SCANNED ON 4/30/2009

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

HOWARD KAGAN,

Plaintiff,

v.

HMC - NEW YORK, INC., HARBINGER CAPITAL PARTNERS GP, L.L.C., HARBINGER CAPITAL PARTNERS FUND I, L.P., HMC INVESTORS, L.L.C., HARBINGER CAPITAL PARTNERS OFFSHORE MANAGER, L.L.C., HARBINGER CAPITAL PARTNERS OFFSHORE FUND I, LTD., HARBINGER HOLDINGS, LLC, PHILIP A. FALCONE, RAYMOND J. HARBERT, MICHAEL D. LUCE, WILLIAM W. BROOKE, CHARLES D. MILLER, DAVID A. BOUTWELL, JOEL B. PIASSICK, MICHAEL P. WHITE, CAROLE B. SCHAFER, LAWRENCE M. CLARK, KATHLEEN K. MURPHY, IAN W. ESTUS, RAYMOND JONES HARBERT ACCUMULATION TRUST U/A 12/22/99, MARY KATHRYN HARBERT ACCUMULATION TRUST U/A 12/22/99, JOHN MURDOCH HARBERT II ACCUMULATION TRUST U/A 12/22/99 and JOHN AND JANE DOES 1 through 100,

Defendants.

Index No.:_____

09601306

SUMMONS

Plaintiff designates New York County as the place of trial.

The basis of venue is Plaintiff's residence.

FILED
APR 29 2009
COUNTY CLERK'S OFFICE NEW YORK

TO THE ABOVE NAMED DEFENDANTS:

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 twenty days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if 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.

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04/28/2009 11570485.1

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Dated: New York, New York
April 29, 2009

LOWENSTEIN SANDLER PC

By: _____

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Steven M. Hecht
Sally J. Mulligan
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Howard Kagan

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Birmingham, Alabama 35203

Mary Kathryn Harbert Accumulation Trust U/A 12/22/99
c/o Harbert Management Corporation
2100 Third Avenue North, Suite 600
Birmingham, Alabama 35203

John Murdoch Harbert II Accumulation Trust U/A 12/22/99
c/o Harbert Management Corporation
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Birmingham, Alabama 35203

John and Jane Does 1 through 100

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

HOWARD KAGAN,

Plaintiff,

v.

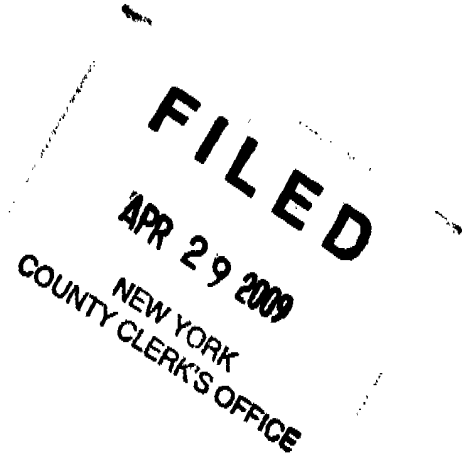
HMC - NEW YORK, INC., HARBINGER CAPITAL PARTNERS GP, L.L.C., HARBINGER CAPITAL PARTNERS FUND I, L.P., HMC INVESTORS, L.L.C., HARBINGER CAPITAL PARTNERS OFFSHORE MANAGER, L.L.C., HARBINGER CAPITAL PARTNERS OFFSHORE FUND I, LTD., HARBINGER HOLDINGS, LLC, PHILIP A. FALCONE, RAYMOND J. HARBERT, MICHAEL D. LUCE, WILLIAM W. BROOKE, CHARLES D. MILLER, DAVID A. BOUTWELL, JOEL B. PIASSICK, MICHAEL P. WHITE, CAROLE B. SCHAFER, LAWRENCE M. CLARK, KATHLEEN K. MURPHY, IAN W. ESTUS, RAYMOND JONES HARBERT ACCUMULATION TRUST U/A 12/22/99, MARY KATHRYN HARBERT ACCUMULATION TRUST U/A 12/22/99, JOHN MURDOCH HARBERT II ACCUMULATION TRUST U/A 12/22/99 and JOHN AND JANE DOES 1 through 100,

Defendants.

Index No.:_____

COMPLAINT

09601306



Plaintiff Howard Kagan, by his undersigned counsel, as and for his Complaint against (i) HMC - New York, Inc., Harbinger Capital Partners GP, L.L.C., Harbinger Capital Partners Fund I, L.P., HMC Investors, L.L.C., Harbinger Capital Partners Offshore Manager, L.L.C., Harbinger Capital Partners Offshore Fund I, Ltd., and Harbinger Holdings, LLC (collectively, the "Harbert Defendants" or "Harbert"); (ii) Philip A. Falcone, Raymond J. Harbert and Michael D. Luce (collectively, the "Controlling Defendants"); (iii) William W. Brooke, Charles D. Miller, David A. Boutwell and Joel B. Piassick (collectively, the "Officer Defendants"); (iv) Michael P. White, Carole B. Schafer, Lawrence M. Clark, Kathleen K.

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Murphy, Ian W. Estus, Raymond Jones Harbert Accumulation Trust U/A 12/22/99, Mary Kathryn Harbert Accumulation Trust U/A 12/22/99 and John Murdoch Harbert II Accumulation Trust U/A 12/22/99 (collectively, the "Investor Defendants," and together with the Controlling Defendants and the Officer Defendants, the "Individual Defendants"); and (v) John and Jane Does 1 through 100 (the "John and Jane Doe Defendants," and together with the Harbert Defendants, the Controlling Defendants, the Officer Defendants and the Investor Defendants, the "Defendants"), respectfully alleges and avers as follows:

NATURE OF THE ACTION

1. This is an action for breach of contract, unjust enrichment, breach of fiduciary duty and aiding and abetting breach of fiduciary duty arising out of the Harbert Defendants' failure to pay Howard Kagan an aggregate of not less than $62,141,783, or such other amount as may be determined at trial based on all available evidence, plus interest, that is owed to him under the parties' written agreements. In addition, Mr. Kagan seeks the imposition of a constructive trust to protect the amounts that the Harbert Defendants have refused to pay him and, upon information and belief, have been wrongfully transferred and will continue to be wrongfully transferred in whole or in part to certain of the Defendants.

2. The Harbert Defendants do not dispute that they owe Mr. Kagan at least $36,572,998. However, in an attempt to pressure Mr. Kagan to accept less than what he is owed under the parties' agreements, the Harbert Defendants have purposefully failed to pay to Mr. Kagan any of the amounts owed, including such acknowledged amounts. In addition, they have attempted to condition payment of such acknowledged amounts on Mr. Kagan signing a release and a covenant not to sue and waiving certain of his rights with respect to the amounts that are owed to him, notwithstanding the fact that the parties' agreements do not require that Mr. Kagan provide any such releases or waivers as a condition to receiving payment. Moreover, in breach of their contractual obligations to pay all of the amounts owed to Mr. Kagan in cash or publicly-traded securities, the Harbert Defendants claim that they have the right to pay more than $12 million of the amounts that they acknowledge they owe to him in the form of illiquid securities

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that are not registered and thus cannot be publicly traded and were valued by the Harbert Defendants using an undisclosed methodology that may have no relationship to what these securities can be sold for in an arms-length sale to a third party (such value is hereinafter referred to as the "Unrealizable Value"). Such conduct constitutes a breach of the parties' written agreements and the implied covenant of good faith and fair dealing.

3. Mr. Kagan is an investment professional in the money management industry, and the Harbert Defendants are part of a group of entities that constitute a New York-based private investment firm. The Harbert Defendants include two investment funds, Harbinger Capital Partners Fund I, L.P. (the "Onshore Fund") and Harbinger Capital Partners Offshore Fund I, Ltd. (the "Offshore Fund" and, together with the Onshore Fund, the "Funds").

4. In or about March of 2003, Mr. Kagan began providing consulting services to HMC - New York, Inc. ("HMC - New York"), and in or about November of 2004, Mr. Kagan became a Vice President and Director of Investments of HMC - New York. In 2006, Mr. Kagan was issued interests in, and became a member of, each of Harbinger Capital Partners GP, L.L.C. (the "Onshore Manager") and Harbinger Capital Partners Offshore Manager, L.L.C. (the "Offshore Manager" and, together with the Onshore Manager, the "Manager Entities"), the entities which managed the Onshore Fund and the Offshore Fund, respectively, at all relevant times. Upon information and belief, each of the Individual Defendants, HMC - New York and HMC Investors, L.L.C. also owned interests in one or both of the Manager Entities and were members of one or both of the Manager Entities at all relevant times.

5. Upon information and belief, the actions of the Manager Entities were, at all relevant times, ultimately controlled by Philip A. Falcone, Raymond J. Harbert and Michael D. Luce, who were the ultimate decision makers with respect to all actions taken by the Manager Entities. Upon information and belief, Mr. Falcone was the Chief Investment Officer and Senior Managing Director of the Manager Entities at all relevant times, Mr. Harbert was the Chairman and Chief Executive Officer of the Manager Entities at all relevant times, and Mr. Luce was the President and Chief Operating Officer of each of the Manager Entities at all relevant times.

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6. As a holder of membership interests in the Manager Entities, Mr. Kagan was entitled to receive payment of a portion of the Manager Entities' performance compensation pursuant to the limited liability company agreements of the Manager Entities. These limited liability company agreements of the Onshore Manager and the Offshore Manager (the "Onshore Manager Agreement" and the "Offshore Manager Agreement," respectively, and collectively, the "Agreements") required that a portion of the amounts owed to Mr. Kagan with respect to 2007 be held back by the Manager Entities and paid to Mr. Kagan only if such amounts vested. Under the Agreements, vesting of the withheld amounts occurs upon a variety of events, including upon the involuntary termination of Mr. Kagan's relationship with Harbert without cause. Once such amounts vest, they are required to be paid to Mr. Kagan within 30 days after Mr. Kagan's termination without cause, in the case of amounts owed by the Offshore Manager, and promptly after his termination, in the case of amounts owed by the Onshore Manager.

7. In order to incentivize Mr. Kagan's performance, the Agreements provide that the amounts owed to Mr. Kagan with respect to the withheld amounts were to be increased or decreased based on the performance of the Onshore Fund. The Agreements further provide, however, that such amounts are fixed and no longer subject to such increase or decrease once such amounts vest in connection with an involuntary termination of Mr. Kagan's relationship with Harbert without cause. This is consistent with the fact that Mr. Kagan, upon the effectiveness of his termination, would no longer be playing a role in the performance of the Funds.

8. In addition to the amounts withheld and subject to vesting with respect to 2007 as set forth in paragraphs six and seven above, the Agreements also provide that in the event of Mr. Kagan's termination without cause, the Manager Entities are required to pay to Mr. Kagan amounts equal to his pro rated share of the performance compensation of the Manager Entities for 2008, the year in which such termination occurred.

9. On August 27, 2008, Mr. Falcone, without prior notice to Mr. Kagan, terminated Mr. Kagan's relationship with Harbert without cause. As a result of such termination and in

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accordance with the foregoing, the Agreements require that Mr. Kagan be paid amounts totaling not less than $62,141,783, all of which is now long overdue.

10. In his meeting with Mr. Kagan at the time of Mr. Kagan's termination, Mr. Falcone assured Mr. Kagan that he would be paid. Mr. Falcone also stated to Mr. Kagan in an e-mail dated August 30, 2008 that "[t]his should be a pretty smooth separation [as] far as I'm concerned. I don't believe we have any issues." In addition, in a subsequent e-mail to Mr. Kagan dated September 1, 2008, Mr. Falcone stated that "[y]ou will get your money and that's that. We have terms, a charter and a contract that everyone abides by."

11. However, almost immediately after Mr. Kagan's termination and as Harbert was calculating the amounts owed to him under the Agreements, circumstances at Harbert changed considerably. In the days following Mr. Kagan's termination, the stock market plunged in response to the unfolding economic crisis, and investment funds experienced a liquidity crisis as they faced an unprecedented number of investor redemptions. The first week of September 2008 culminated with the federal government's takeover of Fannie Mae and Freddie Mac, and the downward spiral continued for the remainder of the month as Lehman Brothers filed for bankruptcy, AIG suffered a liquidity crisis, and the Troubled Assets Relief Program was announced. On September 29, 2008, the Dow Jones Industrial Average suffered its largest one-day point decline ever, dropping 777 points, or almost 7%, wiping out $1.2 trillion in market value. During this time, investment funds were experiencing dramatic declines in performance.

12. Now, nearly eight months have passed since Mr. Falcone involuntarily terminated Mr. Kagan's relationship with Harbert without cause, and even though Harbert acknowledges that it owes Mr. Kagan at least approximately $36.5 million, the Manager Entities have yet to pay to Mr. Kagan any of the $62,141,783 owed to him under the Agreements. In fact, in an attempt to pressure Mr. Kagan to accept less than what he is owed under the Agreements, the Harbert Defendants have purposefully failed to pay even the amounts that they acknowledge they owe to him unless Mr. Kagan signs a release and a covenant not to sue and waives certain of his rights with respect to the amounts that are owed to him. In addition, in breach of the

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Agreements, the Harbert Defendants claim that they have the right to pay a substantial portion of such acknowledged amounts in the form of illiquid securities that may have an Unrealizable Value and that were not even in existence at the time that Mr. Falcone involuntarily terminated Mr. Kagan's relationship with Harbert.

13. Furthermore, upon information and belief, Mr. Falcone, Mr. Harbert and Mr. Luce, the Controlling Defendants, directed and caused the Manager Entities to wrongfully withhold the payments due to Mr. Kagan and caused and continue to cause the Manager Entities to distribute assets to certain of the Defendants that should have been used to pay Mr. Kagan.

PARTIES

14. HMC - New York, Inc., on information and belief, is a corporation organized under the laws of New York with a principal place of business located at 555 Madison Avenue, 16th Floor, New York, New York 10022.

15. Harbinger Capital Partners GP, L.L.C., on information and belief, is a limited liability company organized under the laws of Delaware with a principal place of business located at 555 Madison Avenue, 16th Floor, New York, New York 10022.

16. Harbinger Capital Partners Fund I, L.P., on information and belief, is a limited partnership organized under the laws of Delaware with a principal place of business located at 555 Madison Avenue, 16th Floor, New York, New York 10022.

17. HMC Investors, L.L.C. ("HMC Investors"), on information and belief, is a limited liability company organized under the laws of Delaware with a principal place of business located at 2100 Third Avenue North, Suite 600, Birmingham, Alabama 35203.

18. Harbinger Capital Partners Offshore Manager, L.L.C., on information and belief, is a limited liability company organized under the laws of Delaware with a principal place of business located at 2100 Third Avenue North, Suite 600, Birmingham, Alabama 35203 effective as of July 10, 2008. Prior to July 10, 2008, the principal place of business was located at 555 Madison Avenue, 16th Floor, New York, New York 10022.

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19. Harbinger Capital Partners Offshore Fund I, Ltd., on information and belief, is a limited company organized under the laws of the Cayman Islands with a principal place of business located in Dublin, Ireland.

20. Harbinger Holdings, LLC ("Harbinger Holdings"), on information and belief, is a limited liability company organized under the laws of Delaware with a principal place of business located at 555 Madison Avenue, 16th Floor, New York, New York 10022.

21. William W. Brooke, on information and belief, is an individual with a business address at c/o Harbert Management Corporation, 2100 Third Avenue North, Suite 600, Birmingham, AL 35203. Mr. Brooke was, on information and belief, an Executive Vice President of the Offshore Manager and an Executive Vice President and Secretary of the Onshore Manager at all relevant times.

22. Charles D. Miller, on information and belief, is an individual with a business address at c/o Harbert Management Corporation, 2100 Third Avenue North, Suite 600, Birmingham, AL 35203. Mr. Miller was, on information and belief, an Executive Vice President and Chief Financial Officer of the Offshore Manager and a Vice President and Treasurer of the Onshore Manager at all relevant times.

23. David A. Boutwell, on information and belief, is an individual with a business address at c/o Harbert Management Corporation, 2100 Third Avenue North, Suite 600, Birmingham, AL 35203. Mr. Boutwell was, on information and belief, an Executive Vice President and Chief Administrative Officer of the Offshore Manager and a Vice President and Controller of the Onshore Manager at all relevant times.

24. Joel B. Piassick, on information and belief, is an individual with a business address at c/o Harbert Management Corporation, 2100 Third Avenue North, Suite 600, Birmingham, AL 35203. Mr. Piassick was, on information and belief, an Executive Vice President, General Counsel and Secretary of the Offshore Manager and a Vice President and General Counsel of the Onshore Manager at all relevant times.

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25. Michael P. White, on information and belief, is an individual with a business address at c/o Harbert Management Corporation, 2100 Third Avenue North, Suite 600, Birmingham, AL 35203. Mr. White was, on information and belief, an investor in the Offshore Manager at all relevant times. Mr. White is named as a defendant herein because, upon information and belief, assets have been transferred to and will continue to be transferred to Mr. White by the Harbert Defendants that should have been used by the Harbert Defendants to pay Mr. Kagan.

26. Carole B. Schafer, on information and belief, is an individual with a business address at c/o Harbert Management Corporation, 2100 Third Avenue North, Suite 600, Birmingham, AL 35203. Ms. Schafer was, on information and belief, an investor in the Offshore Manager at all relevant times. Ms. Schafer is named as a defendant herein because, upon information and belief, assets have been transferred to and will continue to be transferred to Ms. Schafer by the Harbert Defendants that should have been used by the Harbert Defendants to pay Mr. Kagan.

27. Lawrence M. Clark, on information and belief, is an individual with a business address at c/o Harbinger Capital Partners, 555 Madison Avenue, 16th Floor, New York, New York 10022. Mr. Clark was, on information and belief, an investor in each of the Onshore Manager and the Offshore Manager at all relevant times. Mr. Clark is named as a defendant herein because, upon information and belief, assets have been transferred to and will continue to be transferred to Mr. Clark by the Harbert Defendants that should have been used by the Harbert Defendants to pay Mr. Kagan.

28. Kathleen K. Murphy, on information and belief, is an individual with a business address at c/o Harbinger Capital Partners, 555 Madison Avenue, 16th Floor, New York, New York 10022. Ms. Murphy was, on information and belief, an investor in each of the Onshore Manager and the Offshore Manager at all relevant times. Ms. Murphy is named as a defendant herein because, upon information and belief, assets have been transferred to and will continue to

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be transferred to Ms. Murphy by the Harbert Defendants that should have been used by the Harbert Defendants to pay Mr. Kagan.

29. Ian W. Estus, on information and belief, is an individual with a business address at c/o Harbinger Capital Partners, 555 Madison Avenue, 16th Floor, New York, New York 10022. Mr. Estus was, on information and belief, an investor in each of the Onshore Manager and the Offshore Manager at all relevant times. Mr. Estus is named as a defendant herein because, upon information and belief, assets have been transferred to and will continue to be transferred to Mr. Estus by the Harbert Defendants that should have been used by the Harbert Defendants to pay Mr. Kagan.

30. Raymond Jones Harbert Accumulation Trust U/A 12/22/99 (the "RJH Trust"), on information and belief, is a Trust Under Agreement with an address at c/o Harbert Management Corporation, 2100 Third Avenue North, Suite 600, Birmingham, Alabama 35203. The RJH Trust was, on information and belief, an investor in the Offshore Manager at all relevant times. The RJH Trust is named as a defendant herein because, upon information and belief, assets have been transferred to and will continue to be transferred to the RJH Trust by the Harbert Defendants that should have been used by the Harbert Defendants to pay Mr. Kagan.

31. Mary Kathryn Harbert Accumulation Trust U/A 12/22/99 (the "MKH Trust"), on information and belief, is a Trust Under Agreement with an address at c/o Harbert Management Corporation, 2100 Third Avenue North, Suite 600, Birmingham, Alabama 35203. The MKH Trust was, on information and belief, an investor in the Offshore Manager at all relevant times. The MKH Trust is named as a defendant herein because, upon information and belief, assets have been transferred to and will continue to be transferred to the MKH Trust by the Harbert Defendants that should have been used by the Harbert Defendants to pay Mr. Kagan.

32. John Murdoch Harbert II Accumulation Trust U/A 12/22/99 (the "JMH Trust"), on information and belief, is a Trust Under Agreement with an address at c/o Harbert Management Corporation, 2100 Third Avenue North, Suite 600, Birmingham, AL 35203. The JMH Trust was, on information and belief, an investor in the Offshore Manager at all relevant

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times. The MKH Trust is named as a defendant herein because, upon information and belief, assets have been transferred to and will continue to be transferred to the MKH Trust by the Harbert Defendants that should have been used by the Harbert Defendants to pay Mr. Kagan.

33. Howard Kagan is an individual domiciled in New York, having an address at 1085 Park Avenue, Apt. 9B, New York, New York 10128.

34. Philip Falcone, on information and belief, is an individual residing at 14 East 67th Street, New York, New York 10021. Mr. Falcone was, on information and belief, the Chief Investment Officer and Senior Managing Director of the Manager Entities at all relevant times. In addition, Mr. Falcone is, upon information and belief, the sole managing member, Chairman and Chief Executive Officer of Harbinger Holdings.

35. Raymond J. Harbert, on information and belief, is an individual residing at 2913 Southwood Road, Birmingham, Alabama 35223. Mr. Harbert was, on information and belief, the Chairman and Chief Executive Officer of the Manager Entities at all relevant times.

36. Michael D. Luce, on information and belief, is an individual residing at 3123 Overhill Road, Birmingham, Alabama 35223. Mr. Luce was, on information and belief, the President and Chief Operating Officer of each of the Manager Entities at all relevant times.

37. John and Jane Does 1 through 100 are fictitious defendants who, on information and belief, received some portion of the assets that should have been used to pay Mr. Kagan.

JURISDICTION AND VENUE

38. Jurisdiction is appropriate in the Commercial Division of the Supreme Court pursuant to Section 202.70 of the Rules of the Commercial Division.

39. This Court has personal jurisdiction over all of the Defendants and venue is proper in this Court because (i) Mr. Kagan is a resident of New York County; (ii) the principal place of business of HMC - New York, the Onshore Manager, the Onshore Fund and Harbinger Holdings is located in the State of New York; (iii) HMC Investors, the Offshore Manager and the Offshore Fund, through their respective agents, have engaged in a continuous and systematic course of doing business in the State of New York and/or transact business in the State of New

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York, and the causes of action asserted against them arise out of those transactions; and (iv) the Individual Defendants either reside in the State of New York and/or transact business in the State of New York, and the causes of action asserted against them arise out of those transactions.

FACTUAL ALLEGATIONS
APPLICABLE TO ALL CAUSES OF ACTION

A. The Relationships Among The Parties

40. The Harbert Defendants are part of a group of entities that constitute a New York-based private investment firm. The Harbert Defendants include two investment funds, the Onshore Fund and the Offshore Fund. At all relevant times, the Onshore Fund and the Offshore Fund were managed by the Onshore Manager and the Offshore Manager, respectively. Upon information and belief, HMC - New York was the sole manager of the Onshore Manager, and HMC Investors was the sole manager of the Offshore Manager, at all relevant times up until Mr. Kagan's termination. Upon information and belief, sometime subsequent to Mr. Kagan's termination, Harbinger Holdings became the sole manager of each of the Offshore Manager and the Onshore Manager. Upon information and belief, Mr. Falcone is the sole managing member, Chairman and Chief Executive Officer of Harbinger Holdings.

41. In or about March of 2003, Mr. Kagan began providing consulting services to HMC - New York, and in or about November of 2004, Mr. Kagan became a Vice President and Director of Investments of HMC - New York. In 2006, Mr. Kagan was issued interests in, and was admitted as a member of, each of the Manager Entities. Upon information and belief, each of HMC - New York, HMC Investors and the Individual Defendants also owned interests in one or both of the Manager Entities and were members of one or both of the Manager Entities at all relevant times.

42. As a holder of membership interests in the Manager Entities, Mr. Kagan was entitled to receive payment of a portion of the Manager Entities' performance compensation pursuant to the Agreements. The Agreements required that a portion of the amounts owed to Mr. Kagan for any given year be held back by the Manager Entities and paid to Mr. Kagan only if

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such amounts vested. Such withheld amounts vest immediately and become payable upon, among other events, the involuntary termination of Mr. Kagan's relationship with Harbert without cause. In addition, the Offshore Manager Agreement separately provided that Mr. Kagan could voluntarily elect to defer the payment of a portion of the amounts owed to him by the Offshore Manager for any given year and, if so elected, that the amount voluntarily deferred at Mr. Kagan's election would reduce the amounts required to be withheld and subject to the mandatory vesting provisions. Both Agreements also provide that in the event of the involuntary termination of Mr. Kagan's relationship with Harbert, the Manager Entities are required to pay to Mr. Kagan amounts equal to his pro rated share of the performance compensation of the Manager Entities for the calendar year in which he was terminated.

43. On August 27, 2008, Mr. Falcone, without any prior notice to Mr. Kagan, terminated Mr. Kagan's relationship with Harbert without cause. As a result, the Offshore Manager Agreement requires that the Offshore Manager pay to Mr. Kagan (i) with respect to the amounts owed to Mr. Kagan for 2007 and required to be withheld pursuant to the mandatory vesting provisions, not less than $52,641,265, or such other amount as may be determined at trial based on all available evidence, plus interest, within thirty days after Mr. Kagan's termination, and (ii) with respect to the amounts owed to Mr. Kagan for the year in which he was terminated (2008), not less than $2,987,903, or such other amount as may be determined at trial based on all available evidence, plus interest, on or before March 31, 2009. In addition, the Onshore Manager Agreement requires that the Onshore Manager pay to Mr. Kagan (a) with respect to the amounts owed to Mr. Kagan for 2007 and required to be withheld pursuant to the mandatory vesting provisions, not less than $3,541,202, or such other amount as may be determined at trial based on all available evidence, plus interest, promptly after his date of termination, and (b) for 2008 (the year of termination), not less than $2,971,413, or such other amount as may be determined at trial based on all available evidence, plus interest, on or before March 31, 2009.

44. In his meeting with Mr. Kagan at the time of Mr. Kagan's termination, Mr. Falcone assured Mr. Kagan that he would be paid, and Mr. Falcone subsequently confirmed this

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in writing. However, almost immediately after Mr. Kagan's termination and as Harbert was calculating the amounts owed to him under the Agreements, circumstances at Harbert changed considerably. In the days following Mr. Kagan's termination, the stock market plunged in response to the unfolding economic crisis and investment funds experienced dramatic declines in performance. Now, nearly eight months have passed since Mr. Kagan was terminated without cause, and the Manager Entities have yet to pay to Mr. Kagan any of the amounts owed to him under the Agreements, even though they do not dispute that at least approximately $36.5 million is owed to Mr. Kagan.

45. In addition, upon information and belief, Mr. Falcone, Mr. Harbert and Mr. Luce, the Controlling Defendants, caused the Manager Entities to wrongfully withhold the payments due to Mr. Kagan and caused and continue to cause the Manager Entities to distribute assets to certain of the Defendants that should have been used to pay Mr. Kagan.

B. Amounts Owed To Mr. Kagan By The Offshore Manager

46. As a holder of membership interests in the Offshore Manager, Mr. Kagan was entitled to receive payments of a portion of the Offshore Manager's performance compensation for each year. Under Section 4.5(d) of the Offshore Manager Agreement, a portion of the amounts owed to Mr. Kagan for any given year were required to be held back by the Offshore Manager and be paid to Mr. Kagan only if such amounts vested. Such amounts withheld pursuant to this mandatory holdback and vesting provision vest immediately and become payable upon, among other events, the involuntary termination of Mr. Kagan's relationship with Harbert without cause. In order to incentivize Mr. Kagan's performance, the amounts owed to Mr. Kagan with respect to these withheld amounts were to be increased or decreased based on the earnings or losses of the Onshore Fund. However, once the withheld amounts vest in connection with a termination of Mr. Kagan without cause, the amounts owed to Mr. Kagan become fixed and are no longer subject to increase or decrease. In addition to the amounts required to be withheld and subject to mandatory vesting pursuant to Section 4.5(d), the Offshore Manager Agreement separately provided in Section 4.6 that Mr. Kagan could voluntarily elect for tax

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purposes to defer the payment of a portion of the amounts owed to him by the Offshore Manager for any given year and, if so elected, that the amount voluntarily deferred at Mr. Kagan's election would (i) result in a corresponding deferral of amounts owed by the Offshore Fund to the Offshore Manager and (ii) reduce the amounts owed to Mr. Kagan that were required to be withheld and subject to the mandatory vesting provisions in Section 4.5(d). The Offshore Manager Agreement (pursuant to Section 8.7 thereof) also provides that, in the event of the termination of Mr. Kagan's relationship with Harbert without cause, the Offshore Manager is required to pay to Mr. Kagan amounts equal to his pro rated share of the performance compensation of the Offshore Manager for the calendar year in which he was terminated.

47. Pursuant to Section 4.5(d) of the Offshore Manager Agreement, a portion of the amounts owed by the Offshore Manager to Mr. Kagan with respect to 2007 and equal to not less than $43,999,720 were required to be held back and subject to the mandatory vesting provisions contained therein (such amounts, the "2007 Offshore Withheld Amounts"), and these amounts were in fact withheld and not paid to Mr. Kagan.

48. Mr. Kagan did not elect to make a voluntary deferral pursuant to Section 4.6 of the Offshore Manager Agreement with respect to any amounts owed to him by the Offshore Manager for 2007. Accordingly, (i) the provisions of Section 4.6 of the Offshore Manager Agreement do not apply with respect to the 2007 Offshore Withheld Amounts, (ii) the entirety of such amounts were to be subject to the provisions of Section 4.5(d) and (iii) no corresponding deferral of amounts owed by the Offshore Fund to the Offshore Manager should have been made by the Offshore Manager. However, Mr. Kagan has learned that the Offshore Manager deferred amounts owed to it from the Offshore Fund as if Mr. Kagan had made a voluntary deferral pursuant to Section 4.6 of the Offshore Manager Agreement. Such unauthorized deferral by the Offshore Manager constitutes a material breach of Section 4.6 of the Offshore Manager Agreement.

49. The vesting provisions contained in Section 4.5(d) of the Offshore Manager Agreement provide that such amounts vest immediately upon the involuntary termination of Mr.

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Kagan's relationship with Harbert without cause. Mr. Kagan was notified of his termination on August 27, 2008, he ceased to provide any services to Harbert thereafter and such termination was involuntary and without cause. Consequently, the 2007 Offshore Withheld Amounts vested upon his termination.

50. The 2007 Offshore Withheld Amounts were to be invested by the Offshore Manager in the Onshore Fund, as provided by Sections 4.5(d)(i) and (vi) of the Offshore Manager Agreement. The amounts owed to Mr. Kagan were to be increased or decreased based on the earnings and losses of the Onshore Fund, as provided by Sections 4.5(d)(v) and (vii) of the Offshore Manager Agreement. However, upon the vesting of the 2007 Offshore Withheld Amounts at the time of Mr. Kagan's termination without cause, the amounts payable to Mr. Kagan in respect of the 2007 Offshore Withheld Amounts became fixed liabilities of the Offshore Manager and were not subject to further increases or decreases based on the performance of the Onshore Fund.

51. Sections 4.5(d)(v) and (vii) of the Offshore Manager Agreement provide that the payment date for the amounts owed in respect of the 2007 Offshore Withheld Amounts "shall be 30 days following the date of vesting and shall be paid promptly after the receipt by the Company of the [2007 Offshore Withheld Amounts] from Harbinger Capital Partners Fund I, L.P." The Offshore Manager therefore was required to pay the amounts owed in respect of the 2007 Offshore Withheld Amounts to Mr. Kagan within 30 days after Mr. Kagan's termination without cause.

52. Accordingly, not less than $52,641,265 should have been paid to Mr. Kagan by the Offshore Manager within 30 days after Mr. Kagan's termination without cause. To date, none of these monies has been paid.

53. In addition to the amounts owed to Mr. Kagan in respect of the 2007 Offshore Withheld Amounts, Mr. Kagan also is owed the amounts that were required to be paid to him pursuant to Section 8.7 of the Offshore Manager Agreement with respect to 2008, the calendar year in which he was terminated.

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54. Under Section 8.7 of the Offshore Manager Agreement, the Offshore Manager is required to pay Mr. Kagan additional amounts equal to not less than $2,987,903, representing his pro rated share of the performance compensation for 2008, the calendar year in which he was terminated. Section 8.7 requires that these amounts were to have been paid by the Offshore Manager no later than March 31, 2009, the date which is ninety days after the end of the calendar year in which Mr. Kagan was terminated. To date, Mr. Kagan has not received payment of these amounts.

55. Accordingly, the aggregate amounts owed to Mr. Kagan by the Offshore Manager equal not less than $55,629,168, or such other amount as may be determined at trial based on all available evidence, plus interest. These amounts must be paid in cash or publicly-traded securities pursuant to Section 4.3 of the Offshore Manager Agreement.

C. Amounts Owed To Mr. Kagan By The Onshore Manager

56. In addition to the amounts owed to Mr. Kagan by the Offshore Manager, Mr. Kagan also is owed substantial amounts by the Onshore Manager.

57. As a holder of membership interests in the Onshore Manager, Mr. Kagan was entitled to receive payments of a portion of the Onshore Manager's performance compensation for each year. Under Section 4.5(e) of the Onshore Manager Agreement, a portion of the amounts owed to Mr. Kagan for any given year were required to be held back by the Onshore Manager and be paid to Mr. Kagan only if such amounts vested. Such mandatory holdback amounts vest immediately and become payable upon, among other events, the involuntary termination of Mr. Kagan's relationship with Harbert without cause. In order to incentivize Mr. Kagan's performance, the amounts owed to Mr. Kagan with respect to these withheld amounts were to be increased or decreased based on the earnings or losses of the Onshore Fund. The Onshore Manager Agreement (pursuant to Section 8.7 thereof) also provides that, in the event of the termination of Mr. Kagan's relationship with Harbert without cause, the Onshore Manager is required to pay to Mr. Kagan additional amounts equal to his pro rated share of the performance compensation of the Onshore Manager for the calendar year in which he was terminated.

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58. Pursuant to Section 4.5(e) of the Onshore Manager Agreement, a portion of the amounts owed by the Onshore Manager to Mr. Kagan with respect to 2007 and equal to not less than $2,959,881 were required to be held back and subject to the mandatory vesting provisions contained therein (such amounts, the "2007 Onshore Withheld Amounts"), and these amounts were in fact withheld and not paid to Mr. Kagan.

59. The vesting provisions contained in Section 4.5(e) of the Onshore Manager Agreement provide that such amounts vest immediately upon the involuntary termination of Mr. Kagan's relationship with Harbert without cause. Mr. Kagan was notified of his termination on August 27, 2008, he ceased to provide any services to Harbert thereafter and such termination was without cause. Consequently, the 2007 Onshore Withheld Amounts vested upon Mr. Kagan's termination.

60. Pursuant to Section 4.5(e)(v) of the Onshore Manager Agreement, the amounts owed to Mr. Kagan with respect to the 2007 Onshore Withheld Amounts were to be increased or decreased by an amount equal to the earnings or losses that would have been incurred if such amounts had been invested in the Onshore Fund as of the beginning of the following year and redeemed at the end of the month prior to vesting. Therefore, the Onshore Manager Agreement requires that calculation of the amounts owed to Mr. Kagan in respect of the 2007 Onshore Withheld Amounts be made as of the end of the month prior to his termination.

61. Consequently, upon Mr. Kagan's termination, the amounts owed to him in respect of the 2007 Onshore Withheld Amounts became fixed liabilities of the Onshore Manager in an amount calculated to reflect such earnings and losses through the end of the month prior to his termination. As such, and consistent with the provision for accelerated vesting of the 2007 Onshore Withheld Amounts upon Mr. Kagan's termination, such amounts should have been paid to Mr. Kagan by the Onshore Manager promptly after the vesting of such amounts upon his termination.

62. Accordingly, amounts equal to not less than $3,541,202 should have already been paid by the Onshore Manager to Mr. Kagan. To date, none of these monies has been paid.

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63. In addition to the amounts owed to Mr. Kagan in respect of the 2007 Onshore Withheld Amounts, Mr. Kagan also is owed the amounts that are required to be paid to him pursuant to Section 8.7 of the Onshore Manager Agreement with respect to 2008, the calendar year in which he was terminated.

64. Under Section 8.7 of the Onshore Manager Agreement, the Onshore Manager is required to pay Mr. Kagan additional amounts equal to not less than $2,971,413 representing his pro rated share of the performance compensation for 2008, the calendar year in which he was terminated. Section 8.7 requires that these amounts were to have been paid by the Onshore Manager no later than March 31, 2009, the date which is ninety days after the end of the calendar year in which Mr. Kagan was terminated. To date, Mr. Kagan has not received payment of these amounts.

65. Accordingly, the aggregate amounts owed to Mr. Kagan by the Onshore Manager equal not less than $6,512,615, or such other amount as may be determined at trial based on all available evidence, plus interest. These amounts must be paid in cash or publicly-traded securities pursuant to Section 4.3 of the Onshore Manager Agreement.

D. Failure To Pay And Bad Faith

66. Despite the fact that the Harbert Defendants have acknowledged that they owe Mr. Kagan at least $36,572,998, the Harbert Defendants have failed to pay Mr. Kagan any of the amounts owed to him, which total at least $62,141,783, all of which are now overdue. In an attempt to pressure Mr. Kagan to accept less than what he is owed under the Agreements, the Harbert Defendants have refused in bad faith to pay Mr. Kagan any of the amounts owed, including such acknowledged amounts, unless Mr. Kagan signs a release and a covenant not to sue and waives certain of his rights with respect to the amounts that are owed to him, notwithstanding the fact that the Agreements do not require that Mr. Kagan provide any such releases or waivers as a condition to receiving payment.

67. Moreover, Section 4.3 of each Agreement requires that the amounts owed to Mr. Kagan by the Manager Entities be paid in cash or publicly-traded securities. Nevertheless, the

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Harbert Defendants claim that they have the right to pay more than $12 million of the amounts that they acknowledge they owe to him in the form of illiquid securities that may have an Unrealizable Value. In addition, upon information and belief, Mr. Falcone, Mr. Harbert and Mr. Luce caused the Manager Entities to wrongfully withhold the payments due to Mr. Kagan and caused and continue to cause the Manager Entities to distribute assets to certain of the Defendants that should have been used to pay Mr. Kagan.

68. Thus, the Harbert Defendants are acting in bad faith and have failed to satisfy their contractual obligations to pay Mr. Kagan the substantial amounts that are owed to him, and a constructive trust should be imposed to protect the amounts that are due and owing to Mr. Kagan.

FIRST CAUSE OF ACTION
Breach of Contract and Implied Covenant of Good Faith and Fair Dealing -- Offshore Manager Agreement

69. Mr. Kagan repeats and alleges each and every allegation set forth above as if set forth at length herein.

70. Mr. Kagan, HMC Investors (and/or Harbinger Holdings, which is, upon information and belief, successor manager to the Offshore Manager) and the Offshore Manager are parties to the Offshore Manager Agreement.

71. The Offshore Manager Agreement is a valid and binding contract between the parties.

72. Mr. Kagan has performed all of his obligations under the Offshore Manager Agreement.

73. HMC Investors (and/or Harbinger Holdings) and the Offshore Manager have materially breached Section 4.5 and other provisions of the Offshore Manager Agreement by failing to properly calculate the amounts due in respect of the 2007 Offshore Withheld Amounts and pay such amounts to Mr. Kagan within 30 days after Mr. Kagan's termination without cause.

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74. Furthermore, HMC Investors (and/or Harbinger Holdings) and the Offshore Manager have materially breached Section 8.7 and other provisions of the Offshore Manager Agreement by failing to pay to Mr. Kagan his pro rated share of the Offshore Manager's performance compensation for 2008 by no later than March 31, 2009.

75. HMC Investors (and/or Harbinger Holdings) and the Offshore Manager also have materially breached Section 4.6 and other provisions of the Offshore Manager Agreement by making certain unauthorized deferrals of amounts owed to the Offshore Manager by the Offshore Fund.

76. In addition, the law implies in every contract an implied covenant of good faith and fair dealing to which the parties must adhere in performing their contractual duties.

77. HMC Investors (and/or Harbinger Holdings) and the Offshore Manager have breached the implied covenant of good faith and fair dealing by willfully refusing to pay amounts that they acknowledge are due and owing to Mr. Kagan, failing to properly calculate the entirety of the amounts owed to Mr. Kagan, refusing to make timely payment to Mr. Kagan of the amounts owed to him, failing to ensure that sufficient assets be available to make such timely payment to Mr. Kagan, and claiming that the amounts owed to Mr. Kagan should be paid partially in assets that may have an Unrealizable Value rather than cash and publicly-traded securities.

78. As a direct and proximate result of the wrongful actions of HMC Investors (and/or Harbinger Holdings) and the Offshore Manager and the material breaches of the Offshore Manager Agreement described above, Mr. Kagan has suffered substantial damages in an amount to be determined at trial, but for a sum of no less than approximately $55,629,168, plus interest.

79. Moreover, upon information and belief, HMC Investors (and/or Harbinger Holdings) and the Offshore Manager have wrongfully transferred to and will continue to wrongfully transfer to certain of the Defendants and/or permitted and will continue to permit certain of the Defendants to wrongfully retain some portion of the assets that should have been

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used to pay Mr. Kagan. Accordingly, upon information and belief, HMC Investors (and/or Harbinger Holdings) and the Offshore Manager have failed to make sufficient assets available to make full payment to Mr. Kagan.

80. Accordingly, because the Harbert Defendants acknowledge that they owe at least $36,572,998 to Mr. Kagan, the Court should order that such amount be paid to Mr. Kagan immediately in cash or publicly-traded securities and without regard to Mr. Kagan's right to seek full payment of all of the amounts that are owed to him.

SECOND CAUSE OF ACTION
Breach of Contract and Implied Covenant of Good Faith and Fair Dealing -- Onshore Manager Agreement

81. Mr. Kagan repeats and alleges each and every allegation set forth above as if set forth at length herein.

82. Mr. Kagan, HMC - New York (and/or Harbinger Holdings, which is, upon information and belief, successor manager to the Onshore Manager) and the Onshore Manager are parties to the Onshore Manager Agreement.

83. The Onshore Manager Agreement is a valid and binding contract between the parties.

84. Mr. Kagan has performed all of his obligations under the Onshore Manager Agreement.

85. HMC - New York (and/or Harbinger Holdings) and the Onshore Manager have materially breached Section 4.5 and other provisions of the Onshore Manager Agreement by failing to properly calculate the amounts due in respect of the 2007 Onshore Withheld Amounts and pay such amounts to Mr. Kagan promptly after Mr. Kagan's termination without cause.

86. Furthermore, HMC - New York (and/or Harbinger Holdings) and the Onshore Manager have materially breached Section 8.7 and other provisions of the Onshore Manager Agreement by failing to pay to Mr. Kagan his pro rated share of the Onshore Manager's performance compensation for 2008 by no later than March 31, 2009.

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87. In addition, the law implies in every contract an implied covenant of good faith and fair dealing to which the parties must adhere in performing their contractual duties.

88. HMC - New York (and/or Harbinger Holdings) and the Onshore Manager have breached the implied covenant of good faith and fair dealing by willfully refusing to pay amounts that they acknowledge are due and owing to Mr. Kagan, failing to properly calculate the entirety of the amounts owed to Mr. Kagan, refusing to make timely payment to Mr. Kagan of the amounts owed to him, failing to ensure that sufficient assets be available to make such timely payment to Mr. Kagan, and claiming that the amounts owed to Mr. Kagan should be paid partially in assets that may have an Unrealizable Value rather than cash and publicly-traded securities.

89. As a direct and proximate result of the wrongful actions of HMC - New York (and/or Harbinger Holdings) and the Onshore Manager and the material breaches of the Onshore Manager Agreement as described above, Mr. Kagan has suffered substantial damages in an amount to be determined at trial, but for a sum of no less than approximately $6,512,615, plus interest.

90. Moreover, upon information and belief, HMC - New York (and/or Harbinger Holdings) and the Onshore Manager have wrongfully transferred and will continue to wrongfully transfer to certain of the Defendants and/or permitted and will continue to permit certain of the Defendants to wrongfully retain some portion of the assets that should have been used to pay Mr. Kagan. Accordingly, upon information and belief, HMC - New York (and/or Harbinger Holdings, which is, upon information and belief, successor manager to the Onshore Manager) and the Onshore Manager have failed to make sufficient assets available to make full payment to Mr. Kagan.

91. Accordingly, because the Harbert Defendants acknowledge that they owe at least $36,572,998 to Mr. Kagan, the Court should order that such amount be paid to Mr. Kagan immediately in cash or publicly-traded securities and without regard to Mr. Kagan's right to seek full payment of all of the amounts that are owed to him.

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THIRD CAUSE OF ACTION
Unjust Enrichment -- Individual Defendants and John and Jane Doe Defendants

92. Mr. Kagan repeats and alleges each and every allegation set forth above as if set forth at length herein.

93. Upon information and belief, certain assets that should have been used to pay Mr. Kagan have been transferred and will continue to be transferred to the Individual Defendants and/or the John and Jane Doe Defendants.

94. Upon information and belief, the Individual Defendants and/or the John and Jane Doe Defendants have been unjustly enriched by retaining the assets that should have been used to pay Mr. Kagan.

95. Upon information and belief, the enrichment of the Individual Defendants and/or the John and Jane Doe Defendants was at Mr. Kagan's expense, as he was denied the benefits of receiving the amounts he was owed in a timely manner.

96. Upon information and belief, the Individual Defendants and/or the John and Jane Doe Defendants have accepted and retained extensive benefits as a result of Mr. Kagan's efforts and contributions without just payment therefor.

97. Upon information and belief, the retention of such benefits by the Individual Defendants and/or the John and Jane Doe Defendants would be unjust.

98. Upon information and belief, the Individual Defendants and/or the John and Jane Doe Defendants have thus been unjustly enriched, and Mr. Kagan is entitled to be compensated for the benefit he has conferred upon them in an amount to be proven at trial.

FOURTH CAUSE OF ACTION
Constructive Trust -- All Defendants

99. Mr. Kagan repeats and alleges each and every allegation set forth above as if set forth at length herein.

100. A confidential relationship and a relationship of trust existed between Mr. Kagan, as a member of the Offshore Manager, and HMC Investors (and/or Harbinger Holdings, which

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is, upon information and belief, successor manager to the Offshore Manager), as the sole manager of the Offshore Manager.

101. Likewise, a confidential relationship and a relationship of trust existed among Mr. Kagan, as a member of the Onshore Manager, and HMC - New York (and/or Harbinger Holdings, which is, upon information and belief, successor manager to the Onshore Manager), as the sole manager of the Onshore Manager.

102. Pursuant to the Agreements, Mr. Kagan agreed to allow a portion of the amounts owed to him with respect to 2007 to be withheld in reliance upon the Manager Entities' promises that such amounts (i) would vest and become fixed liabilities of the Manager Entities immediately upon Mr. Kagan's termination without cause and (ii) would be paid to Mr. Kagan within the time periods specified in the Agreements. In addition, Mr. Kagan agreed that in the event he was terminated without cause, he would transfer his membership interests to the Manager Entities in reliance upon the Manager Entities' promise that they would pay to Mr. Kagan amounts equal to his pro rated share of the performance compensation of the Manager Entities for the year in which he was terminated.

103. Mr. Kagan was notified of his termination on August 27, 2008, he ceased to provide any services to Harbert thereafter and such termination was without cause.

104. The Manager Entities have refused to pay Mr. Kagan (i) the amounts owed to him in respect of the 2007 Offshore Withheld Amounts; (ii) his pro rated share of the Offshore Manager's performance compensation for 2008; (iii) the amounts owed in respect of the 2007 Onshore Withheld Amounts; and (iv) his pro rated share of the Onshore Manager's performance compensation for 2008.

105. Upon information and belief, Mr. Falcone, Mr. Harbert and Mr. Luce caused and will continue to cause the Manager Entities to wrongfully transfer to certain of the Defendants and/or permit certain of the Defendants to wrongfully retain some portion of the assets that should have been used to pay Mr. Kagan.

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106. The Defendants, upon information and belief, have wrongfully retained the benefits of the assets that should have been used to pay Mr. Kagan and have been unjustly enriched thereby.

107. Mr. Kagan has suffered damages in an amount to be proved at trial as a direct and proximate result of such conduct.

108. Consequently, the Court should impose a constructive trust over any and all assets of the Manager Entities that may be used or should have been used to satisfy payment of the amounts owed to Mr. Kagan, wherever such assets may be located, whether such assets are located (i) in the Offshore Fund; (ii) in the Onshore Fund; (iii) in the possession of any of the Defendants; or (iv) in any other location, and order that such amounts be immediately paid to Mr. Kagan.

FIFTH CAUSE OF ACTION
Breach of Fiduciary Duty -- HMC Investors and/or Harbinger Holdings

109. Mr. Kagan repeats and alleges each and every allegation set forth above as if set forth at length herein.

110. HMC Investors (and/or Harbinger Holdings, which is, upon information and belief, successor manager to the Offshore Manager), as the managing member of the Offshore Manager, has a fiduciary duty to Mr. Kagan, as a member of the Offshore Manager, and must act in good faith and engage in fair dealing in all of its dealings with him.

111. HMC Investors (and/or Harbinger Holdings) has breached its fiduciary duty to Mr. Kagan by, among other things, (i) purposefully failing to pay to Mr. Kagan any of the amounts owed to him, including the amounts that it acknowledges are owed; (ii) insisting that it will only pay such acknowledged amounts on the condition that Mr. Kagan sign a release and a covenant not to sue and waive certain of his rights with respect to the amounts that are owed to him; (iii) claiming that it has the right to pay more than $12 million of the acknowledged amounts in the form of illiquid securities that may have an Unrealizable Value; (iv) failing to properly calculate the entirety of the amounts owed to Mr. Kagan; and (v) failing to ensure that sufficient assets be available to make timely payment to Mr. Kagan.

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112. As a direct result of the breaches of fiduciary duty by HMC Investors (and/or Harbinger Holdings), Mr. Kagan has suffered damages in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
Breach of Fiduciary Duty -- HMC - New York and/or Harbinger Holdings

113. Mr. Kagan repeats and alleges each and every allegation set forth above as if set forth at length herein.

114. HMC - New York (and/or Harbinger Holdings, which is, upon information and belief, successor manager to the Onshore Manager), as the managing member of the Onshore Manager, has a fiduciary duty to Mr. Kagan, as a member of the Onshore Manager, and must act in good faith and engage in fair dealing in all of its dealings with him.

115. HMC - New York (and/or Harbinger Holdings) has breached its fiduciary duties to Mr. Kagan by, among other things, (i) purposefully failing to pay to Mr. Kagan any of the amounts owed to him, including the amounts that it acknowledges are owed; (ii) insisting that it will only pay such acknowledged amounts on the condition that Mr. Kagan sign a release and a covenant not to sue and waive certain of his rights with respect to the amounts that are owed to him; (iii) claiming that it has the right to pay more than $12 million of the acknowledged amounts in the form of illiquid securities that may have an Unrealizable Value; (iv) failing to properly calculate the entirety of the amounts owed to Mr. Kagan; and (v) failing to ensure that sufficient assets be available to make timely payment to Mr. Kagan.

116. As a direct result of the breaches of fiduciary duty by HMC - New York (and/or Harbinger Holdings), Mr. Kagan has suffered damages in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
Aiding and Abetting Breach of Fiduciary Duty -- Philip A. Falcone

117. Mr. Kagan repeats and alleges each and every allegation set forth above as if set forth at length herein.

118. HMC Investors (and/or Harbinger Holdings, which is, upon information and belief, successor manager to the Offshore Manager), as the managing member of the Offshore

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Manager, has a fiduciary duty to Mr. Kagan, as a member of the Offshore Manager, and must act in good faith and engage in fair dealing in all of its dealings with him.

119. HMC - New York (and/or Harbinger Holdings, which is, upon information and belief, successor manager to the Onshore Manager), as the managing member of the Onshore Manager, has a fiduciary duty to Mr. Kagan, as a member of the Onshore Manager, and must act in good faith and engage in fair dealing in all of its dealings with him.

120. HMC Investors and HMC - New York (and/or Harbinger Holdings) have breached their respective fiduciary duties to Mr. Kagan by, among other things, (i) purposefully failing to pay to Mr. Kagan any of the amounts owed to him, including the amounts that they acknowledge are owed; (ii) insisting that they will only pay such acknowledged amounts on the condition that Mr. Kagan sign a release and a covenant not to sue and waive certain of his rights with respect to the amounts that are owed to him; (iii) claiming that it has the right to pay more than $12 million of the acknowledged amounts in the form of illiquid securities that may have an Unrealizable Value; (iv) failing to properly calculate the entirety of the amounts owed to Mr. Kagan; and (v) failing to ensure that sufficient assets be available to make timely payment to Mr. Kagan.

121. Upon information and belief, Mr. Falcone, as one of the ultimate decision makers with respect to the actions taken by HMC Investors and HMC - New York (and Mr. Falcone as the sole manager, Chairman and Chief Executive Officer of Harbinger Holdings), knowingly participated in such breaches of fiduciary duty by directing and causing the Manager Entities to (i) purposefully fail to pay to Mr. Kagan any of the amounts owed to him, including the amounts that they acknowledge are owed; (ii) insist that they will only pay such acknowledged amounts on the condition that Mr. Kagan sign a release and a covenant not to sue and waive certain of his rights with respect to the amounts that are owed to him; (iii) claim that they have the right to pay more than $12 million of the acknowledged amounts in the form of illiquid securities that may have an Unrealizable Value; (iv) fail to properly calculate the entirety of the amounts owed to Mr. Kagan; (v) fail to ensure that sufficient assets be available to make timely payment to Mr.

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Kagan; and (vi) upon information and belief, wrongfully transfer some portion of the assets that should have been used to pay Mr. Kagan to certain of the Defendants.

122. As a direct result of Mr. Falcone's aiding and abetting such breaches of fiduciary duty, Mr. Kagan has suffered damages in an amount to be determined at trial.

EIGHTH CAUSE OF ACTION
Aiding and Abetting Breach of Fiduciary Duty – Raymond J. Harbert

123. Mr. Kagan repeats and alleges each and every allegation set forth above as if set forth at length herein.

124. HMC Investors (and/or Harbinger Holdings, which is, upon information and belief, successor manager to the Offshore Manager), as the managing member of the Offshore Manager, has a fiduciary duty to Mr. Kagan, as a member of the Offshore Manager, and must act in good faith and engage in fair dealing in all of its dealings with him.

125. HMC - New York (and/or Harbinger Holdings, which is, upon information and belief, successor manager to the Onshore Manager), as the managing member of the Onshore Manager, has a fiduciary duty to Mr. Kagan, as a member of the Onshore Manager, and must act in good faith and engage in fair dealing in all of its dealings with him.

126. HMC Investors and HMC - New York (and/or Harbinger Holdings) have breached their respective fiduciary duties to Mr. Kagan by, among other things, (i) purposefully failing to pay to Mr. Kagan any of the amounts owed to him, including the amounts that they acknowledge are owed; (ii) insisting that they will only pay such acknowledged amounts on the condition that Mr. Kagan sign a release and a covenant not to sue and waive certain of his rights with respect to the amounts that are owed to him; (iii) claiming that they have the right to pay more than $12 million of the acknowledged amounts in the form of illiquid securities that may have an Unrealizable Value; (iv) failing to properly calculate the entirety of the amounts owed to Mr. Kagan; and (v) failing to ensure that sufficient assets be available to make timely payment to Mr. Kagan.

127. Upon information and belief, Mr. Harbert, who is one of the ultimate decision makers with respect to the actions taken by HMC Investors and HMC - New York, knowingly

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participated in such breaches of fiduciary duty by directing and causing the Manger Entities to (i) purposefully fail to pay to Mr. Kagan any of the amounts owed to him, including the amounts that they acknowledged are owed; (ii) insist that they will only pay such acknowledged amounts on the condition that Mr. Kagan sign a release and a covenant not to sue and waive certain of his rights with respect to the amounts that are owed to him; (iii) claim that they have the right to pay more than $12 million of the acknowledged amounts in the form of illiquid securities that may have an Unrealizable Value; (iv) fail to properly calculate the entirety of the amounts owed to Mr. Kagan; (v) fail to ensure that sufficient assets be available to make timely payment to Mr. Kagan; and (vi) upon information and belief, wrongfully transfer some portion of the assets that should have been used to pay Mr. Kagan to certain of the Defendants.

128. As a direct result of Mr. Harbert's aiding and abetting such breaches of fiduciary duty, Mr. Kagan has suffered damages in an amount to be determined at trial.

NINTH CAUSE OF ACTION
Aiding and Abetting Breach of Fiduciary Duty -- Michael D. Luce

129. Mr. Kagan repeats and alleges each and every allegation set forth above as if set forth at length herein.

130. HMC Investors (and/or Harbinger Holdings, which is, upon information and belief, successor manager to the Offshore Manager), as the managing member of the Offshore Manager, has a fiduciary duty to Mr. Kagan, as a member of the Offshore Manager, and must act in good faith and engage in fair dealing in all of its dealings with him.

131. HMC - New York (and/or Harbinger Holdings, which is, upon information and belief, successor manager to the Onshore Manager), as the managing member of the Onshore Manager, has a fiduciary duty to Mr. Kagan, as a member of the Onshore Manager, and must act in good faith and engage in fair dealing in all of its dealings with him.

132. HMC Investors and HMC - New York (and/or Harbinger Holdings) have breached their respective fiduciary duties to Mr. Kagan by, among other things, (i) purposefully failing to pay to Mr. Kagan any of the amounts owed to him, including the amounts that they acknowledge are owed; (ii) insisting that they will only pay such acknowledged amounts on the

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condition that Mr. Kagan sign a release and a covenant not to sue and waive certain of his rights with respect to the amounts that are owed to him; (iii) claiming that they have the right to pay more than $12 million of the acknowledged amounts in the form of illiquid securities that may have an Unrealizable Value; (iv) failing to properly calculate the entirety of the amounts owed to Mr. Kagan; and (v) failing to ensure that sufficient assets be available to make timely payment to Mr. Kagan.

133. Upon information and belief, Mr. Luce, who is one of the ultimate decision makers with respect to the actions taken by HMC Investors and HMC - New York, knowingly participated in such breaches of fiduciary duty by directing and causing the Manger Entities to (i) purposefully fail to pay to Mr. Kagan any of the amounts owed to him, including the amounts that they acknowledged are owed; (ii) insist that they will only pay such acknowledged amounts on the condition that Mr. Kagan sign a release and a covenant not to sue and waive certain of his rights with respect to the amounts that are owed to him; (iii) claim that they have the right to pay more than $12 million of the acknowledged amounts in the form of illiquid securities that may have an Unrealizable Value; (iv) fail to properly calculate the entirety of the amounts owed to Mr. Kagan; (v) fail to ensure that sufficient assets be available to make timely payment to Mr. Kagan; and (vi) upon information and belief, wrongfully transfer some portion of the assets that should have been used to pay Mr. Kagan to certain of the Defendants.

134. As a direct result of Mr. Luce's aiding and abetting such breaches of fiduciary duty, Mr. Kagan has suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Howard Kagan respectfully requests the entry of a judgment in his favor and against Defendants as follows:

1. Ordering that $36,572,998, which is the amount that the Harbert Defendants acknowledge is owed to Mr. Kagan, be paid to Mr. Kagan immediately in cash or publicly-traded securities and without imposing any conditions with regard to Mr. Kagan's right to seek full payment of all amounts owed to him;

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2. Awarding Howard Kagan compensatory and consequential damages, including (i) the amounts owed in respect of the 2007 Offshore Withheld Amounts, which equal not less than $52,641,265; (ii) his pro rated share of the Offshore Manager's performance compensation for 2008, which equals not less than $2,987,903; (iii) the amounts owed in respect of the 2007 Onshore Withheld Amounts, which equal not less than $3,541,202; and (iv) his pro rated share of the Onshore Manager's performance compensation for 2008, which equals not less than $2,971,413;

3. Awarding Howard Kagan pre-judgment and post-judgment interest with respect to the foregoing amounts (pre-judgment interest estimated to equal $3,038,517 to date);

4. Imposing a constructive trust over any and all assets of the Manager Entities that may be used or should have been used to satisfy payment of the amounts owed to Mr. Kagan, wherever such assets may be located, whether such assets are located (i) in the Offshore Fund; (ii) in the Onshore Fund; (iii) in the possession of any of the Defendants; or (iv) in any other location, and ordering that such amounts be immediately paid to Mr. Kagan;

5. Awarding Howard Kagan the costs and expenses incurred in this litigation, including reasonable attorneys' fees; and

6. Awarding Howard Kagan such other and further relief as the Court may deem just and proper.

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Dated: April 29, 2009

Respectfully submitted,

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By: _____
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Steven M. Hecht
Sally J. Mulligan
Attorneys for Plaintiff Howard Kagan

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

Index No.:

HOWARD KAGAN,

Plaintiff,

v.

HMC - NEW YORK, INC., HARBINGER CAPITAL PARTNERS GP, L.L.C., HARBINGER CAPITAL PARTNERS FUND I, L.P., HMC INVESTORS, L.L.C., HARBINGER CAPITAL PARTNERS OFFSHORE MANAGER, L.L.C., HARBINGER CAPITAL PARTNERS OFFSHORE FUND I, LTD., HARBINGER HOLDINGS, LLC, PHILIP A. FALCONE, RAYMOND J. HARBERT, MICHAEL D. LUCE, WILLIAM W. BROOKE, CHARLES D. MILLER, DAVID A. BOUTWELL, JOEL B. PIASSICK, MICHAEL P. WHITE, CAROLE B. SCHAFER, LAWRENCE M. CLARK, KATHLEEN K. MURPHY, IAN W. ESTUS, RAYMOND JONES HARBERT ACCUMULATION TRUST U/A 12/22/99, MARY KATHRYN HARBERT ACCUMULATION TRUST U/A 12/22/99, JOHN MURDOCH HARBERT II ACCUMULATION TRUST U/A 12/22/99 and JOHN AND JANE DOES 1 through 100

Defendants,

SUMMONS AND COMPLAINT

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Attorney(s) for Plaintiff

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