@eckertseamans.com
mfitzgerald@eckertseamans.com

*Attorneys for Defendants
MB Investment Partners, Inc.,
Robert M. Machinist, P. Benjamin Grosscup,
Thomas N. Barr, Christine Munn and Robert A. Bernhard*

Alan T. Galanty, Esquire
Kantor Davidoff Wolfe Mandelker
Twomey & Gallanty P.C.
51 East 42nd Street, 17th Floor
New York, NY 10017

Mr. Mark E. Bloom
502 Park Avenue
New York, NY 10022

/s/

Maureen P. Fitzgerald

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THOMAS N. BARR, CHRISTINE MUNN, and
ROBERT A. BERNHARD,

Defendants.

CIVIL ACTION NO.:
09-cv-04951

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF DEFENDANTS MB
INVESTMENT PARTNERS, INC., ROBERT M. MACHINIST, P. BENJAMIN
GROSSCUP, THOMAS N. BARR, CHRISTINE MUNN AND ROBERT A.
BERNHARD TO DISMISS AMENDED COMPLAINT**

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Defendants MB Investment Partners, Inc. (“MB”), Robert M. Machinist, P. Benjamin Grosscup, Thomas N. Barr, Christine Munn and Robert A. Bernhard (the “Individual MB Defendants” and collectively with MB, the “MB Defendants”) respectfully submit this Memorandum of Law in support of their Motion to Dismiss certain of the claims asserted against them in the Plaintiffs’ Amended Complaint (the “Complaint”) for failing to state a claim for which relief may be granted.

I. INTRODUCTION

This case arises as a result of the fraudulent Ponzi scheme conducted solely by Defendant Mark Bloom (“Bloom”). The Plaintiffs, realizing that they have lost all or nearly all of their investments with Bloom and that he and his wife are effectively judgment proof,¹ have brought claims against Bloom’s former employer and coworkers alleging that they were somehow responsible for failing to discover Bloom’s criminal enterprise. Specifically, although the Complaint does not allege that the MB Defendants had knowledge of, participated in, or were beneficiaries of, Bloom’s fraudulent scheme, the Plaintiffs have asserted claims of securities fraud, violation of Pennsylvania’s consumer protection law, control person liability under the securities laws, negligent supervision and breach of fiduciary duties. Certain of these claims, however, should be dismissed for failing to meet the applicable pleading standards.

Count I of the Complaint asserts a claim of securities fraud against MB, as well as Defendants Altman and Bloom. In the context of all of the facts this Court is permitted to consider, such a claim fails to meet the plausibility standard applicable to all claims, much less the heightened pleading standards of Rule 9(b) and the Private Securities

¹ This is sufficiently evidenced by the fact that the Complaint does not even name North Hills, the entity through which Bloom conducted his fraud, or his wife, Lauren Bloom, who received substantial benefits as a result of the fraud, as defendants.

Litigation Reform Act of 1995 (the “Reform Act”). Reviewing the facts “holistically”, the Plaintiffs would have this Court believe that when Bloom joined MB as a senior executive in 2004, he began running his already-existing fraudulent pyramid scheme through his new employer, and that the experienced securities professionals around him at his new firm either actively aided and abetted or recklessly ignored Defendant Bloom’s gross violations of securities laws. In so doing, MB’s officers and directors risked MB’s status as a registered investment adviser and their own livelihood as professional investment advisers, not to mention potential criminal liability, for absolutely no benefit to themselves. Such a claim is grossly implausible.

Even if this Court deems the allegations plausible, Count I should be dismissed as to MB for two independently dispositive reasons: (1) it fails to allege scienter, in that it contains no particularized facts to support a strong inference that MB intended to commit fraud or acted recklessly, and (2) it fails to expose MB to derivative liability by failing to allege any benefit to MB from Bloom’s conduct

Counts III and IV of the Complaint should also be dismissed insofar as the MB Defendants are concerned. Count III of the Complaint, asserting control person liability under Section 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) should be dismissed for two reasons: (1) there was no underlying violation of the Exchange Act by a controlled person, and (2) there is no allegation that the individual members of the MB Defendants actually controlled MB. Finally, Count IV of the Complaint, asserting claims of negligent supervision, is fatally flawed because Bloom’s illegal conduct was unforeseeable.

II. SUMMARY OF ALLEGATIONS

As with any motion to dismiss, the Court is required to accept all allegations set forth in the Plaintiffs' Complaint as true.² The Court may also, however, review documents attached to or referenced by the Complaint and matters of public record. *Winer Family Trust v. Queen*, 503 F.3d 319, 327 (3d Cir. 2007).

A. The Parties

The Plaintiffs are a group of individuals and entities who invested money in a purported hedge fund operated by Bloom. Complaint at ¶¶ 22-32; 55. MB was a wealth management firm and registered investment adviser with offices in New York City. *Id.* at ¶ 8. The remainder of the MB Defendants, Messrs. Machinist, Grosscup, Barr and Bernhard, and Ms. Munn, were allegedly senior officers and directors of MB. *Id.* at 11, 18-21. Defendant Ron Altman was an employee of MB.³ *Id.* at 13. The remaining individual Defendants, Lester Pollack, William M. Tomai, and Guillaume Bebear, are affiliates of Defendants Centre Partners Management, LLC and CentreMB Holdings, LLC, the latter of which owned a majority of MB's capital stock. *Id.* at ¶ 9, 14-17. They were also directors of MB. *Id.* at 14-17.

B. Formation and History of North Hills

Sometime in or prior to 2001, Bloom formed two entities, North Hills LP ("North Hills") and North Hills Management, LLC ("NHM"). Information, filed July 30, 2009, in *United States of America v. Mark Bloom*, No. S1 09 Cr. 367 (S.D.N.Y.), at ¶¶ 1-3,

² The factual summary set forth herein merely summarizes the factual allegations as set forth in the Complaint and the related documents that the Court is permitted to consider in connection with this Motion. It should be noted that the MB Defendants dispute many of the factual assertions set forth in the Complaint.

³ Defendant Altman is represented by separate counsel.

attached hereto as Exhibit A (the “Information”).⁴ Bloom was the sole owner of NHM, which in turn was the sole general partner of North Hills. *Id.* at ¶¶ 1-2. Accordingly, “Bloom exercised almost complete control over North Hills and its investments.” Complaint at ¶ 34. For much of the period that Bloom managed North Hills, its business address was Bloom’s “extravagant 4,000 plus square foot, 27th story penthouse in a Trump condominium building at 502 Park Avenue in Manhattan, valued at \$12.6 million.” *Id.* at ¶ 45.

Commencing on or before July 2001, Bloom solicited clients to invest in North Hills representing that it was a “fund of funds”, i.e. a fund that would invest in different hedge funds and management investment vehicles. Information at ¶ 4. Bloom circulated a private placement memorandum to potential investors that promised North Hills would invest “with money managers who had ‘proven historical performance’” and that North Hills’ goal was “‘for meaningful diversification of strategies and money managers whose performance will be independent of one another.’” *Id.* (quoting from the PPM). Bloom successfully raised tens of millions of dollars of investments for North Hills prior to the start of his employment with MB. *Id.* at ¶ 5. Thereafter, Bloom sent or caused to be sent to North Hills’ investors “monthly account statements that purported to show the balance in their capital accounts at North Hills and positive returns.” *Id.* at ¶ 6.

In fact, however, North Hills was nothing but a fraudulent scheme to line Bloom’s own pocket. During the approximately eight years prior to the discovery of his scheme,

⁴ This is the Information to which Bloom pled guilty on July 30, 2009. In light of the Plaintiffs’ numerous references, express and implied, to the Information, this Court is permitted to consider the contents of this document in connection with this Motion. *Winer*, 503 F.3d at 328 (citing *In re Burlington Coat Factory*, 114 F.3d 1410, 1426 (3d Cir. 1997)(holding that a ‘document integral to or explicitly relied upon in the complaint’ may be considered ‘without converting the motion [to dismiss] into one for summary judgment’).

Bloom diverted at least \$20 million from North Hills' operating account to his own use. *Id.* at ¶ 7. These funds were used to purchase, among other things, at least \$2.3 million in renovations to apartments owned by Bloom, a house in Westhampton Beach, New York, well over a million dollars of artwork and high end jewelry, and a variety of other goods and services for the sole benefit of Bloom and his wife. *Id.* He also purchased a number of luxury cars and boats and a 6,200 square foot triplex at 10 Gracie Square, Manhattan, for approximately \$5.2 million. Complaint at ¶ 43. Bloom then transferred his interest in the triplex to his wife for no consideration, and his wife subsequently sold the property for \$11.2 million. *Id.* In or about 2007 and 2008, Bloom solicited and received additional monies for investment in North Hills. Information at ¶ 13. He once again represented that he would invest their funds with other hedge funds but, in fact, he utilized the funds primarily to honor the redemption requests of some of the prior investors. *Id.* In short, therefore, Bloom was operating a classic Ponzi scheme. And, as is inevitable with Ponzi schemes, once the influx of new funds was insufficient to cover the redemption requests of the prior investors, the game was over. Accordingly, on February 25, 2009, Bloom was arrested and charged with, among other things, securities fraud, mail fraud, wire fraud and money laundering. *Id.* at ¶¶ 15-23.

On July 30, 2009, Bloom entered a guilty plea to the charges against him in the Information. Complaint at ¶ 48. In connection with his plea, Bloom agreed to forfeit all of his right, title and interest in a substantial amount of assets, including without limitation three parcels of real estate, a 2005 Formula 330 Sun Sport Boat, a long list of luxury watches and jewelry, artwork, and furs. Information at ¶ 39. Similarly, Bloom's wife, Lauren, entered into a Stipulation with the United States Department of Justice

pursuant to which she surrendered any right, title and interest she might have had in such assets, while being permitted to retain certain other assets. Stipulation and Order, July 16, 2009, attached hereto as Exhibit B.

C. Bloom's Employment History and Association with MB

It was only several years after commencing his fraudulent scheme that Bloom became a minority owner and employee of MB. Specifically, from May 1992 until July, 2001, Bloom was a partner at WG Trading Co., L.P. Complaint at ¶ 12. When he left WG Trading he began North Hills. *Id.* at 12; Information at ¶ 3. He also became a partner at the “major international accounting firm” of BDO Seidman, LLP. Information at ¶ 24. Two years later, in November, 2003, Bloom left BDO, and subsequently joined MB as an employee and minority owner in July, 2004. *Id.*; Complaint at ¶ 12.

Specifically and as alleged in the Complaint, through an indirect ownership interest Bloom owned approximately 8% of MB.⁵ Bloom was also, according to the Complaint, MB's “President, co-managing partner, Chief Marketing Officer and a director.”⁶ *Id.*

Upon joining MB, Bloom also became associated with Defendants Robert Machinist, Benjamin Grosscup, Thomas Barr, Christine Munn and Robert Bernhard, as well as the other individual defendants named in the Complaint. Mr. Machinist was part of a group that included Mr. Bloom which purchased a majority interest in MB, and in connection with the transaction he was named Chairman and co-managing partner of MB. *Id.* at 11. Messrs. Bernhard, Grosscup and Barr and Ms. Munn, meanwhile, had

⁵ The Complaint asserts that he “owned 14% of the capital stock of the majority shareholder of MB” (¶ 12) and that Defendant CentreMB Holdings, LLC “owned 57% of the capital stock of MB” (¶ 9), resulting in Bloom's ownership of 8% of MB.

⁶ In fact, Bloom was only a Vice President, and was never the President, of MB. For purposes of this Motion, however, we must take all allegations set forth in the Complaint as true, and the difference is irrelevant to the analysis hereunder in any event.

been executive officers and owners of MB prior to the sale transaction and, following the transaction, they continued to be employed by MB.⁷ According to the Complaint, each was a partner, a managing director (except for Mr. Bernhard) and a member of MB's Board of Directors.⁸ *Id.* at ¶¶ 18-21. Other than a passing reference to MB included in a list of past employers, neither MB nor any of the other Defendants named in the Complaint was mentioned in the Information.

D. Bloom's Efforts to Conceal His Fraud, and Arrest

During the approximately eight years that Bloom perpetrated his fraudulent scheme, as one would expect, he exerted all of his efforts to conceal his fraud.

Information, at ¶ 3. Specifically, Bloom:

- “sent or caused to be sent to the investors monthly account statements, which purported to show the balance in their capital accounts at [North Hills] and positive returns.” *Id.* at 6.
- stalled investors who submitted redemption requests to him following the discovery that the portion of the North Hills monies that he had invested in a commodities trading pool were the subject of a separate fraud. *Id.* at ¶ 11. In so doing, Bloom cited the illiquidity of North Hills' investments, but failed to notify them that the funds were illiquid because they had been diverted to his personal use. *Id.*
- stalled Plaintiff Barry Belmont's efforts to redeem funds invested in North Hills by informing him that the North Hills partnership agreement only permitted redemptions upon 90 days notice at year end. Complaint at ¶ 62.

On December 8, 2008, two related entities that were investors in North Hills, the Alexander Dawson Foundation and Alexander Dawson, Inc. (collectively, “Alexander Dawson”), filed a complaint in the Supreme Court of New York against NHM, Bloom

⁷ Mr. Barr and Ms. Munn, however, left MB effective August 1, 2008, which is noteworthy in that it was prior to many of the investments made by the Plaintiffs in North Hills.

⁸ In fact, following the July 2004 transaction, Mr. Bernhard was neither an officer or director, nor even an employee, of MB. Rather, he was a consultant who had observation rights with respect to meetings of the Board of Directors. Presumably he has been included in this action simply to add another potential “deep pocket” defendant.

and his wife, Lauren Bloom. A copy of the Complaint is attached hereto as Exhibit C. The MB Defendants hereby request that the Court take judicial notice of the filing of the Alexander Dawson Complaint (the “AD Complaint”).⁹ The AD Complaint alleges, in general, that Alexander Dawson made significant investments in North Hills between 1997 and 2004, that they received monthly statements starting in 2001 showing positive returns, that Bloom had promised steady growth at low risk, and that Bloom instead diverted the monies to his personal use and took numerous steps to conceal his fraud from them. The AD Complaint asserts 12 separate causes of action and seeks damages to be determined at trial but “believed to exceed \$8.5 million.” AD Complaint at pp. 34-38. The AD Complaint makes no mention whatsoever of any of the MB Defendants.

On or about February 25, 2009, less than three months after the filing of the AD Complaint, Bloom was arrested. Complaint at ¶ 48.

III. ARGUMENT

A. Applicable Standard

In deciding Rule 12(b)(6) motions to dismiss, a court must take all well pleaded facts in the complaint as true and draw all reasonable inferences in favor of the plaintiff. *See, e.g., GSC Partners CDO Fund v. Washington*, 368 F.3d 228, 236 (3d Cir. 2004). The complaint may not be dismissed unless “it appears beyond doubt that the plaintiffs can prove no set of facts in support of their claims that would entitle them to relief.” *Id.* In addition to accepting all factual allegations in the complaint as true, the Court must “consider the complaint in its entirety, as well as other sources courts ordinarily examine

⁹ In so moving, the MB Defendants note both that the document is publicly filed and that the Complaint clearly relies upon it in making its own allegations. *See, e.g.*, the nearly identical wording of Paragraph 8 of the AD Complaint and Paragraph 43 of the Complaint, and Paragraph 32 of the AD Complaint and Paragraph 44 of the Complaint.

when ruling on Rule 12(b)(6) motions to dismiss, in particular documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.”

Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007).

Plaintiffs asserting securities fraud claims, however, must meet the higher pleading burdens established by both Rule 9(b) of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995 (the “Reform Act”). Under Rule 9(b), securities fraud allegations must be pled with particularity. *Institutional Investors Group v. Avaya, Inc.*, 564 F.3d 242, 253 (3d Cir. 2009). Further, under the Reform Act, the plaintiff must “specify each allegedly misleading statement, why the statement was misleading and, if an allegation is made on information and belief, all facts supporting that belief with particularity.” *Id.* (quoting *Winer Family Trust*, 503 F.3d at 326).

The complaint must also state with particularity the facts giving rise to a “strong inference” that the defendant acted with the state of mind required to be in violation of Section 10(b) of the Exchange Act, i.e. the “intention to deceive, manipulate, or defraud.” *Id.* (quotation omitted). A “strong inference” is “more than merely ‘reasonable’ or ‘permissible’ – it must be cogent and compelling,” and must be “at least as compelling as any opposing inference of nonfraudulent intent.” *Tellabs*, 551 U.S. at 332. *Tellabs* mandates a “comparative evaluation [where courts] consider, not only inferences urged by the plaintiff. . . but also competing inferences rationally drawn from the facts alleged.” *Id.* at 314. And, if a reasonable person cannot draw the necessary “strong inference” of scienter, the complaint must be dismissed. *Id.*; see *GSC Partners CDO Fund*, 368 F.3d at 237 (affirming dismissal for inadequate pleading of scienter).

In order to withstand a motion to dismiss, a securities fraud claim must plead with particularity facts establishing that the defendant acted intentionally or recklessly. Reckless conduct is defined as conduct “involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of care.” *In re Advanta Corp. Sec. Litig.*, 180 F.3d 525, 535 (3d Cir. 1999). Indeed, “claims essentially grounded on corporate mismanagement are not cognizable under federal law.” *Id.* at 540. Such allegations must also meet the heightened pleading standards applicable to the scienter element of securities fraud claims, i.e. the “who, what, when, where and how” of the events at issue. *In re Suprema Specialties Inc. Sec. Litig.*, 438 F.3d 256, 276 (3d Cir. 2006). They must also meet the plausibility standards established by the Supreme Court which apply to all claims seeking to survive a motion to dismiss in federal court.

B. Plaintiffs’ Failure to Monitor Allegations are Implausible

The Complaint asserts, generally, that MB failed to monitor or supervise its employees, have adequate controls in place, install routine compliance mechanisms, collect information on private investment funds such as North Hills, and “turned a blind eye to the activities of defendants Bloom and Altman, although activities were taking place on MB’s premises and used its facilities.” *Id.* at 14-15. The allegations set forth in the Complaint are simply implausible and, accordingly, the claim should be dismissed.

Two recent Supreme Court cases have firmly established that federal courts are permitted to bring their own experience and common sense to bear in determining whether a complaint should survive a motion to dismiss. In *Bell Atlantic Corp. v. Twombly*, the Court ruled that allegations in a complaint must cross the line from merely possible to plausible in order to survive a motion to dismiss. 550 U.S. 544, 570 (2007). The Supreme Court then clarified its ruling, in *Ashcroft v. Iqbal*, stating that *Twombly*’s

plausibility requirement applied to all claims in federal cases, not just in the antitrust context in which *Twombly* was decided. 129 S.Ct. 1937, 1953 (2009).

All of Plaintiffs' allegations, when analyzed as a whole and in the larger context of the Information and other documents this Court is permitted to consider, coalesce into a story that is implausible on its face, and certainly not "at least as compelling" as any non-fraudulent inference this Court could draw: to wit, that MB and its officers and directors, recklessly failed to maintain even a minimal compliance program, in violation of all applicable securities laws and instead allowed Bloom to operate an illegal Ponzi scheme. In *Iqbal*, the Supreme Court addressed the plausibility of a plaintiff's efforts to have the court infer "purposeful, invidious discrimination" in the wake of his arrest following the events of September 11, 2001. *Iqbal*, 129 S.Ct. at 1951-1952. This the Court would not do in light of the "obvious alternative explanation" for his arrest. *Id.* Similarly, here the Court is faced with the plausibility of the MB Defendants' alleged complete failure to adhere to applicable securities laws or to engage in even cursory monitoring of its employees, or the "obvious alternative explanation" that Bloom (for his own benefit and to the detriment of MB) – who had been conducting his fraudulent North Hills scheme for years prior to being employed by MB – simply continued to do as he had always done, namely conceal his fraudulent scheme from everyone.

C. Plaintiffs Failed to Meet the Heightened Pleading Standards Applicable to Securities Fraud Claims

Count I of Plaintiffs' Complaint fails to plead that MB had scienter, falling far short of pleading facts sufficient to give rise to a "strong inference" of scienter as required under the Reform Act's heightened pleading standards. The Plaintiffs cannot establish a case of derivative liability against MB either as there is no supportable claim

that MB received any benefit from Bloom's actions. These pleading defects reflect the fundamental flaw in the Plaintiffs' theory. Their entire case is predicated on the notion that MB and its officers and directors were somehow legally responsible for discovering and preventing Bloom from conducting a fraudulent scheme that he began long before he was employed with MB, that he took every conceivable step to conceal, that had absolutely nothing to do with MB's business and that MB gained no benefit from.

1. *The Complaint fails to adequately plead that MB is a primary violator of the securities laws.*

Section 10(b) of the Exchange Act prohibits the "Use or employ[ment], in connection with the purchase or sale of any security . . . of any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe." 15 U.S.C. 78j(b). Using the mandate from Congress, the Securities and Exchange Commission promulgated Rule 10(b)-5 which makes it unlawful:

- (a) To employ any device, scheme, or artifice to defraud,
- (b) To make any untrue statement or a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
- (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5. To assert a claim under Rule 10(b)-5, the plaintiff must allege "(1) a material misrepresentation or omission by the defendant, (2) scienter, (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148 (2008).

Viewed “holistically”, the Complaint fails to meet the heightened pleading requirements with respect to the scienter element of a securities fraud claim. *Tellabs*, 551 U.S. at 325 (court must assess all allegations “holistically”). To establish the requisite scienter, the Plaintiffs must plead with particularity facts establishing that MB acted intentionally or recklessly. *In re Advanta Corp. Sec. Litig.*, 180 F.3d 525, 535 (3d Cir. 1999). Recklessness is conduct “involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care.” *Id.* Here, the Complaint is replete with conclusory statements such as the alleged facts that (1) North Hills interests were sold through MB personnel (none are named, other than Defendant Bloom), and through its facilities, (2) the business operations of MB and North Hills were “intertwined”, (3) the MB Defendants failed to “employ reasonable systems and controls that would have ensured that MB and its personnel placed the interests of customers first”; and (4) “MB and its personnel failed to conduct even the most minimal due diligence as to the operations and assets of North Hills.” Complaint at ¶¶ 50; 54-56. No support whatsoever is provided for these statements, despite the clear admonition of controlling case law that allegations of scienter must “state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.” *Avaya*, 564 F.3d at 253.

The Third Circuit has previously stated that such allegations must be similar to those found in the first paragraph of any newspaper article – i.e. the “who, what, when, where and how” of the events at issue. *In re Suprema Specialities Inc. Sec. Litig.*, 438 F.3d at 276. Here, Plaintiffs give no sources or attributions for these statements. In fact, they are the most basic example of the type of conclusory allegations that Rule 9(b) and,

especially, the Reform Act are designed to thwart. Similar to the claims that the court dismissed in *GSC Partners CDO Fund*, the Plaintiffs have simply failed to ascribe “any false statement or omission” to MB other than those asserted against Bloom. *GSC Partners CDO Fund*, 368 F.3d at 246. Certainly there is no “cogent and compelling” inference that MB acted intentionally or recklessly. To survive, inferences of scienter must be both reasonable and strong. Here, “at worst, the Complaint alleges little more than mismanagement. As we have previously held, such claims ‘are not cognizable under federal law.’” *In re Alparma Sec. Litig.*, 372 F.3d 137, 151 (3d Cir. 2004)(internal citation omitted).

Moreover, a “holistic” review of the documents and a “comparative evaluation” of the allegations as mandated by *Tellabs* leads inexorably to inferences that are far more compelling than the theory that the Plaintiffs are trying to sell – that MB acted intentionally or recklessly. In light of the fact that Bloom had formed North Hills prior to being employed by MB (Complaint at ¶ 12, 33), was North Hills’ sole owner and operator (¶¶ 1-2), exercised complete control over North Hills (¶ 34), maintained a separate address for North Hills (¶ 45), sent fraudulent monthly statements to his clients (Information at ¶ 6), and that none of the MB Defendants received any benefits, the strongest inference that may be drawn is that Bloom successfully concealed his fraudulent scheme from MB and its officers and directors. Unable to meet the *Tellabs* requirement that their allegations of scienter be “at least as compelling as any opposing inference of nonfraudulent intent,” Plaintiffs have failed to adequately plead securities fraud against MB. *Tellabs*, 551 U.S. at 332.

2. *Respondeat superior is prohibited as a theory of liability in securities fraud actions*

Having failed to plead that MB was a direct violator, Plaintiffs only avenue for maintaining its securities fraud claim is to argue that MB has derivative liability for Bloom's conduct. In its seminal case of *Rochez Bros., Inc. v. Rhoades*, the Third Circuit held that the easiest path to assert derivative liability of an employer, *respondeat superior*, is "inappropriate in a securities violation case." 527 F.2d 880, 884 (3d Cir. 1975). In so holding, the Court noted in particular that "Congress did not intend anyone to be an insurer against the fraudulent activities of another." *Id.* Further, the Court declined to impose a duty that "would make the corporation primarily liable for any security law violation by any officer or employee of the corporation." *Id.* at 885. Finally, the Court also noted that permitting liability on the theory of *respondeat superior* would undermine the availability of the good faith defenses available under Section 20(a) of the Exchange Act. *Id.*

As the Plaintiffs in their previously filed Opposition noted, there is dicta in *Rochez Bros.* relating to narrow circumstances in which an employer may be derivatively liable for the conduct of its employee – specifically where there may be a "stringent duty to supervise [its] employees." *Id.* at 886. In *Sharp v. Coopers & Lybrand*, the Third Circuit expounded upon its ruling and found that *respondeat superior* may apply where an accounting firm failed to adequately supervise an employee in the drafting and issuance of an opinion letter. 649 F.2d 175, 184-85 (3d Cir. 1981). The court in *Sharp*, however, took great pains to limit its ruling. It noted, for example, that the SEC itself had filed an amicus curiae brief requesting that the Third Circuit either narrowly construe, or completely prohibit, *respondeat superior* as a theory of liability in securities fraud

actions. *Id.* at 181. It also drafted its opinion as narrowly as possible, stating that “[i]n this limited situation, an accounting firm . . . [will be liable] for their violations of Rule 10b-5 under the doctrine of *respondeat superior*. *Id.* at 185. Moreover, there does not appear to be any Third Circuit case law directly on point with respect to the vicarious liability of an employer for securities fraud under these circumstances.

More importantly, however, *Sharp* is now 30 years old and its ongoing validity is in great doubt. Certain aspects of the case have already been overturned. *See In re Data Access Systems Sec. Litig.*, 843 F.2d 1537 (3d Cir. 1988). A prior ruling in this District noted that a Supreme Court case “casts serious doubt” on *Sharp*’s ongoing validity in the wake of the elimination of aiding and abetting by the Supreme Court in 1994. *Jairrett v. First Montauk Sec. Corp.*, 153 F.Supp.2d 562, 571 (E.D. Pa. 2001). Perhaps most tellingly, in a recent decision the Third Circuit characterized its ruling in *Rochez Bros.* with respect to the stringent duty to supervise as arising in the context of Section 20(a) liability, rather than 10(b) liability. *Marion v. TDI*, 591 F.3d 137 (3d Cir. 2010)(“in the context of the ‘broker dealer’ relationship like the one at issue here, we have described **Section 20(a)** as imposing a ‘stringent duty to supervise employees’”(emphasis added).

3. Plaintiffs’ pleadings are insufficient to impute liability to MB.

To survive dismissal, therefore, Plaintiffs’ Complaint must instead impute the fraud of the employee to the employer under the principles set forth by the Third Circuit in *Rochez* and *Official Comm. of Unsecured Creditors v. R.F. Lafferty & Co., Inc.*, 267 F.3d 340 (3d Cir. 2001). The fraud of an officer may be imputed to his corporate employer only “when the officer commits the fraud (1) in the course of his employment, and (2) for the benefit of the corporation.” *Id.*, at 358.

A “holistic” reading of the Complaint and the documents referred to and relied upon therein reveals no allegation that Bloom’s fraud provided any benefit whatsoever to MB. The documents, taken together, clearly establish that Bloom was the sole owner and operator of North Hills, that he started the “business” long before his employment tenure with MB began, and that his fraudulent scheme, which long pre-dated the timeframe of the Plaintiffs’ investments, was solely for his own personal benefit. The Complaint, the AD Complaint and the Information recite a litany of improper uses of the funds he stole, but none of them accrued to MB’s benefit. To the contrary, Bloom’s fraud brought about the demise of MB. The section title before Paragraph 33 of the Complaint is entitled “The Depletion of North Hills’ Assets for the Benefit of the Owner of its General Partner” – i.e. Bloom. Complaint at p. 7. The lone, feeble effort to allege any benefit to MB occurs in Paragraph 45 of the Complaint, which states:

“Large portions of monies Mark Bloom plundered from North Hills were also circulated to insiders of MB and/or Centre Partners or in investments that would benefit them. For example:

(a) Mark Bloom purchased a 14% interest in Centre MB Holdings, LLC the majority shareholder of MB’s corporate parent, using \$900,000 of funds wrongfully taken from North Hills over the years 2004-2006;

(b) North Hills invested substantial sums in DOBI Medical International, Inc., an enterprise in which defendants Robert Machinist and other MB executives were invested, and in which Machinist was Chairman of the Board of Directors; and

(c) In February 2008 Mark Bloom repaid a \$300,000 loan from Michael Jamison, Managing Partner of MB, using funds wrongfully taken from North Hills.”

Analyzed closely, however, these allegations fail to describe any benefit whatsoever to MB or any of the other MB Defendants. The first allegation, regarding Mark Bloom’s investment in Defendant CentreMB Holdings, LLC (“CentreMB”) fails

for two reasons. First, Bloom's purchase of his interest in CentreMB was *prior* to obtaining funds from these Plaintiffs. The allegation sets forth that Bloom purchased his interest for \$900,000 "over the years 2004-2006". Only Barry Belmont invested any monies during this timeframe, and specifically at the very end of the timeframe – \$500,000 on July 17, 2006 and \$1,000,000 on December 27, 2006.¹⁰ All of the other investments by the Plaintiffs occurred in 2007 or 2008 and, therefore, could not have been used by Bloom in making his purchase.

More importantly, however, a purchase of an ownership interest in an entity that was two steps removed from MB ("Bloom purchased [an interest] in . . . the majority shareholder of MB's corporate parent") fails to adequately establish any benefit to MB. An investment in one entity does not by itself establish a benefit to an affiliate of that entity. The Complaint simply does not state that MB received any benefit from this investment. There is no allegation that the ownership of MB and the majority shareholder of MB's corporate parent were the same or similar. The second allegation, regarding an investment in DOBI International, relates to an investment in an entity that had no affiliation whatsoever with MB except for a lone shared member of the two entities' board of directors. MB received no benefit whatsoever from that investment. The third allegation, regarding the repayment of a loan to Michael Jamison, an officer of MB, also fails to assert any benefit whatsoever to MB.

Further, it is impossible to draw any inference that Bloom's activities benefited MB. The Complaint clearly states that NHM was the sole general partner of North Hills, and that Bloom was the sole owner of NHM. Complaint at ¶ 12. Accordingly, Bloom

¹⁰ In fact, Bloom's last cash investment in CentreMB Holdings, LLC occurred in January, 2006, approximately six months *prior* to the first investment in North Hills by any of the Plaintiffs.

“exercised almost complete control over North Hills and its investments” and “disregarded any formalities distinguishing himself from NHM [and] North Hills.” *Id.* at ¶¶ 34-35. Bloom’s efforts to solicit and obtain investment funds from the Plaintiffs was nothing more than an effort to perpetuate the Ponzi scheme that long pre-dated his association with MB. To the extent that any investments he successfully solicited were placed with North Hills rather than MB, then MB, an investment money manager, lost the benefits that would have accrued from managing such money, including collecting fees on the money under management. Indeed, rather than benefitting MB, Bloom’s conduct was in clear violation of his fiduciary duties to MB, as well as the terms of his employment agreement, and ultimately caused the demise of the business, the termination from employment of all of MB’s employees, and the complete loss of the investments made by MB’s owners in the business. Accordingly, the circumstances here fall well within the so-called “adverse interest exception” to the imputation test. *See, e.g., Lafferty*, 267 F.3d at 359. “Under this exception, fraudulent conduct will not be imputed if the officer’s interests were adverse to the corporation and not for the benefit of the corporation.” *Id.* (internal citation omitted). There is no doubt that Bloom’s conduct was absolutely adverse to that of MB.¹¹

D. Count III of Plaintiffs’ Complaint Should be Dismissed as Plaintiffs Have Failed to State a Claim Under Section 20(a).

The MB Defendants hereby move for dismissal of Count III of the Plaintiffs’ Complaint, which asserts a claim that the Individual MB Defendants are liable as control persons under Section 20(a) of the Exchange Act.

¹¹ It is worth noting that there is no effective argument that the “sole actor” exception to the adverse interest exception is applicable under these circumstances in light of the fact that Bloom was only a minority shareholder of MB and that Bloom was hardly the “sole representative” of MB. *Id.*

Section 20(a) provides that:

every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of the action.

A claim for control person liability under Section 20(a) requires that a plaintiff “allege (1) a violation by a controlled person or entity; (2) control of the violating person or entity by the defendant; and (3) culpable participation by the defendant in the primary violation.” *In re DVI, Inc. Sec. Litig.*, 2005 WL 1307959, at *12 (E.D. Pa.) (internal citation omitted). Because the Plaintiffs have failed to adequately allege that MB is a primary violator, or that the Individual MB Defendants were “control persons” with respect to MB in any event, Count III of the Complaint should be dismissed.¹²

The most fundamental element of a claim under Section 20(a) is a violation of the federal securities laws by a primary violator. “Under the plain language of the [Exchange Act], plaintiffs must prove not only that one person controlled another person, but also that the controlled person is liable under the [Exchange] Act. If no controlled person is liable, there can be no controlling person liability.” *In re Alparma Sec. Litig.*, 372 F.3d. at 153 (internal quotations omitted). The Complaint asserts that the Individual MB Defendants are control persons of MB, against which they have alleged liability under Section 10(b) and Rule 10(b)-5 of the Exchange Act. Complaint at ¶ 83 et seq. For the reasons set forth above in Section B of this Memorandum of Law, however, Plaintiffs’ allegations of securities fraud against MB are legally insufficient and must be dismissed.

¹² The Individual MB Defendants also refer the Court to the detailed arguments set forth with respect to control person liability in the Motion to Dismiss filed by Defendants CentreMB Holdings, LLC, Centre Partners Management LLC, Lester Pollack, Guillaume Bébéar and William Tomai.

Therefore, as a matter of law the Plaintiffs' claims against the Individual MB Defendants under Section 20(a) must also be dismissed.

The Plaintiffs claims should also be dismissed for failing to plead that the Individual MB Defendants exerted "control" over MB for purposes of Section 20(a). Allegations that individuals are merely members of an entity's board of directors are generally insufficient to allege control person liability under Section 20(a). *See, e.g., In re Ravisent Techs., Sec. Litig.*, 2004 WL 1563024 at *15 (E.D. Pa.). Control person liability is a functional test, not a categorical one that turns on whether the individual was an officer or director. *In re Complete Mgmt. Inc. Sec. Litig.*, 153 F.Supp.2d 214, 331 (S.D.N.Y. 2001). Here, the Complaint has said precisely nothing about the Individual MB Defendants other than a simple recitation of the corporate offices they held, and generic statements that they were under a duty to supervise Defendants Bloom and Altman, and that they "knew or were reckless in not knowing" that Bloom was conducting a fraudulent scheme. The Complaint does not allege any facts regarding their purported "control" of the enterprise or the transactions at issue. Rather, the Complaint solely relies on the corporate offices they held, which is insufficient to support a claim of control liability under Section 20(a). In *In re Digital Island Sec. Litig.*, the court similarly dismissed claims which were categorical assertions of offices held, rather than functional control over the transactions at issue. *In re Digital Island Sec. Litig.*, 223 F.Supp.2d 546 (D. Del. 2002). The court ruled that plaintiffs "unsupported allegations regarding management responsibilities fail to allege with requisite specificity that the individual defendants played a role" in the transactions at issue. *Id.* at 561. Devoid of

any factual allegations beyond the offices they held, the Section 20(a) claims asserted against the Individual MB Defendants should be dismissed.

E. Count IV of Plaintiffs' Complaint, For Negligent Supervision, Should be Dismissed.

Plaintiffs' negligent supervision claims, as set forth in Count IV¹³ of the Complaint, should be dismissed for several reasons. First, there is no precedent under Pennsylvania law for holding corporate directors liable for the conduct of a corporation's employees. Second, the conduct must be reasonably foreseeable, and the Plaintiffs have made no allegation that such conduct was foreseeable, nor was Bloom's Ponzi scheme foreseeable in any event.

1. *There is no precedent under Pennsylvania law for holding corporate directors liable for an employee's conduct.*

Count IV of the Complaint asserts a claim for negligent supervision against, among others, the Individual MB Defendants. It appears that such liability would be without precedent, as diligent efforts have failed to uncover a single case in which corporate officers and/or directors were found liable for the actions of its corporate employees.

2. *Bloom's conduct was not reasonably foreseeable.*

The Count should also be dismissed as it was not reasonably foreseeable that Bloom had been, both prior and during his employment by MB, operating an illegal Ponzi scheme. Under Pennsylvania law a claim may be asserted against an employer for negligent supervision of an employee "where the employer fails to exercise ordinary care to prevent an intentional harm to a third-party which (1) is committed on the employer's

¹³ The Complaint inaccurately contains two "Count IV" claims. This motion seeks to dismiss the first Count IV, which is of course numbered correctly, and not the inaccurately numbered Count V.

premises by an employee acting outside the scope of his employment and (2) is reasonably foreseeable.” *Mullen v. Topper’s Salon & Health Spa, Inc.*, 99 F. Supp.2d 553, 556 (E.D. Pa. 2000). While the Complaint is replete with conclusory hyperbole regarding the failure of the various defendants to supervise Defendants Bloom and Altman, the MB Defendants could not have reasonably foreseen that Bloom was, and had been since before he was even hired by MB, operating a totally separate, clandestine, illegal Ponzi scheme.

IV. CONCLUSION

For the reasons set forth above, Counts I, III, and IV should be dismissed with prejudice as to the MB Defendants.

Dated: April 13, 2010

KUTCHIN & RUFO, P.C.

ECKERT SEAMANS CHERIN &
MELLOTT, LLC

By: /s/ Edward D. Kutchin

Edward D. Kutchin (pro hac vice)
Kerry R. Northup (pro hac vice)
Kutchin & Rufo, P.C.
Two Center Plaza, Suite 620
Boston, MA 02108-1906
(617) 542-3000
ekutchin@kutchinrufo.com
knorthup@kutchinrufo.com

By: /s/ Peter J. Hoffman

Peter J. Hoffman
Maureen P. Fitzgerald
Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place
50 South 16th Street, 22nd Floor
Philadelphia, PA 19102
(215) 851-8400
phoffman@eckertseamans.com
mfitzgerald@eckertseamans.com

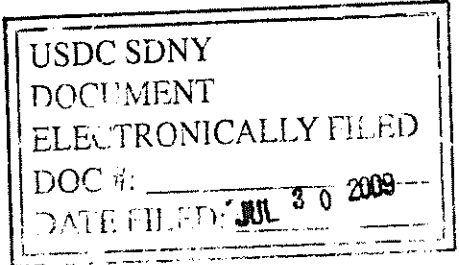
*Attorneys for Defendants
MB Investment Partners, Inc.,
Robert M. Machinist, P. Benjamin Grosscup,
Thomas N. Barr, Christine Munn and Robert A. Bernhard*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----- X

UNITED STATES OF AMERICA :
-v- :
MARK BLOOM, :
Defendant. :

INFORMATION
S1 09 Cr. 367 (JGK)



----- X

COUNT ONE
(Securities Fraud)

The United States Attorney charges:

Relevant Persons and Entities

1. At all times relevant to this Information, MARK BLOOM, the defendant, was the sole owner of North Hills Management, LLC ("North Hills Management" or "NHM"), a limited liability corporation organized under the laws of New York State.

2. At all times relevant to this Information, North Hills Management was the sole General Partner of North Hills LP ("North Hills Fund" or "NHF"), a limited partnership organized under the laws of New York State. At all times relevant to the Information, MARK BLOOM, the defendant, used various locations in New York State to conduct the business of NHF and NHM, including his various residences in New York, New York.

The Scheme to Defraud

3. From at least as early as July 2001 through at least in or about February 2009, MARK BLOOM, the defendant, perpetrated a scheme to defraud the investors of NHF by

soliciting millions of dollars of funds under false pretenses, failing to invest investors' funds as promised, and misappropriating and converting investors' funds to BLOOM's own benefit and the benefit of others without the knowledge or authorization of the investors.

4. To execute the scheme, MARK BLOOM, the defendant, solicited clients to invest with NHF based upon, among other things, his representation that NHF would be a "fund of funds," that is, that it would invest in different hedge funds and management investment vehicles, with a goal of minimizing the risk of the stock market and achieving a 12 percent annual return. For example, in a Private Placement Memorandum (the "PPM") dated July 27, 2001, which BLOOM sent or caused to be sent to prospective investors, BLOOM represented that NHF would invest with money managers who had "proven historical performance," and that substantially all of the securities selected would be "readily marketable." The PPM stated that NHF's goal was "for meaningful diversification of strategies and money managers whose performance will be independent of one another," and that a principal advantage of investing in NHF was that the General Partner would construct "a balanced mix of investment approaches." In the PPM, BLOOM further stated that NHM, as the General Partner, had a "fiduciary duty to the Limited Partners to exercise good faith and fairness in all dealings affecting the Partnership." Pursuant to the PPM and the partnership agreement

which BLOOM and the investors signed, NHM, as the General Partner, was entitled to collect 20 percent of all profits made and an annual management fee of 1 percent of assets under management to cover operational expenses.

5. Based upon the representations in the PPM and the partnership agreement, and other assurances provided by MARK BLOOM, the defendant, investors provided millions of dollars to BLOOM to invest in NHF. These investments were deposited into the operating account of NHF at a bank in New York, New York.

6. At all times relevant to this Information, MARK BLOOM, the defendant, sent or caused to be sent to the investors monthly account statements, which purported to show the balance in their capital accounts at NHF and positive returns. The monthly statements did not itemize how NHF's assets were allocated or identify the money managers who had been retained by NHF.

7. Between at least in or about July 2001 and in or about February 2009, MARK BLOOM, the defendant, diverted at least \$20 million from the NHF operating account, which he converted to his own use without disclosing the fact that he was doing so to the NHF investors. That amount was far in excess of the management fees and shares of profits to which BLOOM was entitled pursuant to the PPM and the partnership agreement. As part of his scheme, BLOOM transferred these funds into the operating account of NHM, and then made disbursements from NHM's operating

account for his own personal expenditures and/or transferred the investor funds to his personal bank account. BLOOM used the investor funds to pay for, among other things, at least \$2.3 million in renovations to apartments owned by BLOOM and his wife in New York, New York, and a house in Westhampton Beach, New York; at least \$750,000 in art; at least \$600,000 in jewelry; and hundreds of thousands of dollars for parties, travel, personal services, and clothing.

8. In or about January 2004, MARK BLOOM, the defendant, entered into a referral agreement (the "PAAM Referral Agreement") with a money management company called the Philadelphia Alternative Asset Management Company ("PAAM"), which operated a commodities trading pool known as the Philadelphia Alternative Asset Fund ("PAAF"). Under the PAAM Referral Agreement, BLOOM received one third of all fees collected by PAAM (the "Referral Fee"), for any investment referred by BLOOM to PAAM. Between in or about February 2004 and January 2005, BLOOM invested more than \$17 million of NHF's assets in PAAF, which represented more than half of NHF's capital. Between in or about 2004 and in or about July 2005, NHF became the largest investor in PAAF, and BLOOM received approximately \$1.6 million in commissions from PAAM. Nevertheless, BLOOM did not disclose the PAAM Referral Agreement to the NHF investors.

9. In addition to failing to disclose his financial interest in PAAF and PAAM, MARK BLOOM, the defendant, did not

disclose to the NHF investors that the majority of their assets were invested with a single money manager, despite the fact that such a concentration of assets in a single investment was inconsistent with the representations made by BLOOM in the PPM that NHF would provide investors with a "meaningful diversification of strategies and money managers whose performance will be independent of one another," and that BLOOM would construct "a balanced mix of investment approaches."

10. In or about June 2005, the United States Commodity Futures Trading Commission ("CFTC") instituted an emergency action in Philadelphia against PAAM and its President, alleging that PAAM and its President had engaged in fraud, including the misappropriation of investor funds (the "PAAM Litigation"). Pursuant to that action, PAAM's assets - including those of PAAF - were frozen and a receiver was appointed to locate and distribute PAAM assets to defrauded investors. As a result, MARK BLOOM, the defendant, disclosed to the NHF investors that they were heavily invested in PAAF, and that the PAAF funds had been frozen because of the CFTC action.

11. After MARK BLOOM, the defendant, made this disclosure, several NHF investors sought to redeem their investments from NHF. BLOOM stalled the investors, citing the illiquidity of the PAAF funds as a reason why he was unable to honor redemption requests. In fact, BLOOM was unable to honor the redemption requests in large part because BLOOM had diverted

to his own personal use the vast majority of the NHF assets that were not invested in PAAF.

12. From in or about July 2005 up to at least in or about December 2008, MARK BLOOM, the defendant, wrote to NHF investors to inform them of the progress of the PAAM Litigation and of scheduled distributions from the PAAM receiver. However, BLOOM failed to disclose to these investors that, in or about September 2006, BLOOM had sold 100 percent of NHF's rights to any PAAM distributions to a third party in exchange for an up-front payment of several million dollars and a portion of any future distributions after the third party recovered its investment. In fact, BLOOM continued to send monthly statements to NHF investors that misrepresented the value of the investors' NHF capital accounts by failing to reflect the third party's claim on any future distributions from the PAAM receiver to NHF.

13. In or about 2007 and 2008, MARK BLOOM, the defendant, solicited approximately \$4 million from new investors in newly created so-called "Class C" shares in NHF. Among other things, BLOOM falsely represented to these investors that NHF would invest their funds with hedge funds. In fact, contrary to the representation he had made to them, BLOOM used these new investors' funds to honor redemption requests of some of the original NHF investors.

14. In or about 2007 and 2008, some of the original NHF investors insisted that MARK BLOOM, the defendant, provide an

accounting of NHF funds that had not been invested with PAAF. In or about November 2008, BLOOM acknowledged to several of the original NHF investors that NHF had no assets other than the PAAF investments and "notes payable" received from the General Partner, NHM. The "notes payable" represented loans that NHF made to NHM, which purported to be payable on demand and accrue 8 percent interest. In truth and in fact, BLOOM, who controlled both NHF and NHM, never demanded that the notes be repaid. BLOOM further acknowledged to these original investors that he had borrowed approximately \$10 million from NHF to, among other things, purchase a personal apartment in New York City.

15. Up until his arrest on or about February 25, 2009, MARK BLOOM, the defendant, sent correspondence to NHF investors which misrepresented the financial condition of NHF. For example, on or about January 30, 2009, BLOOM sent an email to an investor who had been requesting a full redemption for several years. In that email, BLOOM apologized for the delay in making the requested redemption and stated that things were "rather complicated with poor liquidity," as a result of issues beyond his control. Contrary to these representations, as BLOOM well knew, NHF's illiquidity was due largely to the fact that BLOOM had borrowed, and spent, millions of dollars of NHF's assets and was unable to repay the loans.

Statutory Allegation

16. From at least July 2001 through in or about February 2009, in the Southern District of New York and elsewhere, MARK BLOOM, the defendant, unlawfully, willfully, and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in transactions, acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons.

(Title 15, United States Code, Sections 78j(b) and 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5;
Title 18, United States Code, Section 2.)

COUNT TWO
(Mail Fraud)

The United States Attorney further charges:

17. The allegations contained in paragraphs 1 through 15, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

18. From at least as early as in or about July 2001 through in or about February 2009, MARK BLOOM, the defendant, caused investors in NHF to be sent by mail, among other things, false monthly account statements that purported to show the value of their capital accounts at NHF. These statements were sent through the United States Postal Service.

19. From at least in or about July 2001 through in or about February 2009, in the Southern District of New York and elsewhere, MARK BLOOM, the defendant, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice and attempting so to do, did place and cause to be placed in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the United States Postal Service, and did deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and did take and receive therefrom such matters and things, and did knowingly cause to be delivered, by mail and such carriers according to the directions thereon, and at the places at which they were directed to be delivered by the persons to whom they were addressed, such matters and things, to wit, on or about March 11, 2008, BLOOM sent and caused to be sent and delivered via the United States Postal Service an account

statement to an investor in Las Vegas, Nevada which misrepresented the value of the investor's capital account in NHF.

(Title 18, United States Code, Sections 1341 and 2.)

COUNT THREE
(Wire Fraud)

The United States Attorney further charges:

20. The allegations contained in paragraphs 1 through 15, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

21. From at least in or about July 2001 through in or about February 2009, in the Southern District of New York and elsewhere, MARK BLOOM, the defendant, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire and radio communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, BLOOM caused an investor to wire approximately \$1 million on or about July 30, 2007 from the investor's bank account in Atlanta, Georgia, into the NHF operating account at a bank in New York, New York.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT FOUR
(Money Laundering)

The United States Attorney further charges:

22. The allegations contained in paragraphs 1 through 19, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

23. From at least in or about July 2001 through in or about February 2009, in the Southern District of New York and elsewhere, MARK BLOOM, the defendant, in an offense involving and affecting interstate and foreign commerce, unlawfully, willfully, and knowingly engaged and attempted to engage in and cause others to engage in a monetary transaction in criminally derived property that was of a value greater than \$10,000 and was derived from specified unlawful activity, to wit, BLOOM transferred investor funds to his own personal account to, among other things, renovate and decorate his homes in New York, New York and a property at 12 Michaels Way, Westhampton Beach, New York, and purchase millions of dollars in jewelry and art, including artwork for which BLOOM sent a check for \$150,000 to an art dealer in New York, New York, on or about October 7, 2004.

(Title 18, United States Code, Sections 1957 and 2.)

COUNT FIVE

(Corruptly Endeavoring to Obstruct and Impede the
Due Administration of the Internal Revenue Laws)

The United States Attorney further charges:

Background

24. From in or about July 2001 until November 2003, MARK BLOOM, the defendant, was a Certified Public Accountant and a partner at BDO Seidman, LLP, a major international accounting firm ("BDO"), which maintained its headquarters in Chicago, Illinois, and also maintained offices in various other United States cities, including New York, New York. In or about early 1998, a co-conspirator not named as a defendant herein, who was then the head of BDO's national tax practice, and who later became BDO's Chief Executive Officer (the "CEO"), formed a group devoted to designing, marketing, and implementing high-fee tax strategies for individual clients, often with law firms, investment firms, and financial institutions. Initially called the "Tax Sales Executive Group" and "Tax Products Group," the group's name was changed to the "Tax Solutions Group" (hereinafter "TSG") in or about October 1999. The strategies marketed by the TSG included tax shelters that could be used by wealthy clients to eliminate or substantially reduce taxes on significant income or gains. The tax shelters generally generated tax benefits – primarily losses or gain eliminations – that far outweighed the costs to enter into the tax shelters. BDO touted the tax shelters internally as "value-added products"

whereby fees far in excess of the normal hourly billing rate would be charged.

25. From 1998 through October 2000, the CEO led the TSG along with two other tax partners from BDO's New York, New York office. From October 2000 until October 2003, the CEO and one of those partners led the TSG.

26. The TSG engaged in the design, marketing, and implementation of a number of different tax shelters for BDO clients, including several variations of a tax shelter known as the Short Option Strategy ("SOS") tax shelter, one of which was done with the Chicago office of the Jenkins & Gilchrist law firm and a second with an investment firm located in New York, New York. Another of the tax shelters designed, marketed, and implemented by the TSG was known as the Distressed Debt shelter, done with an investment firm located in Greenwich, Connecticut ("Company A").

27. In 2001, MARK BLOOM, the defendant, who had previously been a partner at BDO, was recruited to return to it by the CEO for the express purpose of joining the TSG. In exchange for doing so, the CEO guaranteed BLOOM a \$1 million annual compensation package. BLOOM was to and did utilize his extensive social and business contacts with wealthy individuals in the New York City area for the purpose of attempting to sell BDO's tax shelter products to them.

28. MARK BLOOM, the defendant, utilized a Distressed Debt shelter done with Company A to offset his income received in the years 2001 through 2003.

Statutory Allegations

29. From in or about 2001 through in or about October 2004, in the Southern District of New York and elsewhere, MARK BLOOM, the defendant, did corruptly obstruct and impede, and endeavor to obstruct and impede, the due administration of the Internal Revenue Laws.

Means and Methods of the Corrupt Endeavor to Obstruct and Impede

30. Among the means and methods used by MARK BLOOM, the defendant, to corruptly obstruct and impede and endeavor to obstruct and impede the due administration of the Internal Revenue Laws, were the following:

A. The Promotion of the Fraudulent Tax Shelters

31. TSG members, including MARK BLOOM, the defendant, marketed a variety of tax shelters, including the SOS tax shelter with lawyers at the law firm of Jenkins & Gilchrist in Chicago and with a New York City-based investment firm, and the Distressed Debt tax shelter with Company A. BLOOM then knew and understood that the tax shelter products marketed by him, the TSG, and other members of BDO, were preplanned products designed to eliminate taxes due and owing by the clients who purchased them and were not done for investment purposes.

32. BDO referred clients to Company A for implementation of the financial transactions used in the Distressed Debt tax shelters. MARK BLOOM, the defendant, and others at BDO portrayed the tax shelters to clients as turnkey products with all-in fees paid to BDO and Company A, with additional amounts to be paid to the law firms issuing opinion letters. The law firms issued legal opinion letters concluding that it was "more likely than not" that the client would prevail in claiming the tax benefits from the tax shelter if challenged by the Internal Revenue Service ("IRS"). BLOOM knew and understood that the legal opinion letters were intended to be presented to the IRS in defense of the tax shelter, if and when the clients were audited, and used not only to undermine the ability of the IRS to ascertain the clients' true tax liabilities, but also to undermine the IRS's ability to determine whether penalties should be imposed. BLOOM also knew and understood that the opinion letters contained false and fraudulent representations about the taxpayers' purported motives for entering into the shelters and about the taxpayers' purported nontax business purposes in entering into the tax shelters.

33. MARK BLOOM, the defendant, knew and understood that BDO's tax shelters, including the Distressed Debt tax shelter, were designed, marketed, and implemented for the sole purpose of eliminating taxes otherwise due on its clients' ordinary income and/or capital gains, but were to be falsely

portrayed to the IRS as investment opportunities for the clients. BLOOM pitched a number of potential clients on several different tax shelters being promoted by BDO, knowing full well that the clients had no investment motive or nontax business purpose in purchasing the tax shelters.

34. In promoting the Distressed Debt tax shelter, MARK BLOOM, the defendant, further knew and understood that Company A maintained two funds of distressed debt, one to be used for the tax shelters and another to be used for true investments. BLOOM knew and understood that the quality of the distressed debt used in the tax shelters was inferior to that used in the true investment fund and was unlikely to produce economic profits for the tax shelter clients. BLOOM would not have invested or recommended investment in the distressed debt fund used for the tax shelters but for the desire to generate large tax losses.

35. MARK BLOOM, the defendant, further knew and understood that the consulting agreement used by BDO for its tax shelters contained a false and fraudulent description of the nature and scope of the services to be rendered under the agreement, and deliberately omitted any mention of the purchase of the tax shelter by the client. In truth and fact, as BLOOM, other TSG members, and others knew, the services to be rendered under the consulting agreement and the fees referenced therein were solely for the implementation of the tax shelter. This was done so that BDO and its clients could falsely tell the IRS that

the fees were for services in addition to the tax shelter, and therefore only a portion of BDO's fees should be counted when conducting a profitability analysis of the tax shelter.

B. Bloom's Personal False and Fraudulent Shelter Deductions

36. For the tax years 2001, 2002, and 2003, MARK BLOOM, the defendant, claimed tax shelter losses on his own U.S. Individual Income Tax Returns, Forms 1040, from Distressed Debt tax shelters implemented by Company A. Bloom knew and understood that in order to claim the losses generated by those tax shelters there had to be a realistic possibility for economic profit, and he had to have a nontax business purpose for entering into the tax shelters. In truth and fact, as BLOOM then and there well knew, there was no realistic possibility for economic profit, and BLOOM did not have any genuine investment motive or nontax business purpose, but rather entered into the tax shelters solely to generate tax losses to offset ordinary income in the years 2001, 2002, and 2003.

37. For the tax year 2001, MARK BLOOM, the defendant, willfully filed a false and fraudulent income tax return on which he claimed a \$1,924,111 fraudulent loss derived from a Distressed Debt tax shelter. For the tax year 2002, BLOOM willfully filed a false and fraudulent income tax return on which he claimed a \$2,222,299 fraudulent loss derived from a second Distressed Debt tax shelter. For the tax year 2003, BLOOM willfully filed a

false and fraudulent income tax return on which he claimed \$1,016,037 in fraudulent losses derived from the Distressed Debt tax shelter he entered into in the 2002 tax year and a carryforward loss of \$3,024 from the Distressed Debt tax shelter he entered into in the 2001 tax year.

38. MARK BLOOM, the defendant, further knew and understood that the tax opinion letters for his personal Distressed Debt tax shelters contained representations about BLOOM'S purported investment motives and purported nontax business purpose in entering into the tax shelters that were false and fraudulent. BLOOM signed representation letters in connection with his opinion letters that contained false and fraudulent representations about his purported investment motives and purported nontax business purposes for entering into the tax shelters.

(Title 26, United States Code, Section 7212(a).)

**FORFEITURE ALLEGATION
AS TO COUNTS ONE, TWO AND THREE**

39. As the result of committing one or more of the foregoing securities, mail, and wire fraud offenses alleged in Counts One, Two and Three of this Information, MARK BLOOM, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the

commission of the fraud offenses, including but not limited to the following:

a. At least \$20 million in United States currency, in that such sum in aggregate is property representing the amount of proceeds obtained as a result of the charged securities, mail, and wire fraud offenses;

b. All right, title, and interest in the following specific property:

1. Any and all funds on deposit in Account No. 500-0002-9769 held at First Republic Bank in the name of Lauren Bloom;
2. The real property and appurtenances known and described as 12 Michaels Way, Westhampton Beach, New York;
3. The real property and appurtenances known and described as 45 Ocean Avenue, Unit 81, Monmouth Beach, New Jersey;
4. The real property and appurtenances known and described as 5032 Rose Hill Drive, Apt. 3-104, Boynton Beach, Florida;
5. One 2005 Formula 330 Sun Sport boat, with dual Volvo 8.1 liter engines;
6. An 18K yellow gold midsize, Oyster Perpetual Datejust, automatic movement, wristwatch with a white dial, fluted bezel 31mm in size, and an 18K yellow gold President bracelet;
7. One ladies' 18K yellow gold diamond flower ankle bracelet designed by Judith Ripka;
8. One 18K white gold diamond and yellow sapphire ankle bracelet;
9. One 18K yellow gold, rose quartz, crystal and pink sapphires in a long 32 inch necklace designed by Judith Ripka;

10. One ladies' 18K yellow gold solid link bracelet designed by Verdura;
11. One 18K yellow gold diamond Bvlgari flexible wrap ring;
12. One 18K yellow and white gold Buccellati snowflake band ring;
13. One 18K yellow gold wide Elizabeth Gage purple sapphire wedding band;
14. One pair of 18K yellow gold circle earrings with round diamonds designed by Judith Ripka;
15. One pair of 18K yellow gold diamond and quartz ball earrings;
16. One yellow gold bangle bracelet, "rigator" engraved, decorated with rhomb and triangular blue and green enameled motifs, further enhanced with "ornatine" engraving;
17. One ladies' platinum diamond necklace with heart-shaped solitaire;
18. One Bvlgari colored stone bracelet;
19. One ladies' Verdura three stone ring;
20. One Van Cleef & Arpels Socrate Ring in 18K yellow gold with diamonds;
21. One Van Cleef & Arpels daphne clip in pink sapphire and diamonds;
22. One Harry Winston Timepiece Model #200;
23. One ladies' 18K white gold diamond tube set nine row bracelet imported from Italy;
24. One pair of 22K yellow gold hoop earrings designed by Fern Freeman;
25. One 18K white gold blue sapphire and black diamond band ring imported from Italy;

26. One 18K yellow gold long chain and pearl and peridot link necklace;
27. One pair of 18K white gold diamond hoop earrings imported from Italy;
28. One ladies' 18K white gold very wide diamond cuff bracelet;
29. One pair of 18K yellow gold diamond hoop earrings imported from Italy;
30. One long chain necklace with black and white pearls imported from Italy;
31. One pair of 18K white gold South Sea pearl and pink tourmaline earrings;
32. One pair of 18K yellow and white gold hoops with diamonds imported from Italy;
33. One pair of 18K white gold diamond pave double hoop earrings imported from Italy;
34. One De Grossigono rose gold watch with diamonds on bond galuchat strap;
35. One Fern Freeman disk necklace;
36. One Fern Freeman long chain necklace with rectangle pieces and baby pearls;
37. One circle in circle pink gold necklace;
38. One chain of hearts with pave diamond disk medallion;
39. One pair of hanging earrings with mint-colored stone;
40. One ladies' 18K yellow gold colored-stone heart pendant imported from Italy;
41. One ladies' 14K yellow gold solid link bracelet with colored stones imported from Italy;
42. One ladies' 18K yellow gold 34-inch chain imported from Italy;

43. One ladies' 18K yellow gold Cartier panther style bracelet watch, "Cougar" case;
44. One ladies' stainless steel Cartier Tank Francaise bracelet watch;
45. One ladies' 18K white gold diamond wedding band;
46. One 18K yellow gold dragonfly pin;
47. Three strands of green tourmaline beads with an 18K yellow gold clasp;
48. One 18K yellow gold turquoise and ruby bead lariat necklace;
49. One 22K yellow gold turquoise and ruby bead necklace;
50. One three-strand citrine and pink tourmaline bead necklace with 18K yellow gold clasp;
51. One 18K yellow gold briolette fire opal, tourmaline necklace;
52. One two-strand necklace of aqua, citrine, peridot and 18K yellow gold;
53. One calcedoney big chunk stone necklace;
54. One 18K yellow gold emerald and diamond necklace;
55. One pair of 18K yellow gold Asprey sunflower earrings;
56. One iolite and pearl necklace with heart pearl charm;
57. One grey freshwater pearl and garnet flower necklace;
58. One 18K white gold diamond triangle necklace designed by Judith Ripka;
59. One ladies' stainless steel and 18K yellow gold Cartier Santos bracelet watch;

60. One ladies' 18K yellow gold Frank Mueller conquistador watch;
61. One ladies' 18K white gold Frank Mueller bracelet watch;
62. One 18K white gold diamond pave bar and circle link bracelet;
63. One 18K yellow gold Gucci circle wedding band;
64. One ladies' 18K yellow gold Buccellati braided wedding band;
65. One 18K yellow gold and diamond "star" wedding band;
66. One pair of 18K yellow gold Van Cleef & Arpels clover earrings;
67. Two separate 22K yellow gold pink tourmaline necklaces by Fern Freeman;
68. One 22K yellow gold pink tourmaline and emerald bead ring;
69. One 18K white gold imported Italian diamond choker necklace;
70. One pair of 18K white gold hoop and flower earrings;
71. One pair of 18K white gold tiny baby hoops with round diamonds;
72. One pair of 18K white gold circle pave stick earrings;
73. One pair of 18K yellow gold onyx Bvlgari earrings;
74. One pair of 18K yellow gold antique coin earrings imported from Italy;
75. One 18K yellow gold pink and green tourmaline bead toggle necklace;

76. One pair of 18K yellow gold pearl and sapphire flower earrings imported from Italy;
77. One 18K yellow gold sapphire all around wedding band;
78. One 18K yellow gold pink sapphire all around wedding band;
79. One 18K yellow gold band ring with one oval sapphire;
80. One 18K white gold dome band imported from Italy with round diamonds;
81. One Bulgari coral and onyx flip ring;
82. One turquoise and diamond ring 18K yellow gold designed by Judith Ripka;
83. One 22K yellow gold pink quartz and pink pearl ring;
84. One pair of 18K yellow gold opal earrings designed by Mallory Marks;
85. One pair of 18K white gold diamond pave huggie earrings designed by Judith Ripka;
86. One pair of 18K pink gold diamond baby hoops;
87. One pair of "dogwood" flower earrings designed by Judith Ripka;
88. One 4mm 18K yellow gold round bangle bracelet with pink sapphires designed by Judith Ripka;
89. One 4mm 18K yellow gold round bangle bracelet with light green sapphires designed by Judith Ripka;
90. One 4mm 18K yellow gold round bangle bracelet with yellow sapphires designed by Judith Ripka;
91. One 1.66 carat diamond Breitling watch;
92. One round pave diamond pendant on snake chain diamond necklace;

93. One Bvlgari rubber bracelet stainless watch;
94. One pair of Van Cleef & Arpels snowflake pendant ear clips with diamonds;
95. Ladies' platinum and 18K yellow gold pink sapphire and diamond ring;
96. One pair of 18K white gold diamond spiral ball hanging earrings;
97. One men's Frank Mueller watch;
98. One men's IWC watch;
99. One men's IWC dive watch;
100. One men's Rolex watch (gold and silver);
101. One men's Rolex watch (chrome silver);
102. Gold cufflinks and studs (evil eye) (2001);
103. Unique toned silver print by Kunie Sugiura, "Stacks Tulips A8 Positive 4" (1997);
104. Charcoal and mixed media on paper by Donald Sultan, "Untitled (Two Flowers)" (2000);
105. Cibachrome print by Vik Muniz, "Quathlamba (Frank Stella)" (1999);
106. Gelatin print by Clifford Ross, "Hurricane III" (2000);
107. Gelatin print by Clifford Ross, "Hurricane XVIII" (2002);
108. Lambda C print by Doug & Mike Starn, "Black Pulse #7" (2002);
109. Alkaloid on linen by Stephen Ellis, "SELV-02-4" (2002);
110. Watercolor on paper by Eric Fischl, "Untitled (Study for the Weight)" (1995);

111. Black and white photograph by Hiroshi Sugimoto, "Canton Palace" (1980);
112. India ink on paper by Al Held, AF 12, AF 19, and AF 21 (3 works) (c. 1962);
113. Katy Grannan, "Angela," Red Hook, NY (2003);
114. Katy Grannan, "Taryn & Bird," Pinardville, NH (2003);
115. Thomas Ruff, "Nude, P108" (2001);
116. Lynda Benglis, "Broadcast" (2002-03);
117. Lisa Ruyter, "Untitled (Big Tree)" (2004);
118. Gotz Diergarten, "Untitled (Gouville)" (2002);
119. Watercolor by Malcolm Morley, "Horse and Pony" (1983);
120. Donald Baechler, "Oligarch Agonistes #2" (2004);
121. Bryan Hunt, "Rising" (2001);
122. Stephen Balkenhol, "Woman in Red Trousers" (2002);
123. Christoph Steinmeyer, "Tutelsblumen" (2005);
124. Murano Glass by Jen Michael Othoniel, "Tresor Fontaine";
125. Silkscreen on stainless steel by Roy Lichtenstein, "Water Lilies - Blue Lilly Pads" (1992);
126. Peter Dayton, "Apple Still Life #4 - #7" (2003);
127. One Steinway piano located at 12 Michaels Way, Westhampton Beach, New York;
128. One Steinway piano formerly located at 502 Park Avenue, New York, New York;

129. One natural Russian sable coat with matching hat;

130. One black and white chinchilla jacket; and

131. One Hermes bag.

Substitute Asset Provision

40. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 981(a)(1)(C);
Title 21, United States Code, Section 853(p);
and Title 28, United States Code, Section 2461.)

FORFEITURE ALLEGATION
AS TO COUNT FOUR

41. As the result of committing the money laundering offense alleged in Count Four of this Information, MARK BLOOM, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982, all property, real and personal, involved in the money laundering offense and all property traceable to such property, including but not limited to the following:

a. At least \$20 million in United States currency, in that such sum in aggregate is property involved in the money laundering offense or is traceable to such property; and

b. All of the defendant's right, title and interest in the properties, numbered 1 through 131, identified in Paragraph 39b above.

Substitute Asset Provision

42. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

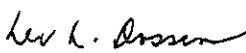
b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;
it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 982.)



LEV L. DASSIN
Acting United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

MARK BLOOM,

Defendant.

INFORMATION

S1 09 Cr. 367 (JGK)

LEV L. DASSIN
Acting United States Attorney.

7/30/2009 FILED WAIVER OF INDICTMENT AND SUPERCEDING INFORMATION, DEFT
ARRAIGNED ON SUPERCEDING INFORMATION. DEFT CHANGES PLEA
OF NOT GUILTY TO INDICTMENT AND PLEADS GUILTY TO ALL COUNTS
OF SUPERCEDING INFORMATION. SENTENCE DATE 12/4/2009 AT 9:30am.
PSI ORDERED. BAIL MODIFIED: EXTENDED TO EDPA; EXT TO
MASSACHUSETTS BETWEEN 8/7/2009 AND 8/10/2009.

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7-16-09

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA :
:
- v. - :
:
MARK BLOOM, :
:
Defendant. :
:
----- x

STIPULATION AND ORDER

09 Cr. 367 (JGK)

WHEREAS, on April 14, 2009, Mark Bloom (the "defendant"), was charged in a four-count Information, 09 Cr. 367 (JGK), with securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2 (Count One); mail fraud, in violation of Title 18, United States Code, Sections 1341 and 2 (Count Two); wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2 (Count Three); and money laundering, in violation of Title 18, United States Code, Sections 1957 and 2 (Count Four);

WHEREAS, the Information includes forfeiture allegations providing notice that the Government is seeking forfeiture, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, of all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the fraud offenses charged in Counts One, Two, and Three of the

Information, and pursuant to Title 18, United States Code, Section 982, of all property, real and personal, involved in the money laundering offense charged in Count Four of the Information, and all property traceable to such property;

WHEREAS, on or about April 17, 2009, this Court entered a post-information restraining order upon the application of the Government and the consent of the defendant, restraining the defendant's interest in any property subject to forfeiture upon his conviction, as described in forfeiture allegations of the Information (the "Restraining Order");

WHEREAS, the parties to this Agreement, the United States of America (the "United States"), through Lev L. Dassin, Acting United States Attorney for the Southern District of New York, by Jessica A. Roth, Amy Lester, and Sharon Cohen Levin, Assistant United States Attorneys, and Lauren Bloom, the wife of the defendant (the "Parties"), desire to resolve without litigation Lauren Bloom's potential claims to the assets listed on the attached Schedule A (the "Schedule A Assets"), and to resolve without litigation potential claims of the United States to the assets listed on the attached Schedule B (the "Schedule B Assets");

WHEREAS, the Schedule A and Schedule B Assets have been frozen pursuant to Orders issued by this Court in the parallel

cases brought by the United States Securities and Exchange Commission ("SEC") and the United States Commodity Futures Trading Commission ("CFTC") as part of their civil actions against the defendant and various corporate entities that he controlled, and against Lauren Bloom as a relief defendant. See Securities and Exchange Commission v. North Hills Management, LLC, and Mark Evan Bloom, Defendants, and North Hills, LP and Lauren Bloom, Relief Defendants, 09 Civ. 1746 (JGK); and U.S. Commodity Futures Trading Commission v. Mark Evan Bloom and North Hills Management, LLC, Defendants, and Lauren Bloom, Relief Defendant, 09 Civ. 1751 (JGK);

WHEREAS, it is Lauren Bloom's understanding that, upon the settlement of the forfeiture matters in this Agreement, the SEC Division of Enforcement intends to recommend to the SEC that it enter into a Consent Order of Dismissal of its action against her in a form to be proposed to Lauren Bloom by the SEC Division of Enforcement, and which includes her waiver of costs, including costs under the EAJA and SBREFA, and any right to appeal;

WHEREAS, it is also Lauren Bloom's understanding that, upon the settlement of the forfeiture matters in this Agreement, the CFTC Division of Enforcement intends to recommend to the CFTC that it enter into a Consent Order of Dismissal of its action against her in a form to be proposed to Lauren Bloom by the CFTC

Division of Enforcement, and which includes her waiver of costs, including costs under the EAJA and SBREFA, and any right to appeal; and

WHEREAS, the Parties agree that a settlement on the terms and conditions set forth herein will serve the best interests of the Parties without the need for further litigation and intend for this Stipulation and Order to constitute a full and final settlement of forfeiture matters between the Parties;

IT IS HEREBY STIPULATED AND AGREED as follows:

1. Lauren Bloom will not contest the administrative or judicial forfeiture, pursuant to Title 18, United States Code, Sections 981, 982, and 984, of the Schedule A Assets.

2. Lauren Bloom will take all necessary steps to pass clear title to the Schedule A Assets to the United States, its agent or designee, for the Schedule A Assets within her dominion and control, including, but not limited to, the execution of all documentation necessary to convey title or otherwise relinquish all of her interest in the Schedule A Assets.

3. Lauren Bloom represents that -- with the exception of the following two assets in which Hollis Coleman and Thelma Bloom may have potential property interests: i) the real property and appurtenances known and described as 45 Ocean Avenue, Unit 81, Monmouth Beach, New Jersey; and ii) the real property and

appurtenances known and described as 5032 Rose Hill Drive, Apt. 3-104, Boynton Beach, Florida -- she is aware of no one who might have a property interest in the Schedule A Assets other than herself and her husband, the defendant.

4. As long as she possesses or maintains control over any of the Schedule A Assets, Lauren Bloom agrees to maintain them in order to preserve their current market value (normal wear and tear excepted) and to maintain existing insurance policies on the Schedule A Assets with coverage satisfactory to the United States Attorney's Office. Lauren Bloom shall fully cooperate with any persons and entities designated by the United States Attorney's Office to inspect or examine the Schedule A Assets. Lauren Bloom shall not encumber or transfer any title or ownership or cause any alteration to the Schedule A Assets without prior written approval of the Office United States Attorney's Office.

5. It is understood that Lauren Bloom will not, in any judicial, administrative, or other proceeding involving the Schedule A Assets, file a claim or otherwise contest the forfeiture of the Schedule A Assets. Nor will Lauren Bloom assist any third party in filing a claim or otherwise contesting the forfeiture of the Schedule A Assets. Nothing herein shall prevent Lauren Bloom from engaging in discovery in the course of

any civil action in which she is a defendant, or from reaching a settlement of such litigation.

6. The United States Attorney's Office shall have the sole discretion to appoint or seek judicial approval of manager(s) for the Schedule A Assets (including, but not limited to, the United States Marshals Service).

7. The United States Attorney's Office shall notify Lauren Bloom of the mortgage broker, real estate agent, and/or listing agent chosen to market and sell the real property located at 12 Michaels Way, Westhampton Beach, New York.

8. Lauren Bloom is hereby barred from asserting any claims against the United States or any of its agents and employees, including the United States Marshals Service and the United States Attorney's Office, in connection with, or arising out of, the United States' forfeiture of the Schedule A Assets or the transfer of the Schedule A Assets to the United States, its agents and designees.

9. The United States agrees that it will not institute any judicial, administrative, or other forfeiture proceeding against the Schedule B Assets in the context of the instant criminal case against the defendant. The United States also agrees that, to the extent that the Schedule B Assets were restrained pursuant to the Restraining Order in this action, they are no longer subject

to restraint under the Restraining Order upon the execution of this Agreement.

10. This Agreement shall not constitute an admission of any criminal or civil liability or wrongdoing on the part of Lauren Bloom.

11. The United States' agreement to and the Court's approval of this Agreement is expressly premised upon the truthfulness, accuracy, and completeness in every material part of the representations made by Lauren Bloom to the United States.

12. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement shall be enforceable.

13. The Court shall have exclusive jurisdiction over the interpretation and enforcement of this Stipulation and Order.

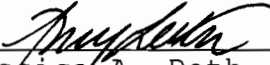
14. This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed the complete Stipulation and Order.

15. The Clerk of the Court shall forward four certified copies of this Stipulation and Order to Assistant United States Attorney Amy Lester, One St. Andrew's Plaza, New York, New York 10007.

AGREED AND CONSENTED TO:

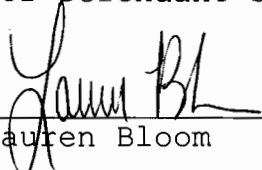
For the United States:

LEV L. DASSIN
Acting United States Attorney
Southern District of New York

By: 
Jessica A. Roth
Amy Lester
Sharon Cohen Levin
Assistant United States Attorneys
One St. Andrew's Plaza
New York, NY 10007
(212) 637-2347/2416/1060


Dated: 7/16/09

For Defendant's Wife:


Lauren Bloom

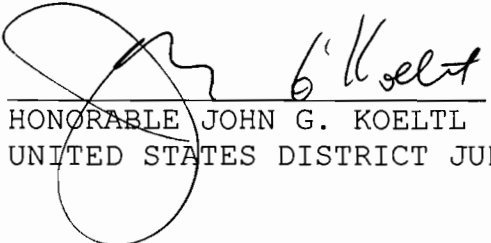
Dated: 7/15/09

Attorneys for Defendant's Wife:


Daniel J. Fetterman, Esq.
Christian T. Becker, Esq.
Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway
New York, NY 10019
212-506-1700

Dated: 7/15/09

SO ORDERED:


HONORABLE JOHN G. KOELTL
UNITED STATES DISTRICT JUDGE

Dated: 7/16/09

SCHEDULE A

1. Any and all funds on deposit in Account No. 500-0002-9769 held at First Republic Bank in the name of Lauren Bloom;
2. \$600,000 of the net proceeds from the sale of the real property and appurtenances known and described as 12 Michaels Way, Westhampton Beach, New York;
3. The real property and appurtenances known and described as 45 Ocean Avenue, Unit 81, Monmouth Beach, New Jersey;
4. The real property and appurtenances known and described as 5032 Rose Hill Drive, Apt. 3-104, Boynton Beach, Florida;
5. One 2005 Formula 330 Sun Sport boat, with dual Volvo 8.1 liter engines;
6. An 18K yellow gold midsize, Oyster Perpetual Datejust, automatic movement, wristwatch with a white dial, fluted bezel 31mm in size, and an 18K yellow gold President bracelet;
7. One ladies' 18K yellow gold diamond flower ankle bracelet designed by Judith Ripka;
8. One 18K white gold diamond and yellow sapphire ankle bracelet;
9. One 18K yellow gold, rose quartz, crystal and pink sapphires in a long 32 inch necklace designed by Judith Ripka;
10. One ladies' 18K yellow gold solid link bracelet designed by Verdura;
11. One 18K yellow gold diamond Bvlgari flexible wrap ring;
12. One 18K yellow and white gold Buccellati snowflake band ring;
13. One 18K yellow gold wide Elizabeth Gage purple sapphire wedding band;
14. One pair of 18K yellow gold circle earrings with round diamonds designed by Judith Ripka;

15. One pair of 18K yellow gold diamond and quartz ball earrings;
16. One yellow gold bangle bracelet, "rigator" engraved, decorated with rhomb and triangular blue and green enameled motifs, further enhanced with "ornatine" engraving;
17. One ladies' platinum diamond necklace with heart-shaped solitaire;
18. One Bvlgari colored stone bracelet;
19. One ladies' Verdura three stone ring;
20. One Van Cleef & Arpels Socrate Ring in 18K yellow gold with diamonds;
21. One Van Cleef & Arpels daphne clip in pink sapphire and diamonds;
22. One Harry Winston Timepiece Model #200;
23. One ladies' 18K white gold diamond tube set nine row bracelet imported from Italy;
24. One pair of 22K yellow gold hoop earrings designed by Fern Freeman;
25. One 18K white gold blue sapphire and black diamond band ring imported from Italy;
26. One 18K yellow gold long chain and pearl and peridot link necklace;
27. One pair of 18K white gold diamond hoop earrings imported from Italy;
28. One ladies' 18K white gold very wide diamond cuff bracelet;
29. One pair of 18K yellow gold diamond hoop earrings imported from Italy;
30. One long chain necklace with black and white pearls imported from Italy;

31. One pair of 18K white gold South Sea pearl and pink tourmaline earrings;
32. One pair of 18K yellow and white gold hoops with diamonds imported from Italy;
33. One pair of 18K white gold diamond pave double hoop earrings imported from Italy;
34. One De Grossigono rose gold watch with diamonds on bond galuchat strap;
35. One Fern Freeman disk necklace;
36. One Fern Freeman long chain necklace with rectangle pieces and baby pearls;
37. One circle in circle pink gold necklace;
38. One chain of hearts with pave diamond disk medallion;
39. One pair hanging earrings with mint-colored stone;
40. One ladies' 18K yellow gold colored-stone heart pendant imported from Italy;
41. One ladies' 14K yellow gold solid link bracelet with colored stones imported from Italy;
42. One ladies' 18K yellow gold 34-inch chain imported from Italy;
43. One ladies' 18K yellow gold Cartier panther style bracelet watch, "Cougar" case;
44. One ladies' stainless steel Cartier Tank Francaise bracelet watch;
45. One ladies' 18K white gold diamond wedding band;
46. One 18K yellow gold dragonfly pin;
47. Three strands of green tourmaline beads with an 18K yellow gold clasp;

48. One 18K yellow gold turquoise and ruby bead lariat necklace;
49. One 22K yellow gold turquoise and ruby bead necklace;
50. One three-strand citrine and pink tourmaline bead necklace with 18K yellow gold clasp;
51. One 18K yellow gold briolette fire opal, tourmaline necklace;
52. One two-strand necklace of aqua, citrine, peridot and 18K yellow gold;
53. One calcedoney big chunk stone necklace;
54. One 18K yellow gold emerald and diamond necklace;
55. One pair of 18K yellow gold Asprey sunflower earrings;
56. One iolite and pearl necklace with heart pearl charm;
57. One grey freshwater pearl and garnet flower necklace;
58. One 18K white gold diamond triangle necklace designed by Judith Ripka;
59. One ladies' stainless steel and 18K yellow gold Cartier Santos bracelet watch;
60. One ladies' 18K yellow gold Frank Mueller conquistador watch;
61. One ladies' 18K white gold Frank Mueller bracelet watch;
62. One 18K white gold diamond pave bar and circle link bracelet;
63. One 18K yellow gold Gucci circle wedding band;
64. One ladies' 18K yellow gold Buccellati braided wedding band;
65. One 18K yellow gold and diamond "star" wedding band;

66. One pair of 18K yellow gold Van Cleef & Arpels clover earrings;
67. Two separate 22K yellow gold pink tourmaline necklaces by Fern Freeman;
68. One 22K yellow gold pink tourmaline and emerald bead ring;
69. One 18K white gold imported Italian diamond choker necklace;
70. One pair of 18K white gold hoop and flower earrings;
71. One pair of 18K white gold tiny baby hoops with round diamonds;
72. One pair of 18K white gold circle pave stick earrings;
73. One pair of 18K yellow gold onyx Bvlgari earrings;
74. One pair of 18K yellow gold antique coin earrings imported from Italy;
75. One 18K yellow gold pink and green tourmaline bead toggle necklace;
76. One pair of 18K yellow gold pearl and sapphire flower earrings imported from Italy;
77. One 18K yellow gold sapphire all around wedding band;
78. One 18K yellow gold pink sapphire all around wedding band;
79. One 18K yellow gold band ring with one oval sapphire;
80. One 18K white gold dome band imported from Italy with round diamonds;
81. One Bvlgari coral and onyx flip ring;
82. One turquoise and diamond ring 18K yellow gold designed by Judith Ripka;
83. One 22K yellow gold pink quartz and pink pearl ring;

84. One pair of 18K yellow gold opal earrings designed by Mallory Marks;
85. One pair of 18K white gold diamond pave huggie earrings designed by Judith Ripka;
86. One pair of 18K pink gold diamond baby hoops;
87. One pair of "dogwood" flower earrings designed by Judith Ripka;
88. One 4mm 18K yellow gold round bangle bracelet with pink sapphires designed by Judith Ripka;
89. One 4mm 18K yellow gold round bangle bracelet with light green sapphires designed by Judith Ripka;
90. One 4mm 18K yellow gold round bangle bracelet with yellow sapphires designed by Judith Ripka;
91. One 1.66 carat diamond Breitling watch;
92. One round pave diamond pendant on snake chain diamond necklace;
93. One Bvlgari rubber bracelet stainless watch;
94. Unique toned silver print by Kunie Sugiura, "Stacks Tulips A8 Positive 4" (1997);
95. Charcoal and mixed media on paper by Donald Sultan, "Untitled (Two Flowers)" (2000);
96. 50% of the proceeds from the sale of the following items:
 - a. One pair of Van Cleef & Arpels snowflake pendant ear clips with diamonds;
 - b. Ladies' platinum and 18K yellow gold pink sapphire and diamond ring;
 - c. One pair of 18K white gold diamond spiral ball hanging earrings;

These items will be sold within one year of the execution of this Agreement by Lauren Bloom with the supervision of the United States Attorney's Office.

97. One men's Rolex gold Presidential watch (oyster);
98. One men's Frank Mueller watch;
99. One men's IWC watch;
100. One men's IWC dive watch;
101. One men's Rolex watch (gold and silver);
102. One men's Rolex watch (chrome silver);
103. Gold cufflinks and studs (evil eye) (2001);
104. Cibachrome print by Vik Muniz, "Quathlamba (Frank Stella)" (1999);
105. Gelatin print by Clifford Ross, "Hurricane III" (2000);
106. Gelatin print by Clifford Ross, "Hurricane XVIII" (2002);
107. Lambda C print by Doug & Mike Starn, "Black Pulse #7" (2002);
108. Alkaloid on linen by Stephen Ellis, "SELV-02-4" (2002);
109. Watercolor on paper by Eric Fischl, "Untitled (Study for the Weight)" (1995);
110. Black and white photograph by Hiroshi Sugimoto, "Canton Palace" (1980);
111. India ink on paper by Al Held, AF 12, AF 19, and AF 21 (3 works) (c. 1962);
112. Katy Grannan, "Angela," Red Hook, NY (2003);
113. Katy Grannan, "Taryn & Bird," Pinardville, NH (2003);
114. Thomas Ruff, "Nude, P108" (2001);
115. Lynda Benglis, "Broadcast" (2002-03);

116. Lisa Ruyter, "Untitled (Big Tree)" (2004);
117. Gotz Diergarten, "Untitled (Gouville)" (2002);
118. Watercolor by Malcolm Morley, "Horse and Pony" (1983);
119. Donald Baechler, "Oligarch Agonistes #2" (2004);
120. Bryan Hunt, "Rising" (2001);
121. Stephen Balkenhol, "Woman in Red Trousers" (2002);
122. Christoph Steinmeyer, "Tutelsblumen" (2005);
123. Murano Glass by Jen Michael Othoniel, "Tresor Fontaine";
124. Silkscreen on stainless steel by Roy Lichtenstein, "Water Lilies - Blue Lilly Pads" (1992);
125. Peter Dayton, "Apple Still Life #4 - #7" (2003);
126. One Steinway piano located at 12 Michaels Way, Westhampton Beach, New York;
127. One Steinway piano formerly located at 502 Park Avenue, New York, New York;
128. One natural Russian sable coat with matching hat;
129. One black and white chinchilla jacket; and
130. One Hermes bag.

SCHEDULE B

1. Any amount in excess of \$600,000 from the net proceeds from the sale of the real property and appurtenances known and described as 12 Michaels Way, Westhampton Beach, New York;
2. Any and all funds on deposit in Account No. HUN-150327 held at Beech Hill Securities in the name of Lauren Bloom;
3. Any and all funds on deposit in Account No. 2112-6327 held at Charles Schwab in the names of Lauren Bloom and Mark Bloom as tenants in common;
4. Any and all funds on deposit in Account No. 2124-9301 held at Charles Schwab in the name of Lauren Bloom for Reid Bloom;
5. Any and all funds on deposit in Account No. 2044-5951 held at Charles Schwab in the name of Mark Bloom for Taylor Bloom;
6. Any and all funds on deposit in Account No. 022-0644616-65 held at Chase Bank in the name of Lauren Bloom;
7. Any and all funds on deposit in Account No. 920-6078297-65 held at Chase Bank in the name of Lauren Bloom;
8. Any and all funds on deposit in Account No. 920-0048613-65 held at Chase Bank in the name of Lauren Bloom;
9. Any and all funds on deposit in Account No. 920-6078318-01 held at Chase Bank in the name of Lauren Bloom;
10. Any and all funds on deposit in Account No. 979-0010-0987 held at First Republic Bank in the name of Lauren Bloom;
11. Any and all funds on deposit in Account No. 7928922504 held at TD Bank in the name of Lauren Bloom;
12. One pair of platinum diamond and South Sea pearl earrings;
13. One ladies' 18K yellow gold 10.5mm curb link bracelet imported from Italy;
14. One ladies' 18K yellow gold 9.5mm curb link bracelet imported from Italy;

15. One strand of white, gold, black, and grey South Sea Basque pearls 15.5mm by 13mm in size;
16. One emerald cut diamond engagement ring in platinum setting;
17. One set of 8 separate 18K yellow gold imported Italian bangle bracelets;
18. One ladies' 18K yellow gold Cartier love bracelet;
19. One ladies' stainless steel Frank Mueller bracelet watch with black dial and white numbers;
20. One ladies' 18K white gold Frank Mueller diamond watch "Long Island";
21. One ladies' Roger Dubuis 18K white gold watch;
22. Five separate 22K yellow gold wedding bands;
23. One 18K white gold Bvlgari coil wedding band;
24. Two band rings, one with pink tourmaline and one with green tourmaline;
25. One pair of 18K white gold Van Cleef & Arpels clover earrings;
26. One ladies' 18K white gold double wrap Van Cleef & Arpels clover necklace 32 inches;
27. One ladies' 18K white gold diamond hoops imported from Italy;
28. One 18K yellow gold Verdura "Candy" ring with citrine and tourmalines;
29. One pair of 18K yellow gold diamond hoops with round diamonds designed by Judith Ripka;
30. One pair of 18K white gold diamond pave huggies;
31. Two 18K yellow gold round bangle bracelets with round diamonds;

32. Set of two 18K white gold diamond flower bracelets imported from Italy;
33. One ladies' 18K white gold diamond and ruby bracelet imported from Italy;
34. One pair of ladies' 18K white gold round diamond earrings;
35. One 18K yellow and white gold diamond pave large link bracelet imported from Italy;
36. One set of two separate tennis style 18K white gold bracelets with diamonds imported from Italy;
37. One pair of 18K white gold diamond stud earrings with round diamonds;
38. Two separate 18K white gold diamond flower bracelets imported from Italy;
39. One 18K white gold diamond and ruby bracelet imported from Italy;
40. Two separate long open work gold link chains 36 inches overall imported from Italy;
41. Two 18K white gold diamond pave wedding bands imported from Italy;
42. One ladies' custom platinum diamond by the yard necklace with 198 round diamonds;
43. One pair round drop diamond earrings;
44. One yellow gold charm bracelet with 3 charms;
45. One soft gold diamond bracelet; gift for 45th birthday from many friends;
46. One pair of dangling earrings designed by Judith Ripka;
47. One pink gold ring;
48. One pair pink hoop earrings;

49. One pair gold hoop earrings;
50. Three ceramic bracelets - 2 white, 1 black;
51. One ring with green and white semiprecious stones in the shape of a diamond;
52. Two white gold "Id" bracelets with initials "LJB";
53. Two link bracelets - 1 pink, 1 white;
54. 50% of the proceeds from the sale of the following items:
 - a. One pair of Van Cleef & Arpels snowflake pendant ear clips with diamonds;
 - b. Ladies' platinum and 18K yellow gold pink sapphire and diamond ring;
 - c. One pair of 18K white gold diamond spiral ball hanging earrings;

These items will be sold within one year of the execution of this Agreement by Lauren Bloom with the supervision of the United States Attorney's Office.
55. Mixed media on paper by David Salle, "Untitled" (1988);
56. Pastel on paper by Jennifer Bartlett, "March, Parrot Cay #11" (2001);
57. Pastel on paper by Jennifer Bartlett, "March, Parrot Cay #12" (2001);
58. Graphite on paper by Mark Sheinkman, "6.23.98" (1998);
59. Two checks totaling approximately \$17,397, made payable to Lauren Bloom from Linda's Stuff, Inc.
60. Any other items -- including but not limited to, furniture, artwork, jewelry, and personalty -- that were i) purchased prior to January 1, 2002; or ii) are individually valued at less than \$2,000.

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

ALEXANDER DAWSON FOUNDATION,
INDIVIDUALLY AND DERIVATIVELY ON
BEHALF OF NORTH HILLS, L.P., AND
ALEXANDER DAWSON, INC., INDIVIDUALLY
AND DERIVATIVELY ON BEHALF OF NORTH
HILLS, L.P.,

Plaintiffs,

- against -

MARK EVAN BLOOM, NORTH HILLS
MANAGEMENT, LLC, AND LAUREN BLOOM,

Defendants.

Index No.:
Date purchased 12/8/08

08603590

Summons

Plaintiffs designate New York
County as the place of trial.

The basis for the venue is CPLR § 503

Plaintiffs reside at Las Vegas, Nevada

County of CLARK

FILED
DEC 08 2008
NEW YORK
COUNTY CLERK'S OFFICE

To the above named Defendant MARK EVAN BLOOM:

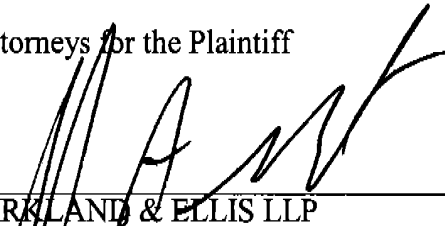
You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: December 8, 2008

Attorneys for the Plaintiff

Defendant's address:

MARK EVAN BLOOM
502 Park Avenue
27th Floor
New York, NY 10022


KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

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

ALEXANDER DAWSON FOUNDATION,
INDIVIDUALLY AND DERIVATIVELY ON
BEHALF OF NORTH HILLS, L.P., AND
ALEXANDER DAWSON, INC., INDIVIDUALLY
AND DERIVATIVELY ON BEHALF OF NORTH
HILLS, L.P.,

Plaintiffs,

- against -

MARK EVAN BLOOM, NORTH HILLS
MANAGEMENT, LLC, AND LAUREN BLOOM,

Defendants.

Index No.:
Date purchased 12/8/08

603590108

Summons

Plaintiffs designate New York
County as the place of trial.

The basis for the venue is CPLR § 503

Plaintiffs reside at Las Vegas, Nevada

County of CLARK

FILED
DEC 08 2008
NEW YORK
COUNTY CLERK'S OFFICE

To the above named Defendant NORTH HILLS MANAGEMENT, LLC:

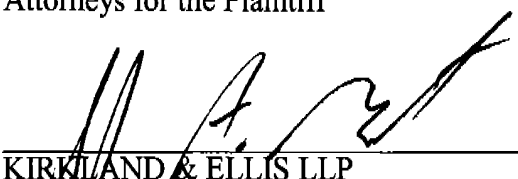
You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: December 8, 2008

Attorneys for the Plaintiff

Defendant's address:

NORTH HILLS MANAGEMENT, LLC
502 Park Avenue
27th Floor
New York, NY 10022


KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

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

603590/08

ALEXANDER DAWSON FOUNDATION,
INDIVIDUALLY AND DERIVATIVELY ON
BEHALF OF NORTH HILLS, L.P., AND
ALEXANDER DAWSON, INC., INDIVIDUALLY
AND DERIVATIVELY ON BEHALF OF NORTH
HILLS, L.P.,

Plaintiffs,

- against -

MARK EVAN BLOOM, NORTH HILLS
MANAGEMENT, LLC, AND LAUREN BLOOM,

Defendants.

Index No.:
Date purchased 12/8/08

Summons

Plaintiffs designate New York
County as the place of trial.

The basis for the venue is CPLR § 503

Plaintiffs reside at Las Vegas, Nevada

County of CLARK

FILED

DEC 08 2008

NEW YORK
COUNTY CLERK'S OFFICE

To the above named Defendant LAUREN BLOOM:

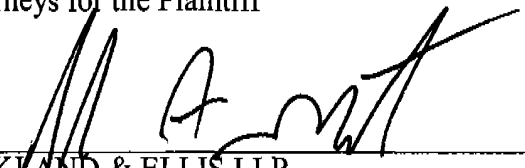
You are hereby summoned to answer the complaint in this action and to
of your answer, or, if the complaint is not served with this summons, to serve a notice of
appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive
of the day of service (or within 30 days after the service is complete if this summons is not personally
delivered to you within the State of New York); and in case of your failure to appear or answer,
judgment will be taken against you by default for the relief demanded in the complaint.

Dated: December 8, 2008

Attorneys for the Plaintiff

Defendant's address:

LAUREN BLOOM
502 Park Avenue
27th Floor
New York, NY 10022


KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

ORIGINAL

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

ALEXANDER DAWSON FOUNDATION,
INDIVIDUALLY AND DERIVATIVELY
ON BEHALF OF NORTH HILLS, L.P., and
ALEXANDER DAWSON INC.,
INDIVIDUALLY AND DERIVATIVELY
ON BEHALF OF NORTH HILLS, L.P.,

Plaintiffs,

- against -

MARK EVAN BLOOM, NORTH HILLS
MANAGEMENT, LLC, and LAUREN
BLOOM,

Defendants.

VERIFIED COMPLAINT

Index No.: **08603590**

Date Filed:

FILED

DEC 08 2008

NEW YORK
COUNTY CLERK'S OFFICE

Plaintiffs the Alexander Dawson Foundation ("ADF") and Alexander Dawson Inc. ("ADI"), each individually, and each derivatively as Limited Partners, pursuant to New York Partnership Law § 115-a, on behalf of North Hills, L.P. ("North Hills," or the "North Hills Fund"), by and through their counsel, Kirkland & Ellis LLP, file this Verified Complaint and aver:

1. This case is about Defendant Mark Evan Bloom ("Bloom"), a purported hedge fund manager who embezzled millions from entities that support the education of children. ADF and ADI entrusted \$13.5 million to Bloom and his solely-owned company, North Hills Management, LLC ("NHM"), to invest in the North Hills Fund, of which NHM was the General Partner. Instead of making investments to generate the "moderate" returns Bloom promised ADF and ADI, and by extension the grade schools they support, Bloom took ADF's and ADI's money to, among other things, buy an ultra-luxurious, multi-million dollar apartment for himself and his wife. Bloom and NHM concealed this theft for years by issuing false account statements

that showed positive returns, by lying about the health of the Fund, and through other self-dealing transactions designed to line Bloom's pockets at investors' expense.

2. Bloom was so blinded by greed that he completely disregarded any formalities distinguishing himself from NHM, North Hills, and other hedge fund entities he ostensibly managed, commingling the funds and using them for his own purposes. He acted as if all of the money investors entrusted to him could be used for his personal benefit. When ADF and ADI called for redemptions of their investments, he distributed small amounts to placate them, but never disclosed his fraud.

3. In addition to his blatant theft, Bloom engaged in self-dealing. Aside from the North Hills' assets Bloom embezzled for his personal use, Bloom invested \$17 million of North Hills' assets in the Philadelphia Alternative Asset Fund ("PAAF"). Bloom took this action not because he thought it to be a prudent investment for North Hills, but rather because he acted as a third-party marketer for the PAAF fund — without disclosing his conflict of interest — and personally received a lucrative commission from PAAF.

4. The PAAF fund, however, was the victim of a separate fraud. A federal court in Philadelphia has frozen its assets because its principal defrauded its investors. The proceeds of the PAAF settlement are subject to a receivership in federal court in Philadelphia. Bloom also misappropriated the settlement distributions the PAAF fund has made to date. This self-serving investment in PAAF, along with Bloom's ravenous spending habits, have, according to Bloom, left North Hills without any material assets, despite the fact that the monthly account statements provided to ADF and ADI have not shown a loss in over seven years.

5. Eventually, in January 2008, in response to general market turmoil and a need for funds to carry out their educational mission, ADF and ADI requested a full redemption of the

assets they had in North Hills. Bloom made small distributions in response to this request (\$500,000 to each of ADF and ADI in March 2008), but failed to fully redeem either ADF's or ADI's investments. Instead, he stalled at every turn. It was not until November 2008, when one of ADF's trustees threatened Bloom with legal action, that the misconduct was not just revealed, but admitted.

6. In November 2008, Bloom's lawyer acknowledged that Bloom, through NHM, had taken money out of North Hills to buy Bloom a luxury apartment, including money from the accounts of ADF and ADI. Indeed, in a letter to ADF and ADI, Bloom's lawyer conceded that at least \$8 million was taken by Bloom's management company, and that money was owed to ADF and ADI: "*[t]here is no dispute about the obligation of payment.*" (See Ex. A (emphasis added).) This was the first time ADF and ADI learned that Bloom had embezzled from North Hills.

7. Bloom's lawyer made similar admissions during a contemporaneous telephone conference with ADF's trustees and ADI's directors. This group of trustees and directors, which includes a former federal magistrate judge, heard *Bloom's lawyer admit* to ADF and ADI that, beginning in 2002 and continuing thereafter, Bloom "borrowed" more than \$8 million in North Hills' partnership assets to buy himself an "opulent, very luxurious place to live" in Manhattan. But the money was not borrowed. It was embezzled. Indeed, Bloom's lawyer went on to state that "only this week has [Bloom] owned up to the loans" and described what Bloom had done as "a horrible situation." Bloom's lawyer further informed ADF and ADI that the "loans" Bloom gave himself were "illiquid assets" and that if they were not repaid by Bloom, it would be "a disaster." Bloom's lawyer described Bloom's use of ADF's and ADI's investments in North Hills as "hugely disappointing," adding that "Bloom has no right to ask for your trust."

8. Bloom's lawyer minimized the truth during this call. Bloom used ADF's and ADI's investments to finance his lavish lifestyle, including multiple apartments on the Upper East and Upper West Sides of Manhattan, beach houses in the Hamptons, Florida and on the New Jersey shore, and multiple luxury cars and luxury boats. In perhaps his most ostentatious act of misconduct, Bloom and his wife purchased a home at 10 Gracie Square in Manhattan — a 6,200 square foot triplex with its own gymnasium — apparently using \$5.2 million dollars of fund assets. Bloom then transferred his interest in the apartment entirely to his wife for zero dollars. In turn, Bloom's wife, Lauren Bloom ("Mrs. Bloom") sold the apartment for \$11.2 million, netting a lucrative return for herself and Bloom. The millions of dollars that Bloom embezzled are monies that belonged to the investors in North Hills — including funds that could have been supporting the needs of over 1,000 school children and other charitable goals of ADF.

9. In response to the damning admissions by Bloom and his lawyer, ADF and ADI demanded full payment of the embezzled funds and access to documentation, pursuant to their rights under the partnership agreement, that would allow them to fully account for their money. Bloom continued his stall tactics. While first promising full disclosure of North Hills' books and records, Bloom has since repeatedly reneged and has selectively produced only North Hills' purported annual reports for 2002 and 2003. Citing criminal concerns, he has refused to produce any further information.

10. In addition, while repeatedly promising that there is "a plan" to redeem ADF and ADI in full for their investments in North Hills, Bloom has failed to pay the philanthropic institutions a dime. Indeed, ADF and ADI are out of pocket more than \$8 million, while Bloom and his wife continue to live in a massive Park Avenue apartment (among their various properties), and continue to appear in New York's society pages, attending lavish social events.

(See Ex. B.) Even now, Bloom uses as North Hills' business address an extravagant 4,000 plus square foot, 27th-story penthouse in a Trump condominium building at 502 Park Avenue in Manhattan, valued at \$12.6 million, no doubt also funded with investor assets.

11. This lawsuit is necessary to make ADF, ADI, and North Hills whole on the investments and partnership assets, and put an end to the fraudulent scheme Bloom and NHM have been perpetrating for years.

THE PARTIES

12. Plaintiff ADF, a Nevada charitable trust, supports the Alexander Dawson schools in Nevada (pre-K to 8th grade) and Colorado (K to 12th grade), serving the needs of over 1,000 students. The trustees of ADF are Mario P. Borini, Joseph C. Borini, Farrow J. Smith, Oswald Gutsche and John D. O'Brien.

13. Plaintiff ADI, a Nevada corporation wholly owned by ADF, serves as an investment arm to ADF. The directors of ADI are Mario P. Borini, Joseph C. Borini, Farrow J. Smith, Oswald Gutsche and John D. O'Brien.

14. Both ADF and ADI were, at all relevant times, Limited Partners in North Hills. North Hills is a New York limited partnership established for the ostensible purpose of investing in other hedge funds employing various investment techniques. Until July 2001, North Hills was an enhanced stock index fund. Since July 2001, Bloom and NHM marketed North Hills as a "fund of funds," indicating that the strategy was to invest in a diverse group of hedge funds to generate a relatively moderate, "market-neutral" return, while at the same time reduce investment risk through diverse and uncorrelated investments.

15. Defendant NHM, a New York limited liability company, is the manager and General Partner of North Hills.

16. Defendant Bloom is the principal and 100% owner of NHM, which, as the General Partner, manages North Hills. In addition to managing North Hills, Bloom has held multiple other positions. Over the last several years Bloom has also been a third-party marketer for the Philadelphia Alternative Asset Management Company, LLC ("PAAMCo"), Chief Marketing Officer, Managing Partner and Director of MB Investment Partners, Inc., Chief Operating Officer and Managing Partner at Munn Bernhard & Associates, and a managing partner at BDO Seidman, L.L.P. From May 1992 to July 2001, Bloom was a partner of WG Trading Co., L.P., an affiliate of North Hills, responsible for marketing and client services.

17. Defendant Lauren Bloom ("Mrs. Bloom") is the wife of Bloom. Bloom transferred to Mrs. Bloom title to certain of his real property assets, at least one of which Bloom was able to acquire as a result of his theft of funds from ADF and ADI. Upon information and belief, Bloom has transferred other North Hills assets to Mrs. Bloom.

JURISDICTION AND VENUE

18. This Court has jurisdiction over this action pursuant to C.P.L.R. § 301 because all Defendants either reside in or conduct business in New York. Alternatively, this Court has jurisdiction pursuant to C.P.L.R. § 302 because all Defendants transact business in New York.

19. Venue is proper in this Court under C.P.L.R. § 503 because Bloom and Mrs. Bloom reside in New York County and NHM has its principal offices in New York County.

BACKGROUND

I. ADF and ADI Invest With Bloom

20. In 1997, Bloom formed North Hills as an enhanced stock index fund based on the S&P 500, S&P 400 and Russell indexes. Bloom initially solicited an investment from ADI in North Hills because he had been a business acquaintance of one of ADI's directors. This fact,

along with Bloom's resumé and professional presentation, left ADF and ADI with a false sense of confidence in Bloom's ability to make their money grow and thus further their educational mission.

21. Thus, on November 4, 1997, ADI made an initial investment in North Hills of \$1 million. ADF first invested in North Hills on September 1, 1999.

22. On or about August 1, 2001, Bloom made a presentation to the Investment Committee of the Board of Trustees of ADF in which he stated that North Hills was transforming itself into a "fund of funds" partnership to be viewed as an "absolute return fund," and that North Hills' goal was a 12% annual return. According to Bloom's marketing materials, he would invest North Hills' partnership assets in a number of other funds, and through diversification and lack of correlation, achieve a "market-neutral" return of approximately 12%.

23. The stated "objective" of the Fund was "above average capital appreciation consistent with moderate risk." (*Id.* at 2.)

24. On or about August 13, 2001, ADF and ADI received from Bloom and NHM a copy of the Private Placement Memorandum (the "PPM"), which contained a description of the North Hills fund and a summary of the North Hills Limited Partnership Agreement (the "LPA"). Annexed to the PPM was a copy of the LPA, subscription materials and a Partnership Agreement Supplement. (*See Ex. C.*) ADF and ADI each executed the LPA and became Limited Partners of North Hills. (*See Ex. D.*) The Private Placement memorandum stated the following with respect to the Fund's advantages:

The principal advantages of investing in the Fund are:

- The Fund's goal is for meaningful diversification of strategies and money managers whose performance will be independent of one another.

- The Fund's policy of seeking satisfactory returns while minimizing total risk.
- The judgment of the General Partner in assessing strategies and money managers and constructing a balanced mix of investment approaches.
- Access to strategies and managers, which due to minimum investment requirements or other factors, might otherwise be inaccessible to other investors. (*See Ex. C at 1.*)

25. Relying on the PPM, ADF and ADI decided to continue to invest in the Fund, as Bloom's representations about his investment strategy for North Hills' assets were consistent with their goals of achieving moderate returns with limited risk. For every month since 2001, ADF's and ADI's account statements showed a positive result. (*See Ex. E (chart of monthly returns and examples of statements).*) Believing the account statements to be accurate and their investments stable, ADF and ADI regularly added to their investments in North Hills, with a combined investment of \$13.5 million.

26. ADF and ADI made the following investments in North Hills:

- (a) November 4, 1997: ADI invested \$1,000,000.
- (b) September 1, 1999: ADI's initial \$1,000,000 investment was transferred to ADF.
- (c) June 12, 2002: ADF invested \$1,000,000.
- (d) October 1, 2002: ADF invested \$4,500,000.
- (e) January 2, 2003: ADF invested \$3,000,000.
- (f) April 1, 2004: ADI invested \$2,000,000.
- (g) April 1, 2004: ADF invested \$2,000,000.

ADF and ADI made each of these investments in good faith, without knowledge of any fraud or self-dealing on behalf of Bloom, NHM or any other party. If ADF or ADI had any knowledge that Bloom or NHM were self dealing, giving loans to themselves, or otherwise utilizing funds

for their personal benefit, ADF and ADI would have ceased making investments in North Hills and immediately withdrawn all of their capital.

II. Bloom Begins To Steal Funds from North Hills

27. In 2002 and 2003, Bloom embezzled from the North Hills' funds at least \$8 million. Bloom admits he took this money, but now claims that it was simply a "loan" that NHM took from North Hills pursuant to a note that purportedly bears 8% interest. Until November 2008, Bloom never disclosed this supposed "loan" to ADF and ADI despite multiple opportunities to do so, and despite ADF's and ADI's repeated requests that he delineate the exact investments in which Bloom placed ADF's and ADI's money. Indeed, in response to a specific request in October 2008 for Bloom to identify the exact nature of ADF's and ADI's investments, Bloom actively concealed the truth by stating: "The funds/notes are commingled and I do not have a list." (*See Ex. F.*)

28. In addition, Bloom has never produced any note documenting this loan, despite repeated requests that he do so. Bloom has produced no documentation evidencing that anyone other than himself ever consented to the supposed "loan." Most importantly, Bloom's lawyer recently admitted that Bloom used the proceeds of this supposed "loan" to finance an "opulent" apartment.

29. Indeed, Bloom's theft coincides with his purchase of a luxury maisonette at 10 Gracie Square on the Upper East Side of Manhattan in Bloom's and Mrs. Bloom's (the "Blooms") name for \$5.2 million. (*See Ex. G.*) This is a 6,200 square foot, three-story residence that has, among other amenities, a gym. (*See Ex. H* (comparable current listing at 10 Gracie Square).) At 10 Gracie Square, the Blooms were situated in the center of New York high society — Brooke Astor, Gloria Vanderbilt and Madame Chiang Kai-Shek are just some of the

famous personas who have or have had residences in this building. In July 2005, Bloom transferred his ownership of this apartment to Mrs. Bloom — for zero dollars in consideration. In March 2007, Mrs. Bloom sold the apartment for approximately \$11.2 million, a handsome windfall that, on information and belief, Mrs. Bloom currently retains. (*See Ex. G.*)

30. In addition to this luxury apartment, Bloom used monies he has taken from North Hills' partnership assets (including funds invested by ADF and ADI) to finance the high expenses of his extravagant lifestyle. The properties the Blooms own include the following:

- (a) An apartment at 180 East End Avenue in Manhattan;
- (b) An apartment on 25 Central Park West in Manhattan;
- (c) A property at 12 Michaels Way in Westhampton Beach, New York (transferred to Mrs. Bloom in August 2003);
- (d) A property at 45 Oceanside Beach in Monmouth Beach, New York; and
- (e) A condominium at 5032 Rose Hill Drive in Boynton Beach, Florida.

31. Bloom currently lives in a 4,000 plus square foot penthouse at Trump's exclusive Park Avenue condominium, which is also the current ostensible address for the North Hills fund, which he apparently rents and which was listed for sale for \$12.6 million. The rent on another penthouse in the building is \$200,000 per month. (*See Ex. I.*)

32. Bloom has also purchased a fleet of luxury automobiles, including a 2008 BMW 328I convertible, a 2008 Land Rover SUV, a 2007 Mercedes Benz S550 sedan, a 2006 Land Rover SUV, a 2005 Mercedes Benz E500 station wagon, a 2003 Mercedes Benz E320 station wagon, a 2003 BMW 325XI sedan, a 2002 Mercedes Benz G500 SUV, and a 2002 Porsche 911 coupe. He has three of these luxury cars registered to himself at 502 Park Avenue, the address of

North Hills. Bloom also owns or has owned several luxury pleasure boats, including a 2005 33-foot Thunderbird, a 2002 24-foot Monterey, and a 2001 18-foot Monterey.

III. Bloom Repeatedly Assures ADF And ADI That Their Investments Are Safe

33. By early 2004, ADF's and ADI's investment in North Hills, according to NHM's account statements, had grown to over \$11 million. Because of the size of the investment, the Investment Committee of the ADF Board of Trustees sought assurances from Bloom that North Hills had internal controls and that Bloom and NHM were monitoring its various investments.

34. On March 5, 2004, to reassure ADF and ADI that their investments were secure, Bloom wrote to ADF and ADI stating that NHM was going to retain an investment sub-advisor and back-office administrator. Bloom stated to ADF and ADI that this advisor "will offer me and therefor[e] you error and omission insurance. In addition they would take on additional administrative responsibilities in my absence. Further more [sic] I would initiate a banking control which would require dual authorizations for transfers or checks in excess of 1 million dollars. . . . PS, are you contemplating a significant increase or a modest increase." (*See Ex. J.*)

35. These false representations about the security of ADF's and ADI's investments and the retention of sub-advisors and administrators were merely another attempt on the part of Bloom and NHM to cover up Bloom's failure to establish any semblance of reasonable internal controls, and also to cover up Bloom's fraudulent self-dealing. Indeed, prior to March 5, 2004, Bloom had already "taken" substantial amounts of money from North Hills.

36. But for Bloom and NHM's concealment and failure to disclose that Bloom was stealing North Hills' funds for his own personal use, ADF and ADI would have redeemed their investments and would not have made any further investments in North Hills.

37. Instead, relying on Bloom's and NHM's false assurances, in April 2004, ADF and ADI each invested \$2 million more in North Hills. (*See* Ex. E (generally).) These were the last investments in North Hills that ADF and ADI made.

38. To further mislead ADF and ADI, and to coerce them to keep their monies invested in North Hills, Bloom and NHM continued to make fraudulent misrepresentations about the value and nature of ADF's and ADI's investments in North Hills. For example, on or about April 12, 2004, Bloom and NHM sent ADF and ADI marketing materials labeled an "executive summary" for the Fund. This document — issued over a year after Bloom had embezzled millions of dollars from the Fund in the form of phony loans — repeated many of Bloom's consistent misrepresentations about the Fund's investment strategy. For example, Bloom and NHM represented to ADF and ADI that:

The portfolio is expected to have the following five characteristics:

1. Consistent Performance: targeted at 12% annually.
2. Low Volatility: shall not exceed 3% per year.
3. Diversified Risk: we will generally engage a variety of managers, each implementing one or more strategies.
4. Low Correlation: with equity and fixed income markets, and low correlation between each of the underlying funds.
5. Liquidity: maximum quarterly redemptions permitted.

(*See* Ex. K at 3.) Bloom and NHM went on to represent that "North Hills, L.P. will engage a number of investment managers, each employing one or more distinct strategies." (*Id.* at 5.) In these marketing materials, Bloom further misrepresented the historical performance of the Fund — 9.35% in 2002 and 7.35% in 2003 — when in fact, these numbers overstated the value of a fund tied up in illegitimate loans whose proceeds were embezzled by Bloom and NHM with no intent of paying back the stated interest rate, along with secret self-dealing investments in the

PAAF fund. (*Id.* at 8.) In truth, Bloom and NHM did not intend to make diverse, prudent investments, intending instead to run North Hills as Bloom's own piggy bank, and the stated values of the Fund did not reflect reality.

39. In November 2004, trustees and directors of ADF and ADI met in Nevada with Bloom to discuss their investments in North Hills. Bloom brought to the meeting representatives of an investment sub-advisor he purported to have retained for both investment advice and back-office compliance. At the meeting, Bloom and this advisor again provided false assurances to ADF and ADI regarding the compliance and diligence procedures Bloom had instituted. Once again, Bloom failed to disclose any self-dealing or any of the purported "loans" NHM had taken from the North Hills fund.

40. In June 2005, Bloom, NHM and the purported investment sub-advisor issued a performance report that asserted that the investments were allocated among funds as follows: "Airlie 10%, Centrix 5%, Gramercy 25%, Millennium 25%, Stewardship 25%. White Orchard 10%." (*See* Ex. L (strategy document dated June 2005).) At the time these representations were made to ADF and ADI, Bloom and NHM failed to inform them that Bloom had already "borrowed" — *i.e.*, embezzled — millions of dollars from North Hills and was using the money for his and Mrs. Bloom's personal benefit. Similar reports were issued in June 2004 and August 2006, again falsely showing the Fund to be invested in various other funds, and failing to disclose Bloom's theft and other self-serving conduct. (*See* Ex. L.)

41. Had ADF and ADI known the truth about the state of North Hills' investments, they would have withdrawn their funds immediately.

IV. Bloom's Self Dealing And Reckless Investments

42. In addition to failing to disclose the fact that Bloom was using North Hills' partnership assets for his own personal use, Bloom and NHM also failed to disclose that Bloom served as a third-party marketer for the Philadelphia Alternative Asset Fund ("PAAF"). This undisclosed conflict of interest is significant because Bloom invested \$17 million of North Hills' assets in PAAF, and thus received what amounted to a personal kickback from PAAF each time North Hills invested money in PAAF. Only in the last few weeks have ADF and ADI learned about Bloom's self-dealing after locating a court document filed in the PAAF action in federal court in Philadelphia. (*See Ex. M.*)

43. According to the ADF and ADI account statements, Bloom invested 50% or more of North Hills' assets in PAAF, pocketing the lucrative commissions. Inconsistent with the account statements, the marketing documents did not disclose any investment by North Hills in PAAF. (*See Ex. L.*) Not only was the investment improper because of Bloom's undisclosed conflict of interest, but it was also grossly negligent and/or reckless to invest such a high percentage of North Hills' assets into a single fund. The investment violated Bloom and NHM's stated investment goal of diversifying North Hills' assets across hedge funds in uncorrelated investments. Indeed, at times, PAAF was North Hills' sole investment — with the remainder of its funds misappropriated by Bloom.

44. On or about July 11, 2005, Bloom informed ADF and ADI by letter that in June 2005, the Commodity Futures Trading Commission ("CFTC") had shut down PAAF and frozen its assets. (*See Ex. E* (letter dated July 11, 2005).) According to court documents, the PAAF manager had hidden investment losses and had personally misappropriated fund assets, and in

June 2005, a receiver was appointed by the court to oversee the distribution of assets and handle settlements. (*See Ex. N.*)

45. Bloom never disclosed to ADF and ADI that he worked as a marketer for PAAF and personally received millions of dollars in commissions for the sale of PAAF to various investors, including North Hills. When PAAF was shut down by the CFTC in 2005, Bloom claimed that he was simply a victim of PAAF, just like ADF, ADI, and North Hills.

46. Had ADF and ADI known about the reckless and self-dealing nature of Bloom's investments in the PAAF fund, ADF and ADI would have withdrawn their investments from North Hills. Instead, ADF and ADI continued to invest additional amounts and continued to trust Bloom and NHM to "manage" their investment monies.

V. Bloom Promises ADF And ADI Will Be Made Whole

47. Subsequent to the demise of PAAF, ADF and ADI began to question Bloom about their investments and inquired about seeking a full redemption of their money. In a meeting with ADF Trustees and ADI Directors in Nevada on August 8, 2005, Bloom misled them once again. He promised to fully make whole ADF and ADI for any losses in PAAF. "You will not lose anything, I will stand by this," he told them. ADF and ADI relied on Bloom's word, and trusted that he would keep them informed of developments related to PAAF. As a result, instead of a full redemption, ADF accepted a limited redemption from North Hills of only \$4 million in September and October 2005.

48. Bloom did not stand by his word. He did not make ADF and ADI whole, but rather continued to misappropriate the proceeds of the PAAF settlement, proceeds which rightfully belonged to North Hills and North Hills' investors. The United States District Court for the Eastern District of Pennsylvania authorized distributions of frozen PAAF funds to

investors on November 13, 2006, February 15, 2008, March 5, 2008, and September 19, 2008. (See Ex. O.) Bloom and NHM never informed ADF or ADI of the amount of these distributions, and did not credit any of the proceeds to their purported "allocation" as he should have. Bloom apparently again misappropriated these funds.

VI. Bloom Fails To Disclose North Hills' Investment In Refco

49. PAAF was not the only financial scandal into which Bloom and NHM dragged North Hills. Around 2005, Bloom lost \$17 million of North Hills' funds in the Refco fraud. Refco, Inc. was the largest futures and commodities broker on the Chicago Mercantile Exchange. On October 10, 2005, Refco announced that its Chairman and CEO, Phillip R. Bennett, had hidden \$430 million in bad debts from Refco's auditors and investors.

50. Refco went bankrupt and Bennett was prosecuted for securities fraud and wire fraud. A court document filed in Bermuda lists NHM as an unsecured creditor with a \$17,187,504 claim. (See Ex. P.) A court document filed with the U.S. Bankruptcy Court for the Southern District of New York lists "North Hills, LP A/C #2" as an unsecured creditor with a \$6,844,218 claim in Refco, Inc., North Hills, LP as an unsecured creditor in Refco, Inc. with a \$1 million claim, and NHM as an unsecured creditor with a \$7,720,247 claim. (See Ex. Q.) The unsecured creditors eventually received 26 cents on the dollar for what they were owed.

51. Bloom never disclosed North Hills' investment in Refco or the Refco settlements to ADF or ADI until after Refco imploded, and never allocated to ADF or ADI any proceeds from the Refco settlement.

VII. Bloom and NHM Refuse To Return the Embezzled Money

52. Needing additional funds to continue its educational goals, on November 30, 2007, ADF wrote to North Hills and requested a redemption of \$3.5 million from its North Hills

account. (*See Ex. R.*) Bloom asked ADF to wait to redeem the funds until the end of the first quarter of 2008, as he had a plan to increase performance by investing in a new fund and he claimed he wanted ADF and ADI to get the benefit of the forthcoming PAAF settlement. (*Id.*)

53. In January 2008, ADF and ADI again requested a full redemption of their combined investments of more than \$13 million in North Hills, or at least the \$4.8 million not allegedly frozen in the PAAF case. (*See Ex. S.*) Of these amounts, North Hills redeemed to ADF only \$500,000 on March 13, 2008, and another \$500,000 on March 31, 2008.

54. In response, ADF and ADI continued to press for a full redemption of their investments. Because, until November 2008, they did not know that North Hills' money was being embezzled, they continued to be patient with Bloom and accepted as true the representations in the account statements, which showed that ADF and ADI maintained a significant investment earning positive (but by this point, very, very small) returns. On October 16, 2008, for example, Bloom sent an account statement to ADF that showed \$10,235,558 in capital, with \$6,764,676 allocated to PAAF — 66%. The account statement also showed a \$4,077 gain in September on the remaining \$3,470,882 invested — approximately a 0.1% return. For ADI, the account statement showed \$2,355,958 in capital, with \$982,043 allocated to PAAF — 42%. The account statement showed a gain of \$938 in September on the remaining \$1,373,915 — approximately a 0.07% return. (*See Ex. E (Oct. 16, 2008 statements).*)

VIII. ADF and ADI Threaten Action If Bloom Does Not Fully Redeem Them

55. On October 16, 2008, following up on the account statements, Oswald Gutsche, Treasurer of the ADF Board of Trustees, wrote Bloom a letter demanding to know what North Hills was invested in, where those assets were located, and seeking assurances that the investments were properly accounted for. (*See Ex. T.*)

56. On October 20, 2008, Bloom met in New York with ADF Board Chair Mario Borini and ADF Board Trustee Joseph Borini. Bloom told the Borinis that North Hills could not redeem ADF's and ADI's investments because the funds were in 3-to-5 year notes that were illiquid. Bloom said that the notes were "distressed debt," and that he would send ADF and ADI a list of the corporate notes in ADF's and ADI's North Hills accounts.

57. On October 30, 2008, Bloom peeled back another layer of his elaborate lie, sending an email to ADF Trustee Joseph Borini, stating, "[ADF's and ADI's] funds/notes are *commingled* and I do not have a list. I am moving forward with the plan I outlined at our meeting last week toward the liquidation of ADF and ADI. *I maintain that the amounts not in PAAF should be returned to you in whole. . . .*" (See Ex. F (emphasis added).) When Mr. Borini responded to the email asking, "How much interest do these notes/bonds pay?," Bloom replied, "Historic returns vary but around 8 percent." (*Id.*) According to the account statements for the month ending September 30, 2008, however, ADF and ADI were receiving nowhere near an annual return of 8% on the notes — achieving 0.1% or less per month or 1.2% per year. (See Ex. E (Oct. 16, 2008 statements).) But Bloom *still* failed to disclose that these so-called "corporate bonds" were nothing more than his personal "loans" — funds he had embezzled from North Hills to support his jet-setting lifestyle and would never return.

58. After repeated attempts by ADF and ADI to gather details about their investments from Bloom and North Hills, and after repeatedly being stalled by Bloom (*see* Ex. U.), Mario Borini, one of the Trustees of ADF, told Bloom in early November 2008 that he intended to take legal action against Bloom.

IX. Bloom Claims He “Borrowed” ADF’s And ADI’s Funds

59. In response to Mr. Borini’s threat of legal action, on or about November 7, 2008, ADF and ADI received a letter from counsel for Bloom and NHM. The letter stated that NHM, the Fund manager, which is 100% owned and operated by Bloom, had “borrowed” millions of dollars from North Hills: “the remaining assets of the LP are in the form of notes payable from NHM, which is presently unable to repay the debt. . . . the total amount is in excess of \$8,000,000.” (*See Ex. A.*) The alleged corporate bonds, then, were nothing more than a story to cover-up Bloom’s theft of millions of dollars from North Hills in the form of bogus and self-dealing loans.

X. Bloom Refuses ADF’s And ADI’s Information Requests

60. After ADF and ADI continued to press for redemption and further information about Bloom’s self-dealing, on November 20, 2008, Bloom promised to produce — by Monday, November 24, 2008 — financial books and records of North Hills that would allow ADF and ADI to understand fully the financial situation.

61. ADF and ADI continued to insist on the prompt return of their funds and exercised their contractual right to review North Hills’ books and records. (*See Ex. V.*) Bloom’s lawyer promised to comply with this request. (*Id.*)

62. On November 24, 2008, Bloom failed to produce to ADF or ADI any of North Hills’ books and records. Bloom’s lawyer, however, promised that the documents were being collected and would be produced by Wednesday, November 26, 2008.

63. Instead, on November 25, 2008, counsel for Bloom sent ADF and ADI selective documents purporting to be financial reports for North Hills for the years ended December 31, 2002, and December 31, 2003. (*See Ex. W.*) Neither ADF nor ADI had been provided these

documents previously, despite their requests for updated financial statements, and have no way to verify their legitimacy. Bloom's lawyer claims that these statements disclose Bloom's loans, but the supposed disclosures are cryptic at best, suggesting, contrary to the admitted theft, that NHM borrowed from its own capital account at North Hills. The purported disclosures do not come close to disclosing that Bloom or NHM took investor assets to fund the Blooms' apartment and lavish lifestyle. Bloom's lawyer claims that no audited financial statements exist after 2003, despite the LPA's requirement that Bloom and NHM perform such audits for the partnership on an annual basis.

64. Importantly, Bloom's lawyer, citing criminal concerns, refuses to produce to ADF or ADI any additional documents relating to North Hills, despite their unquestioned contractual right to have access to them. Indeed Bloom's lawyer, in an email to ADF's and ADI's Nevada counsel dated November 25, 2008, admits that he has possession of, or could obtain the information that ADF and ADI are entitled to inspect — but nonetheless refuses to allow access:

Although the LP Agreement mandates that the GP keep books and records according to GAAP, this was not done after 2003. Hence, I am enclosing only 2002 and 2003 audited statements. I believe that your clients had already received these some years back, but I am providing them again. Any other documents and information, including also disclosure of any PAAF information, will have to be secured through discovery in a civil action or by Grand Jury subpoena. I confirm that I have what I understand to be most of the LP's books and records, as well as those of its bookkeeper, in my possession. It is my understanding that there are other documents in possession of another accountant that are being sent overnight to me. There may also be some documents in the possession of a third accounting firm, and I have asked Mark to have them sent to me.

65. Similarly, to test the veracity of Bloom's representations to them about the PAAF settlement, on November 25, 2008, counsel for ADF and ADI wrote to counsel for the Receiver to PAAF, requesting the amount of the anticipated distribution to North Hills and/or Bloom. Bloom's counsel refused to consent to the Receiver's disclosure of this information. (*See Ex. X.*)

Consequently, ADF and ADI have no way of knowing how much they, or any other North Hills investor, can expect to recover from North Hills' investment in PAAF.

66. In fact, ADF and ADI understand that the United States District Court for the Eastern District of Pennsylvania has approved, and the PAAF Receiver will soon make a final distribution of funds to PAAF investors. The final distribution hearing in the matter is scheduled for December 15, 2008. *See Commodity Futures Trading Commission v. Paul M. Eustace et. al.*, Case 2:05-cv-02973-MMB (E.D. Pa.), Docket Entry No. 662. Bloom's actions in precluding ADF and ADI, Limited Partners in North Hills, from gaining access to information regarding this distribution, along with his past apparent embezzlement of PAAF settlement distribution funds, suggests that he intends to misappropriate this forthcoming distribution.

67. Because of his refusal to pay back the money he has embezzled, and his stonewalling on the production of information, Bloom has left ADF and ADI no choice but to bring this lawsuit to recover the funds that have been embezzled from them and from other North Hills investors.

COUNT I

ADF and ADI for Fraud against Bloom and NHM

68. Plaintiffs incorporate by reference paragraphs 1-67 above as if set forth fully herein.

69. Bloom and NHM owed ADF and ADI a fiduciary duty.

70. This fiduciary duty is established by law pursuant to Section 43 of the New York Partnership Law, and is also reflected in the North Hills PPM:

The General Partner has a fiduciary duty to the Limited Partners to exercise good faith and fairness in all dealings affecting the Partnership. If a Limited Partner believes this duty has been violated, he may seek legal relief under applicable law, for himself

and other similarly situated Limited Partners, or on behalf of the Partnership. (See Ex. C at 9.)

71. In addition, ADF and ADI reposed their trust and confidence in the integrity and fidelity of Bloom. Bloom acquired and abused this confidence.

72. Despite this fiduciary relationship, Bloom and NHM orchestrated a scheme to defraud ADF and ADI, and in connection with this scheme made numerous material misrepresentations and omissions to ADF and ADI.

73. Bloom and NHM *fraudulently omitted* informing ADF and ADI of, and actively concealed, the following material facts:

- (a) That Bloom and NHM were investing in PAAF for self-serving reasons, because Bloom received commissions as a third-party marketer for the PAAF fund;
- (b) That Bloom was taking funds that ADF and ADI had invested in North Hills for his personal use.

74. Bloom and NHM, as fiduciaries of ADF and ADI, were under a duty to disclose these facts to ADF and ADI as soon as they became aware of them.

75. These omissions were material.

76. ADF and ADI would have ceased investing in North Hills and immediately withdrawn all of the capital invested in North Hills had they known the truth.

77. Bloom and NHM also *fraudulently misrepresented* the following facts to ADF and ADI in an attempt to conceal their misconduct:

- (a) Bloom and NHM sent ADF and ADI account statements showing ADF's and ADI's investments to be healthy. They were, in fact, being embezzled by Bloom. Exhibit E of this complaint includes a chart with misrepresented account values from Bloom's and NHM's monthly account statements, along with several sample misleading account statements.
- (b) In April 2004 and October 2004, Bloom and NHM sent marketing materials that falsely represented that ADF's and ADI's investments had been earning positive returns in other hedge funds, continuing to mislead ADF and ADI about the supposed investment strategy for North Hills — even well after Bloom had embezzled millions of dollars from North Hills. These materials again falsely reiterated that the Fund was diversified and mitigating its risks. (See Ex. K.)

- (c) Bloom and NHM repeatedly misrepresented that they would make ADF and ADI whole on their investments in North Hills when they had no intention of following through on that promise.
- (d) In June 2005, Bloom, NHM, and the purported investment sub-advisor issued a fraudulent and misleading report. (*See* Ex. L (strategy document dated June 2005).) The report falsely represented that the Fund was fully invested in other hedge funds. Similar reports were issued in June 2004 and August 2006, all of which reflect similar misrepresentations and omissions. (*Id.*) (*See* Paragraph 40 above.)
- (e) On February 15, 2008, Joseph Borini emailed Bloom and inquired about the market value of ADF and ADI's investments. On the same day, Bloom responded that the market value of ADF's investment in North Hills was \$11.1 million, and that the market value of ADI's investment was \$2.3 million. This again was a gross misrepresentation as to the actual value of ADF's and ADI's investments, and failed to disclose Bloom's theft, details about the PAAF investment, or Refco losses. (*See* Ex. Y.)

78. Each of Bloom's and NHM's misrepresentations was material in that ADF and ADI relied on it to make their decision to invest and maintain their investments in North Hills.

79. If ADF and ADI had known the truth about any of these misrepresentations, they would not have made additional investments in North Hills and would have immediately withdrawn any investments they had already made.

80. Instead, ADF and ADI reasonably relied on Bloom's misrepresentations, and continued to invest in North Hills and to allow Bloom and NHM to manage the money they had already invested.

81. Bloom and NHM knew that these misrepresentations and omissions were false and material, and intended that ADF and ADI rely on such misrepresentations and omissions. They intended to mislead ADF and ADI, because the deception permitted Bloom and NHM to steal millions of dollars from ADF, ADI, and North Hills, and to use this money to buy a luxury apartment and otherwise support a lavish lifestyle for Bloom and his wife.

82. ADF and ADI have been deprived of the value of their investments by such misrepresentations.

COUNT II

**ADF and ADI, In their Individual Capacity and Derivatively for the Benefit of North Hills,
for Conversion against Bloom and NHM**

83. Plaintiffs incorporate by reference paragraphs 1-82 above as if set forth fully herein.

84. Bloom commingled assets and disregarded corporate formalities. (*See* Ex. F.) Bloom exercised complete domination of NHM, and used such domination as General Partner to convert funds rightfully belonging to North Hills and North Hills' investors for his own personal use.

85. Without authority, Bloom and NHM stole money from North Hills for Bloom's personal use, interfering with North Hills' right of possession.

86. As Limited Partners, ADF and ADI have demanded return of the money from Bloom and NHM, but Bloom has refused to do so.

87. As a proximate result of Bloom's and NHM's conversion, North Hills has sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

88. ADF and ADI are qualified to bring this claim in a derivative capacity on behalf of North Hills, as ADF and ADI are Limited Partners in North Hills and have been so throughout the relevant time period.

89. It would be futile for ADF and ADI to make a demand that the General Partner — NHM, over which Bloom has 100% control — file suit against NHM and Bloom to vindicate the partnership's interests, because as General Partner, NHM and Bloom are themselves architects of the wrongdoing.

COUNT III

ADF and ADI for Breach of Fiduciary Duty against Bloom and NHM

90. Plaintiffs incorporate by reference paragraphs 1-89 above as if set forth fully herein.

91. Bloom and NHM owed a fiduciary duty to ADF and ADI to manage their investments prudently and honestly, and without self-dealing, pursuant to Section 43 of the New York Partnership Law and as reflected in the PPM:

The General Partner has a fiduciary duty to the Limited Partners to exercise good faith and fairness in all dealings affecting the Partnership. If a Limited Partner believes this duty has been violated, he may seek legal relief under applicable law, for himself and other similarly situated Limited Partners, or on behalf of the Partnership. (*See Ex. C at 9.*)

92. Bloom and NHM also had duties under Sections 42 through 44 of the New York Partnership Law to render true and full information of all things affecting the partnership, to account to the partnership as a fiduciary, and to provide on demand a formal account as to partnership affairs.

93. Bloom and NHM breached these duties by failing to manage ADF's and ADI's investments prudently and honestly, by self-dealing, by stealing from North Hills and by investing ADF's and ADI's funds in a manner designed to increase commissions to Bloom, by providing false account statements and marketing materials to ADF and ADI, and by failing to disclose the truth about the North Hills' investments.

94. As a proximate result of Bloom's and NHM's breaches of their fiduciary duties, ADF and ADI have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

COUNT IV

ADF and ADI, Derivatively for the Benefit of North Hills, for Breach of Fiduciary Duty against Bloom

95. Plaintiffs incorporate by reference paragraphs 1-94 above as if set forth fully herein.

96. At all relevant times, Bloom and NHM, as North Hills' General Partner, stood in a fiduciary relationship with respect to the North Hills partnership.

97. In this capacity, NHM and Bloom owed a duty of utmost good faith, fairness, and loyalty toward North Hills.

98. Bloom and NHM breached these duties by failing to manage the partnership and its investments prudently and honestly, by concealing information, by stealing from North Hills for Bloom's own personal use, and by investing North Hills funds in a manner designed to increase commissions to Bloom.

99. As a proximate result of Bloom's and NHM's breaches of their fiduciary duties, North Hills has sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

100. ADF and ADI are qualified to bring this claim in a derivative capacity on behalf of North Hills, as ADF and ADI are Limited Partners in North Hills and have been so throughout the relevant time period.

101. It would be futile for ADF and ADI to make a demand that the General Partner — NHM, over which Bloom has 100% control — file suit against NHM and Bloom to vindicate the partnership's interests, because as General Partner NHM and Bloom are themselves architects of the wrongdoing.

COUNT V

ADF and ADI, Derivatively for the Benefit of North Hills, for Default on Loan against Bloom and NHM

102. Plaintiffs incorporate by reference paragraphs 1-101 above as if set forth fully herein.

103. ADF and ADI aver that the “loans” taken from North Hills by Bloom and NHM and the notes securing them, to the extent they even exist, were mere shams designed to conceal Bloom’s theft of North Hills’ partnership assets. However, in the event that the notes are found to be valid, enforceable instruments — instead of instruments of NHM’s and Bloom’s fraud and conversion — NHM and Bloom have defaulted on these notes.

104. In 2003, Bloom claims, NHM and Bloom took a loan from North Hills’ partnership assets. This loan was acquired exclusively for Bloom’s personal use.

105. Upon information and belief, the loan was in the form of 3-to-5 year notes with a minimum of 8% annual interest.

106. The return on the account statements provided to ADF and ADI indicate that Bloom and NHM have not been paying 8% interest on these notes. Instead, the notes have been achieving approximately 1.2% annually.

107. Bloom and NHM have defaulted on these sham notes.

108. As a proximate result of Bloom’s and NHM’s default, North Hills has sustained, and will continue to sustain, substantial damages in an amount to be proven at trial, and is entitled to appropriate injunctive relief to prevent further harm.

109. ADF and ADI are qualified to bring this claim in a derivative capacity on behalf of North Hills, as ADF and ADI are Limited Partners in North Hills and have been so throughout the relevant time period.

110. It would be futile for ADF and ADI to make a demand that the General Partner — NHM, over which Bloom has 100% control — file suit against NHM and Bloom to vindicate the partnership's interests, because as General Partner, NHM and Bloom are themselves architects of the wrongdoing.

COUNT VI

ADF and ADI, Derivatively for the Benefit of North Hills, for Unjust Enrichment against Bloom and Mrs. Bloom

111. Plaintiffs incorporate by reference paragraphs 1-110 above as if set forth fully herein.

112. Without authorization, Bloom and NHM took money that belonged to the North Hills partnership that allowed Bloom and Mrs. Bloom to purchase real property, which Bloom subsequently transferred to Mrs. Bloom in its entirety for a consideration of zero dollars.

113. The transfers from Bloom to Mrs. Bloom of property purchased as a result of money misappropriated from North Hills were made without adequate consideration. Mrs. Bloom knew or should have known of the misconduct associated with the purchases of these properties and subsequent transfers to her.

114. Substantial unjust benefits were conferred on Bloom and Mrs. Bloom via Bloom's theft of money from North Hills. In addition to receiving the proceeds of a \$11.2 million sale of the apartment at 10 Gracie Square, Mrs. Bloom also received the benefit of living in a 6,200-square-foot triplex for over four years.

115. ADF, ADI and North Hills were deprived of the value of their investments as a direct result of Bloom's theft of money from North Hills.

116. Bloom lacked justification for depriving ADF, ADI and North Hills of the value of their investments in North Hills.

117. Plaintiffs lack a remedy at law because Bloom has informed them that North Hills lacks adequate funds to repay them.

118. ADF and ADI are qualified to bring this claim in a derivative capacity on behalf of North Hills, as ADF and ADI are Limited Partners in North Hills and have been so throughout the relevant time period.

119. It would be futile for ADF and ADI to make a demand that the General Partner — NHM, over which Bloom has 100% control — file suit against NHM and Bloom to vindicate the partnership's interests, because as General Partner NHM and Bloom are themselves architects of the wrongdoing.

COUNT VII

ADF and ADI, Derivatively for the Benefit of North Hills, for Accounting against NHM

120. Plaintiffs incorporate by reference paragraphs 1-119 above as if set forth fully herein.

121. Bloom and NHM, as General Partner, had a fiduciary relationship with the partnership.

122. ADF, ADI and North Hills entrusted money to Bloom for investment in North Hills.

123. Property purchased with North Hills' partnership assets, along with any proceeds traceable to such properties, rightfully belongs to North Hills. Such property was acquired in circumstances such that the holder of the legal title — *i.e.*, Bloom and/or Mrs. Bloom — may not in good conscience retain the beneficial interest.

124. Plaintiffs have demanded that NHM provide an accounting of their investments in North Hills. NHM has refused to provide such an accounting.

125. Plaintiffs lack an adequate remedy at law as Bloom has informed them that North Hills lacks adequate funds to repay them.

126. ADF and ADI are qualified to bring this claim in a derivative capacity on behalf of North Hills, as ADF and ADI are Limited Partners in North Hills and have been so throughout the relevant time period.

127. It would be futile for ADF and ADI to make a demand that the General Partner — NHM, over which Bloom has 100% control — file suit against NHM and Bloom to vindicate the partnership's interests, because as General Partner NHM and Bloom are themselves architects of the wrongdoing.

COUNT VIII

ADF and ADI, Derivatively for the Benefit of North Hills, for Constructive Trust against Bloom, NHM, and Mrs. Bloom

128. Plaintiffs incorporate by reference paragraphs 1-127 above as if set forth fully herein.

129. Bloom and NHM, as General Partner, had a fiduciary relationship with the partnership.

130. Bloom and NHM breached their fiduciary duties to the partnership.

131. Bloom promised ADF, ADI and North Hills that he would invest their money prudently and in accordance with the terms of the LPA.

132. Without authorization, Bloom and NHM took money that belonged to the North Hills partnership that allowed Bloom and Mrs. Bloom to purchase real property, which Bloom subsequently transferred to Mrs. Bloom in its entirety for a consideration of zero dollars.

133. NHM, Bloom, and Mrs. Bloom were unjustly enriched at North Hills' expense.

134. Mr. and Mrs. Bloom cannot in good conscience retain a beneficial interest in property wrongfully acquired with North Hills assets.

135. Because of Bloom's and Mrs. Bloom's unreasonable conduct and unjust enrichment, it is appropriate to trace the money Mrs. Bloom received from the sale of the apartment purchased with North Hills partnership funds, along with any other money or property traceable to money that Bloom took from the North Hills Fund, and impose a constructive trust over these assets.

136. ADF and ADI are qualified to bring this claim in a derivative capacity on behalf of North Hills, as ADF and ADI are Limited Partners in North Hills and have been so throughout the relevant time period.

137. It would be futile for ADF and ADI to make a demand that the General Partner — NHM, over which Bloom has 100% control — file suit against NHM and Bloom to vindicate the partnership's interests, because as General Partner NHM and Bloom are themselves architects of the wrongdoing.

COUNT IX

ADF and ADI, Derivatively for the Benefit of North Hills, for Gross Negligence Against Bloom and NHM

138. Plaintiffs incorporate by reference paragraphs 1-137 above as if set forth fully herein.

139. As the Fund manager, Bloom and NHM owed a duty to North Hills to manage the partnership's assets professionally, with care and prudence.

140. Bloom and NHM recklessly made investment decisions on behalf of the Fund, without adequate diligence, internal controls, or analysis. As a result of their disregard for sound investment principles, Bloom and NHM wasted the partnership's assets.

141. Bloom's and NHM's gross negligence caused damage to the value of North Hills' investments and diminished the partnership assets.

142. As a proximate result of Bloom's and NHM's gross negligence, North Hills has sustained, and will continue to sustain, substantial damages in an amount to be proven at trial, and is entitled to appropriate injunctive relief to prevent further harm.

143. ADF and ADI are qualified to bring this claim in a derivative capacity on behalf of North Hills, as ADF and ADI are Limited Partners in North Hills and have been so throughout the relevant time period.

144. It would be futile for ADF and ADI to make a demand that the General Partner — NHM, over which Bloom has 100% control — file suit against NHM and Bloom to vindicate the partnership's interests, because as General Partner NHM and Bloom are themselves architects of the wrongdoing.

COUNT X

ADF and ADI for Breach of Contract Against Bloom and NHM

145. Plaintiffs incorporate by reference paragraphs 1-144 above as if set forth fully herein.

146. ADF and ADI, along with NHM (which is completely dominated and controlled by Bloom, with disregard for corporate formalities), are parties to the LPA.

147. ADF and ADI have invested money in North Hills and are Limited Partners in North Hills.

148. Bloom and NHM breached the LPA. Bloom's and NHM's breaches of the LPA include but are not limited to the following:

- (a) The PPM (incorporated by reference into the LPA) states that "[t]he General Partner has a fiduciary duty to the Limited Partners to exercise good faith and fairness in all dealings affecting the Partnership." (Ex. C at 9.) As set forth in

Count III above, Bloom and NHM have breached their fiduciary duties to ADF and ADI.

- (b) Section 3.9 of the LPA mandates that North Hills' total capital shall be determined in accordance with GAAP. (*See Ex. C at Annex A.*) Since 2003, Bloom and NHM have failed to meet this requirement.
- (c) Section 5.3 of the LPA provides that a Limited Partner may withdraw all or any part of its investment in North Hills upon written notice. (*See id.*) ADF and ADI have repeatedly requested complete withdrawals of their investments in North Hills. Bloom and NHM have refused to comply.
- (d) Section 7.1 of the LPA mandates that North Hills keep books and records in accordance with GAAP. (*See id.*) Since 2003, Bloom and NHM have failed to meet this requirement.
- (e) Section 7.1 of the LPA mandates that the books of North Hills shall be open to inspection by any Partner upon written notice. (*See id.*) Bloom and NHM refuse to meet this requirement.
- (f) Section 7.2 of the LPA requires NHM to prepare and have mailed to ADF and ADI each year audited Annual Reports. (*See id.*) Since the 2001 report, Bloom and NHM have failed to meet this requirement.

149. As a proximate result of Bloom's and NHM's breaches of contract, ADF and ADI have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial, and are entitled to appropriate injunctive relief to prevent further harm.

COUNT XI

ADF and ADI, In their Individual Capacity and Derivatively for the Benefit of North Hills, for Conspiracy Against Bloom, NHM, and Mrs. Bloom

150. Plaintiffs incorporate by reference paragraphs 1-149 above as if set forth fully herein.

151. An agreement existed among Bloom, NHM, and Mrs. Bloom to fraudulently transfer and conceal the North Hills partnership assets wrongfully acquired by Bloom. Bloom and NHM wrongfully transferred such assets to Mrs. Bloom to frustrate investors and future creditors, in an attempt to render Bloom and NHM virtually insolvent on paper and appear "judgment-proof."

152. As a proximate result of Bloom's, NHM's, and Mrs. Bloom's conspiracy to defraud, ADF, ADI, and North Hills have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial, and are entitled to appropriate injunctive relief to prevent further harm.

153. ADF and ADI are qualified to bring this claim in a derivative capacity on behalf of North Hills, as ADF and ADI are Limited Partners in North Hills and have been so throughout the relevant time period.

154. It would be futile for ADF and ADI to make a demand that the General Partner — NHM, over which Bloom has 100% control — file suit against NHM and Bloom to vindicate the partnership's interests, because as General Partner NHM and Bloom are themselves architects of the wrongdoing.

COUNT XII

ADF and ADI, In their Individual Capacity and Derivatively for the Benefit of North Hills, for Fraudulent Conveyance Against Bloom, NHM, and Mrs. Bloom

155. Plaintiffs incorporate by reference paragraphs 1-154 above as if set forth fully herein.

156. In late 2002, Bloom purchased a luxury apartment at 10 Gracie Square in Manhattan in his and Mrs. Bloom's name at approximately the same time Bloom was embezzling money that ADF and ADI had invested in North Hills.

157. In July 2005, Bloom transferred his ownership of the 10 Gracie Square apartment to Mrs. Bloom without fair consideration. Upon information and belief, the consideration was zero dollars.

158. In March 2007, Mrs. Bloom sold the apartment for approximately \$11.2 million.

159. Mrs. Bloom knew or should have known that Bloom was using North Hills' funds to transfer property to her. She knew or should have known about the fraud involved in acquiring such property, and she knew or should have known that Bloom was fraudulently conveying such property to her to hide it and prevent North Hills and North Hills' investors or future creditors from obtaining the property.

160. Mrs. Bloom did not give fair consideration for the transfer from Bloom of properties purchased with North Hills assets.

161. As a result of the transfer of Bloom's interest in real properties, including the apartment at 10 Gracie Square and the Westhampton beach house, to Mrs. Bloom, Bloom intended or believed that he would incur debt beyond his ability to pay, since he knew the funds that allowed him to purchase these properties belonged to North Hills.

162. Bloom's transfer of his interest in property to Mrs. Bloom was fraudulent as to North Hills, ADF, and ADI. Such transfer served to frustrate North Hills, ADF, and ADI from recouping funds rightfully belonging to them, and from obtaining judgment from Bloom, NHM, and Mrs. Bloom for their wrongful misappropriation and personal use of North Hills partnership assets and ADF's and ADI's individual investment monies.

163. As a proximate result of Bloom's, NHM's and Mrs. Bloom's fraudulent conveyance, North Hills, ADF and ADI have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial, and are entitled to appropriate injunctive relief to prevent further harm.

WHEREFORE, Plaintiffs ADF and ADI, individually and on behalf of North Hills L.P., respectfully request judgment as follows:

(a) On their First Count for fraud, rescinding their investments in North Hills, or in the alternative, rescinding the LPA, or in the alternative, awarding damages against Bloom and NHM in an amount to be determined at trial but believed to exceed \$8.5 million, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(b) On their Second Count for conversion, injunctive relief precluding NHM or Bloom from taking possession of any PAAF distribution pending the resolution of this dispute, an award of damages against Bloom and NHM in an amount to be determined at trial but believed to exceed \$8.5 million, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(c) On their Third and Fourth Counts for breach of fiduciary duty, awarding damages against Bloom and NHM in an amount to be determined at trial but believed to exceed \$8.5 million, together with prejudgment interest, or in the alternative, an accounting and imposition of a constructive trust, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, injunctive relief, and other such relief as the Court may deem appropriate.

(d) On their Fifth Count for default on loan, awarding damages against Bloom and NHM in an amount to be determined at trial but believed to exceed \$8.5 million, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(e) On their Sixth Count for unjust enrichment, awarding damages against Bloom and Mrs. Bloom in an amount to be determined at trial but believed to exceed \$8.5 million, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(f) On their Seventh Count for accounting, an accounting of the assets of NHM, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(g) On their Eighth Count for constructive trust, an accounting, the imposition of a constructive trust against the assets of Bloom, NHM and Mrs. Bloom, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

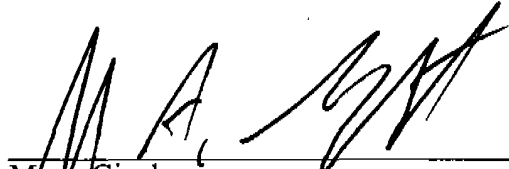
(h) On their Ninth Count for gross negligence, awarding damages against Bloom and NHM in an amount to be determined at trial but believed to exceed \$8.5 million, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(i) On their Tenth Count for breach of contract, awarding damages against Bloom and NHM in an amount to be determined at trial but believed to exceed \$8.5 million, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(j) On their Eleventh Count for conspiracy, awarding damages against Bloom, NHM, and Mrs. Bloom in an amount to be determined at trial but believed to exceed \$8.5 million, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(k) On their Twelfth Count for fraudulent conveyance, injunctive relief including but not limited to an order freezing Bloom's, NHM's, and Mrs. Bloom's assets, an order for Bloom, NHM, and Mrs. Bloom to cease and desist from transferring or dissipating any assets traceable to funds on loans from North Hills, the imposition of a constructive trust or receivership to collect from Bloom, NHM, and Mrs. Bloom property rightfully belonging to North Hills, an award for the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

Dated: December 8, 2008
New York, NY



Marja Ginzburg
Joe A. Blanchet
Michael D. Reisman

KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

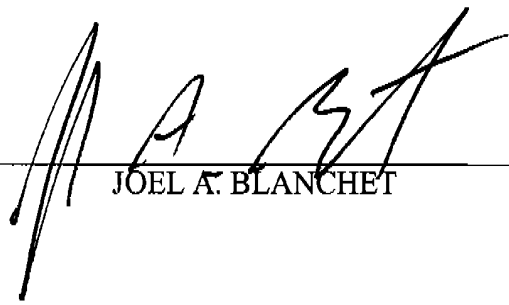
Attorneys for Plaintiffs
Alexander Dawson Foundation
Alexander Dawson Inc.

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

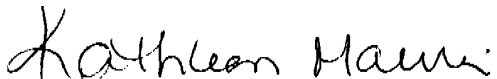
JOEL A. BLANCHET, being duly, sworn deposes and says:

I am the attorney for the Plaintiffs in the within action, who are not in the county where I have my office; I have read the foregoing Complaint and know the contents thereof; and the same is true to my own knowledge, except as to those matters therein stated to be upon information and belief, and as to those matters I believe them to be true.



JOEL A. BLANCHET

Sworn to before me on this
8th day of December 2008



Notary Public

KATHLEEN MAURIN
NOTARY PUBLIC, State of New York
No. 01CO5021646
Qualified in Nassau County
Commission Expires December 20, 2009

<p>INDEX NO.:</p> <p>SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK</p>	<p>ALEXANDER DAWSON FOUNDATION, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF NORTH HILLS, L.P., AND ALEXANDER DAWSON, INC., INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF NORTH HILLS, L.P.,</p> <p>Plaintiffs,</p> <p>- against -</p> <p>MARK EVAN BLOOM, NORTH HILLS MANAGEMENT, LLC, and LAUREN BLOOM,</p> <p>Defendants.</p>	<p>SUMMONS</p>	<p>Kirkland & Ellis LLP Citigroup Center 153 East 53rd Street New York, NY 10022-4675 (212) 446-4800</p>
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

BARRY J. BELMONT, PHILADELPHIA
FINANCIAL SERVICES, LLC, THOMAS J. KELLY,
JR., FRANCES R. KELLY and GARY O. PEREZ,

Plaintiffs,

v.

MB INVESTMENT PARTNERS, INC., CENTREMB
HOLDINGS, CENTRE PARTNERS
MANAGEMENT, LLC, ROBERT M. MACHINIST,
MARK E. BLOOM, RONALD L. ALTMAN,
LESTER POLLACK, WILLIAM M. TOMAI,
GUILLAUME BEBEAR, P. BENJAMIN GROSSCUP,
THOMAS N. BARR, CHRISTINE MUNN AND,
ROBERT A. BERNHARD, Defendants

CIVIL ACTION NO.:
09-cv-04951

ORDER

AND NOW, this ____ day of _____, 2010, upon consideration of

Defendants MB Investment Partners, Inc., Robert M. Machinist, P. Benjamin Grosscup,
Thomas N. Barr, Christine Munn and Robert A. Bernhard's Motion to Dismiss, it is
hereby ORDERED that Defendants' Motion is GRANTED and that Counts I, III and IV
of Plaintiffs' Amended Complaint are dismissed with prejudice.

Judge B. Schiller