

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

-----X
HARVEY BARRISON,,

Plaintiff(s),

Index No.: 653530/2011

**AMENDED VERIFIED
COMPLAINT**

-against-

D'AMATO AND LYNCH, LLP., LUKE D. LYNCH, JR.,
and HECHT AND COMPANY, CERTIFIED PUBLIC
ACCOUNTANTS, P.C.,,

Defendant(s).

-----X

Plaintiffs, HARVEY BARRISON, by his attorneys, WINGATE, RUSSOTTI, SHAPIRO & HALPERIN, LLP, as and for his Amended Verified Complaint against the defendants in the above-entitled action, alleges the following to be true upon information and belief:

AS AND FOR A FIRST CAUSE OF ACTION FOR DISSOLUTION AND ACCOUNTING

1. Plaintiff is an individual member of defendant D'AMATO AND LYNCH, LLP (hereinafter referred to as "D and L").

2. Defendant "D and L" is a law firm whose principal place of business is 2 World Financial Center, New York, NY 10281.

3. Defendant, HECHT AND COMPANY, CERTIFIED PUBLIC ACCOUNTANTS, P.C., (hereinafter referred to as "HECHT"), is an accounting firm whose principal place of business is 1501 Broadway, New York, NY, 10036.

4. In 1990, plaintiff became a partner of defendant "D and L" law firm, when George D'Amato made him a partner.

5. From 1990, until the present, plaintiff has continued as a partner as evidenced by the following:

- a. Plaintiff agreed to share in the profits and losses of the firm.

- b. Plaintiff exercised managerial control in the firm.
- c. When plaintiff was made a partner, he was provided with an associate and secretarial staff and he had, and exercised authority to, direct, control and manage said staff.
- d. The plaintiff had the authority to execute retainers on behalf of the firm and obligate the firm to perform the services for which the firm was retained and plaintiff exercised that power numerous times.
- e. The plaintiff was the senior member of a committee which had been delegated the authority to negotiate a flat rate contract with a provider of electronic research services on behalf of the firm and exercised that authority ultimately saving the firm of "D and L" \$50,000 a year.
- f. Mr. Barrison was designated as the partner responsible to review the files of an elderly partner who became incapacitated, who has since passed away, and directed the information technology department to provide him with all the voice mail messages left for that partner in order to make decisions on behalf of the firm on what needed to be done for those clients.
- g. Mr. Barrison made an independent determination whether or not there was anything which might endanger the firm, either through a failure to respond to a client or which might become the basis for a complaint against the firm to the Disciplinary Committee.
- h. Mr. Barrison was provided, in early 2008, with several bankers' boxes of approximately 90 original wills and codicils that dated as far back as 1963 which had been prepared by the late Robert Makla, another partner of the

firm. Mr. Barrison spent six months locating the working files in the office, locating the people who were the firm's clients, and death and social security records. Mr. Barrison was the partner responsible to determine whether to return original wills to the clients, obtain proper instructions in the case of revocations, locate new instruments, determine whether people had died and if their estates were handled with newer testamentary instruments. Mr. Barrison was able to avoid any potential law suits for matters that had been neglected by the aging partner, thereby protecting the firm.

- i. Mr. Barrison was involved in managing some of the firm's escrow accounts. Specifically, in late 2007, Mr. Barrison was delegated the responsibility to investigate the source of unaccounted escrow funds of approximately \$100,000.
- j. Mr. Barrison determined these funds had been in escrow since 1987 and were obtained by Robert Makla as a result of a successful 1978 subrogation action which ended in a judgment in the firm's client's favor of \$80,000. No one in the firm, including Defendant Lynch, could explain why the firm had been holding a client's money for 20 years, which could have been an ethical disaster for the firm especially if the office of Court Administration had audited the firm's escrow accounts. Mr. Barrison was delegated the responsibility to resolve the problem, determine and transfer the funds to the proper owner of the escrow funds. This took six months to accomplish, but by June, 2008, Mr. Barrison was able to reduce the escrow to zero, thereby protecting the firm from a disciplinary complaint and lawsuit.

- k. Mr. Barrison successfully resolved another escrow funds mismanagement problem concerning the existence of an open escrow of \$20,500 following a real estate closing performed by the firm.
- l. The Plaintiff made capital contributions to the firm.
- m. Plaintiff had an ownership interest in the firm as evidenced by:
 - (1) The regular and systematic provision by defendant "D and L" to provide the plaintiff with an IRS K-1, "Partner's Share of Income, Deductions, Credits," and a New York State "Partners' Schedule K-1", for the years 1990 until the present.
 - (2). The K-1's provided to the plaintiff by the defendant "D and L" identified plaintiff as a "general partner and/or domestic partner."
 - (3). The K-1's and accompanying documents identified plaintiff's capital account in "D and L".
 - (4). Defendant "D and L" charged back to plaintiff on the K-1's plaintiff's share of the New York City Unincorporated Business Tax allocable to partners.
 - (5). The defendant "D and L" did not deduct or pay Medicare tax from plaintiff's draw.
 - (6). The plaintiff paid Medicare tax attributable to his income on his own.
 - (7). The defendant "D and L" did not deduct or pay Social Security tax from plaintiff's draw.
 - (8). The plaintiff paid Social Security tax attributable to his income on his own.

- (9). The defendant "D and L" did not withhold income taxes from plaintiff's draw.
- (10). The plaintiff paid all income taxes attributable to his income on his own.
- (11). Defendant "D and L" did not pay New York State Worker's Compensation, unemployment insurance or disability insurance premiums for plaintiff.
- (12). The defendant "D and L" provided plaintiff with a statement of his share of health insurance premiums paid by plaintiff which was reported as compensation to plaintiff.
- (13). The plaintiff paid income taxes on that portion of added back health insurance premiums on his own.
- (14). The defendant "D and L" had a 401(k) plan for its employees and matched a percentage of the employee's contribution to the 401(k) plan, but did not provide that benefit to plaintiff as a partner.
- (15). The defendant "D and L" represented to the outside world that plaintiff was a partner in the firm.
- (16). The plaintiff was, at all times, identified on defendant "D and L's" letterhead as a partner.
- (17). The plaintiff was identified as a partner by "D and L" to its professional liability insurance carrier.
- (18). The plaintiff was at all times listed as a partner by "D and L" on defendant "D and L's" law firm's website.

(19). The plaintiff was authorized to and did bind the firm in obtaining legal business by executing retainers on behalf of the firm, thereby retaining clients the firm would represent.

(20). The plaintiff was provided with associates and secretarial staff by defendant "D and L" to manage as he saw fit.

(21). The plaintiff signed legal documents, pleadings and letters on behalf of the firm as partner of the firm, all with knowledge of the firm.

6. From on or about July, 2007, the firm was managed by defendant, LUKE D. LYNCH JR., and others (hereinafter referred to as "LYNCH").

7. Defendant "LYNCH", from 2007 and thereafter, assigned clients and work to Mr. Barrison.

8. Since 2010, defendant "LYNCH," has attempted to coerce and force plaintiff into withdrawing from the firm by:

- a. Refusing to assign new clients to plaintiff;
- b. Refusing to assign new matters to plaintiff;
- c. Changing plaintiff's method of compensation by requiring a minimum number of billable hours each month before plaintiff receives any draw;
- d. Refusing to pay plaintiff any draw for the last nine (9) months.

9. As a result of these actions, plaintiff can no longer effectively operate within the partnership because of defendant "LYNCH's" conduct.

10. On June 6, 2011, plaintiff confronted defendant "LYNCH" with his conduct intended to cause plaintiff to disassociate from the firm.

11. That the aforementioned conduct caused the dissolution of the partnership known as D'AMATO AND LYNCH, LLP.

12. Plaintiff requested that the defendant "LYNCH" amicably resolve the plaintiff's disassociation from the firm.

13. Plaintiff and defendant "LYNCH" agreed that their respective counsel would further discuss the situation.

14. On or about June 7, 2011, plaintiff's counsel demanded an accounting from defendant's counsel on the basis of plaintiff's position as a partner in the firm.

15. Shortly thereafter, defendant's counsel denied that plaintiff was a general partner or had any partnership interest in the firm, but rather was an employee and had always been an employee.

16. This was the first time that anyone from the firm told plaintiff he was an "employee" and not a partner.

17. Since that time defendant "LYNCH" has contended in affirmations that plaintiff was a "Limited Partner" and not a General Partner.

18. No written partnership agreement was ever executed by the plaintiff thus, plaintiff's rights are governed and determined exclusively by New York State Partnership Act.

19. Defendant "LYNCH" has continued to conduct the business of the partnership and, on information and belief, intends to continue that business without any compensation to plaintiff for his interest in the firm.

20. Defendants "LYNCH" and "D and L" have exclusive possession of all the assets of the partnership and all the partnership books and records.

21. Plaintiff has no manner of knowing or ascertaining the correct facts as to the money that has been earned by the partnership from June 1990 until the present, or money hereinafter earned or the assets and liabilities of the business except, on information and belief that, from the period of 2000 to 2008, defendant "D and L's" revenue was in excess \$300,000,000.00 (THREE HUNDRED MILLION DOLLARS).

22. In the event that defendant "D and L's" business is not wound up, the disassociation of plaintiff from the partnership entitles plaintiff to receive a buyout of the plaintiff's partnership interest pursuant to Article 6 of the New York State Partnership Law.

23. Without an accounting, plaintiff is unable to determine exactly the value of his partnership interest in the partnership.

24. Plaintiff has no adequate remedy at law and demands dissolution and an accounting of the firm's profits and loss since 1990 and an accounting of its assets and liabilities.

AS AND FOR A SECOND CAUSE OF ACTION FOR MISAPPROPRIATION OF FUNDS

25. Plaintiff repeats and realleges every allegation of the complaint marked "1" through "23" with the same force and effect as if it were hereinafter set forth at length.

26. Defendants "D and L", "LYNCH" and predecessor managers of the firm paid to themselves more than their rightful share of the profits, sales and earnings allocable to them.

27. Defendant "D and L", "LYNCH" and predecessor managers have never accounted to plaintiff as to the earnings of the partnership and the income and expenses and amounts paid to the other partners as compensation and the amounts paid to plaintiff.

28. Without an accounting, plaintiff is unable to determine exactly what defendant "D and L" and "LYNCH" owe plaintiff for excess profits, salaries and drawings taken from 1990 to the present.

29. Plaintiff has no adequate remedy at law.

AS AND FOR A THIRD CAUSE OF ACTION FOR MISREPRESENTATION AND FRAUD

30. Plaintiff repeats and realleges every allegation of the complaint marked "1" through "28" with the same force and effect as if it were hereinafter set forth at length and alleges alternatively as follows:

31. Defendant "D and L" represented to plaintiff that the plaintiff was a general partner from 1990 to the present and treated plaintiff as a general partner by all of the acts set forth above in paragraph 6.

32. During that time, defendant "HECHT" was retained by defendant "D and L" to prepare its tax returns, including preparation of partners' K-1's from June 1990 to the present.

33. During that time, defendant "HECHT" prepared and provided plaintiff with New York State and IRS K-1's representing plaintiff's status as a general partner.

34. During that time defendant "HECHT" prepared and provided defendant "D and L" and Lynch with corresponding tax forms which it knew would be filed with Federal, State and Local taxing authorities.

35. The defendant "HECHT" knew or should have known that plaintiff and defendants would file those forms with the appropriate taxing authorities.

36. During that time, defendant "HECHT" computed and provided plaintiff with his share of the "capital account" of the firm each year as reported on plaintiff's K-1's.

37. Every year during that time, defendant "HECHT" calculated and reported on plaintiff's K-1's the allocation of plaintiff's share of New York City Unincorporated Business charge back to plaintiff.

38. During that time, defendant "HECHT" calculated and reported on plaintiff's K-1's plaintiff's share of health insurance premium paid by plaintiff and added that back to plaintiff's income for plaintiff to pay taxes on.

39. During that time, defendants "HECHT" and "D and L" did not deduct or account for or pay on behalf of plaintiff any New York State Worker's Compensation or disability insurance premiums.

40. At all times, defendant "HECHT" had a duty to determine the accuracy of the information it documented on K-1's based upon information as provided by defendant "D and L" and "LYNCH" regarding plaintiff's employment status because it prepared the tax documents which it knew would be submitted to Federal, State and City taxing authorities and upon which defendants and plaintiff would rely.

41. At all times, defendant "HECHT" had an obligation under 26 USC §7206 (2) to provide accurate information regarding plaintiff's employment status to the Internal Revenue Service and New York State taxing authority.

42. Plaintiff relied upon defendant "HECHT's" representations contained in the tax documents prepared by defendant "HECHT" to ascertain plaintiff's tax liabilities to New York State, City and Federal Government.

43. Defendant "HECHT" advised defendants "D and L" and "LYNCH" on the tax ramifications of providing plaintiff with a K-1 and identifying him as a general partner and the

propriety of adding back allocations for unincorporated business tax and medical insurance premiums to partners including plaintiff.

44. Defendant HECHT believed and was told by Defendants LYNCH and "D and L" that plaintiff did not have equity interest in the firm, had no capital account, was not a limited partner and therefore, was not a partner for tax purposes.

45. Nevertheless, the Defendants "HECHT", "D and L" and "LYNCH" all agreed to identify plaintiff as a general partner on K-1's and treat him as a general partner for tax purposes.

46. As a result of the representations made on the financial documents prepared by "HECHT" and submitted by "D and L", plaintiff has paid all income taxes attributable to his income to the Internal Revenue Service, New York State and New York City taxing authorities, including all FICA and Medicare taxes.

47. Defendant "HECHT" knew or should have known that plaintiff was not a general partner and that as such was not responsible to pay the entire amount of FICA, Medicare and other taxes but that defendant "D and L" was responsible to pay for same.

48. For the first time on or about June 7, 2011 and thereafter, defendant LYNCH claimed that plaintiff has been an employee and/or a limited partner and not a general partner and has no partnership interest in the firm.

49. Based upon the fraudulent representations made by the defendants to the plaintiff regarding his status from 1990 until the present, plaintiff has paid to the Internal Revenue Service, New York State and City government taxes properly payable by the defendant "D and L" and "LYNCH" namely FICA, Medicare, a portion of the defendant "D and L's" New York City Unincorporated Business Tax and taxes on medical insurance premiums, which were all properly payable by defendant.

50. Accordingly, by such fraud and misrepresentation, defendants "D and L" and "LYNCH" have converted and misappropriated plaintiff's monies to pay their tax obligation by fraudulently misrepresenting plaintiff's status to him.

51. Defendant "HECHT" has aided and abetted the defendants "D and L" and "LYNCH" in converting plaintiff's monies to pay defendant "D and L's" and "LYNCH's" tax obligations by preparing K-1's for the plaintiff which included misleading and false information and making the calculations relied upon by the plaintiff.

**AS AND FOR A FORTH CAUSE OF ACTION FOR NEGLIGENT
MISREPRESENTATION**

52. Plaintiff repeats and realleges every allegation of the complaint marked "1" through "49" with the same force and effect as if it were hereinafter set forth at length.

53. At all times, defendant "HECHT" had a duty to properly ascertain plaintiff's employment status because it was creating tax documents for submission by defendants and plaintiff to New York State, City and Federal Government upon which it knew or should have known that plaintiff would rely to compute plaintiff's tax liability.

54. Defendant "HECHT" negligently represented to plaintiff that plaintiff was a general partner in "D and L" in such tax documents.

55. Defendant "HECHT" negligently prepared New York City, New York State and IRS K-1's identifying plaintiff as a partner in "D and L" and in providing false information indicating plaintiff's status as a general partner upon which it knew or should have known plaintiff would rely.

56. Plaintiff relied on such misrepresentations to his detriment.

AS AND FOR A FIFTH CAUSE OF ACTION FOR EQUITABLE ESTOPPEL

57. Plaintiff repeats and realleges every allegation of the complaint marked "1" through "54" with the same force and effect as if it were hereinafter set forth at length.

58. Defendants' conduct of representing that plaintiff was a general partner, in the manner set forth above in paragraph 6, from 1990 until the present is inconsistent with defendant "LYNCH's" position now asserted on or about June 7, 2011, and in his affidavit dated September 14, 2011 that plaintiff is not and has never been a general partner but rather an employee and or limited partner.

59. Defendants knew or should have known that plaintiff would act upon and rely upon said representations especially in so far as related to plaintiff's responsibility to compute his share and pay taxes related to documents prepared by defendants and furnished by defendants to plaintiff.

60. Only defendants had actual knowledge of the true facts.

61. Plaintiff did not have means of ascertaining the facts in question, considering he was at all times provided with tax documents, consistent with his understanding of his relationship with the firm, namely that he was a general partner.

62. Plaintiff relied in good faith upon the statements made and documents provided by defendants regarding his relationship with the firm.

63. Plaintiff acted upon such representations by paying taxes for FICA, Medicare, his portion of the New York City Unincorporated Business Tax and on his portion of medical insurance premiums that were otherwise payable by defendant if plaintiff was not in fact a general partner.

64. Defendant "D and L" and "LYNCH" filed partnership tax returns with the Internal Revenue Service and New York State Income tax from 1990 until the present.

65. Those partnership returns must be consistent with the individual partners' return as to all items reported on the returns pursuant to 26 USC §6222 and 26 USC §6241.

66. The partnership returns had the same information identifying plaintiff as a general partner with the same allocation of income, add backs, deductions, etc. as were reported by plaintiff on the K-1's provided by defendant.

67. The partnership return was verified by defendant Lynch and predecessor managers as true and accurate under penalty of perjury, as required by 26 USC §7206.

68. Defendant "LYNCH" and "D and L" now claim plaintiff is not and has never been a general partner and has no partnership interest in the firm.

69. Defendant "LYNCH" and "D and L" filed false and fraudulent partnership tax returns from 1990 to the present in violation of 26 USC §7206.

70. Defendant "HECHT" prepared the partnership tax returns for the partnership, which were filed from 1990 to the present.

71. Defendant "HECHT" willfully aided and assisted, procured, counseled and advised in the preparation of fraudulent and false tax returns in violation of 26 USC §7206.

72. These misrepresentations have resulted in plaintiff's detriment in that he expended funds to pay taxes not due and owing by him but due and owing by defendants "LYNCH" and "D and L."

73. As a result of the foregoing fraud, misrepresentation and filings of false tax returns defendants should be estopped from asserting that plaintiff has not been a partner since 1990 and estopped from asserting the Statute of Limitations as a defense.

**AS AND FOR A SIXTH CAUSE OF ACTION AGE DISCRIMINATION IN VIOLATION
OF NEW YORK EXECUTIVE LAW**

74. Plaintiff repeats and realleges paragraph "1" through "71" with the same force and effect as if set forth at length herein.

75. During the 20 years plaintiff worked for defendant "D and L" he was provided with clients and cases to work on by George D'Amato and Luke D. Lynch.

76. Plaintiff was never required to bring in clients or business to the firm.

77. Plaintiff was never asked to maintain a minimum amount of billable hours to be entitled to a draw.

78. Plaintiff's performance was always of the highest professional and ethical caliber.

79. Plaintiff was given complicated and sensitive legal work to do on behalf of the firm.

80. During 2009 defendant Lynch began to significantly decrease the amount of work assigned to plaintiff.

81. Despite years of devoted efforts to the Firm, in October 2010, for the first time defendant Lynch demanded that plaintiff maintain a minimum billable requirement per month to obtain his draw and then stopped his draw in October 2010 because he did not meet the purported billable minimum requirements.

82. On or about November 2010, at the same time defendant changed the manner in which they dealt with plaintiff, defendant hired three associates all of whom had recently graduated from law school and were less than 35 years old.

83. Plaintiff is 63 years old.

84. Upon information and belief, those newly hired associated were given work to perform by defendants, which is the same work that plaintiff performed, while plaintiff was not given any work.

85. Upon information and belief, the requirements that plaintiff bring in business and clients and have minimum billable hours per month before being permitted any draw was purely pretextual.

86. Upon information and belief the requirements instituted by defendant Lynch were designed to force plaintiff to leave the firm due to his age.

87. Based upon the foregoing, defendants "LYNCH" and "D and L" discriminated against the plaintiff based upon his age, in violation of the Human Rights Law of the State of New York, including the Executive Law Sections 290 et seq., and have damaged plaintiff thereby.

88. The discriminatory conduct of defendants "LYNCH" and "D and L" has substantially interfered with the employment of the plaintiff in violation of New York State Executive Law § 296.

89. As the direct and proximate result of the defendants "LYNCH" and "D and L's" unlawful employment practices, plaintiff has suffered the indignity of age discrimination and great humiliation, extreme mental anguish, injury to his reputation, depression, severe disruption of his personal life, and loss of enjoyment of life.

90. As a direct result and proximate result of the unlawful employment practices of defendants "LYNCH" and "D and L's" violation of New York State Executive Law § 296 the plaintiff has been damaged in the sum of One Million (\$1,000,000.00) Dollars.

91. The actions of the Defendants "LYNCH" and "D and L's" were performed recklessly and with malice and without justification or excuse, thereby entitling plaintiff to punitive damages plus plaintiff's attorney's fees.

**AS AND FOR A SEVENTH CAUSE OF ACTION AGE DISCRIMINATION IN
VIOLATION OF NEW YORK CITY LAW**

92. Plaintiff repeats and realleges paragraph "1" through "89" with the same force and effect as if set forth at length herein.

93. Based upon the foregoing, defendant "LYNCH" and "D and L" have discriminated against the plaintiff based upon his age, in violation of the New York City Human Rights Law as codified in Tittle 8-107(1)(a) of the Administrative Code of the City of New York and has damaged the plaintiff thereby.

94. The discriminatory conduct of defendants "LYNCH" and "D and L" has substantially interfered with the employment of plaintiff in violation of Tittle 8-101 et seq., of the Administrative Code of the City of New York and has damaged plaintiff thereby.

95. As direct, and proximate result of defendants "LYNCH" and "D & L" unlawful employment practices, plaintiff has suffered the indignity of age discrimination, and great discrimination, and great humiliation, extreme mental anguish, physical injury, depression, severe disruption of his personal life, and loss of enjoyment in the pleasures of everyday life.

96. As a result of defendants "LYNCH" and "D and L" violation of Title 8-101 et seq., of the Administrative Code of the City of New York, plaintiff has been damaged in the sum of One Million (\$1,000,000.00) Dollars.

97. The actions of the Defendants "LYNCH" and "D and L" were performed with malice and without justification or excuse thereby entitling plaintiff to punitive damages plus plaintiff's attorney's fees.

98. The Plaintiff is further entitled to prejudgment interest on all moneys awarded to him and reasonable attorneys' fees and costs.

AS AND FOR AN EIGHTH CAUSE OF ACTION UNDER 26 USC §7434

99. Plaintiff repeats and realleges paragraph "1" through "98" with the same force and effect as if set forth at length herein.

100. Federal and City, tax forms, including, but not limited to, K-1 forms and the equivalent State forms were prepared by the defendant "HECHT" and filed with the taxing authorities by the defendants "D and L" and "HECHT" from 1990 until 2011 identifying plaintiff as a general partner.

101. That K-1 forms are 'information returns" pursuant to 26 USC 6724[d][1][A].

102. Defendant "D and L" and LYNCH informed plaintiff in June 2011 he was not and had never been a general partner.

103. On September 14, 2011, Defendant LYNCH swore to an affidavit that plaintiff never had any ownership interest in the firm, had no managerial interest in the firm, made no decisions regarding the firm, and that the defendant Lynch alone determined plaintiff's salary, draw and discretionary payments.

104. If it is determined that plaintiff was not a partner, but an employee of D'AMATO AND LYNCH, then the plaintiff alleges:

- (A). The K-1 forms and equivalent State forms 's identifying plaintiff as a general partner were false and fraudulent and known to be so by the defendants HECHT & Co.
- (B). That said forms were false and fraudulent and known to be so by the D'AMATO AND LYNCH and Mr. Luke Lynch.
- (C). That the defendants D'AMATO and LYNCH and HECHT filed the fraudulent information returns.

- (D). The plaintiff relied upon the acted upon the K1 forms and the statements and representations inherent in, and implied by, the information returns set forth above by paying taxes for FICA, Medicare, his portion of the New York City Unincorporated Business Tax and on his portion of medical insurance premiums that were otherwise payable by defendant if plaintiff was not in fact a general partner.
- (E) If Plaintiff was never a partner but an employee, plaintiff was not responsible for paying the entire amount of self-employment taxes, FICA and Medicare taxes and employee's Unincorporated Business taxes.
- (F). That defendant D'AMATO AND LYNCH, as plaintiff's employer was responsible for paying 50% of the FICA and Medicare taxes attributable to plaintiff's income.
- (G). Defendant D'AMATO AND LYNCH and Lynch denominated plaintiff a "partner" in order to avoid paying 50% of plaintiff's FICA and Medicare taxes from 1990 to 2011 and his share of unincorporated business types.

105. On information and belief there were at least 40 other similarly situated attorneys from 1990 to present who were called "partners" but may have really been employees who overpaid their FICA, Medicare and Unincorporated Business Taxes based upon the same misrepresentations made by the defendants herein.

106. Defendant Hecht intentionally, recklessly, or negligently, avoided and ignored information available to it which indicated that plaintiff was not a partner and was not responsible to pay self-employment tax or Unincorporated Business tax.

107. On information and belief, the Defendant Hecht advised D'AMATO AND LYNCH

and LYNCH that if employees were listed as a partners, D'AMATO AND LYNCH and LYNCH would not have to pay 50% of the FICA and Medicare tax attributable to plaintiff's income.

108. As a proximate result of the filing of the fraudulent returns by Defendants, Plaintiff was caused to pay D'AMATO AND LYNCH'S share of FICA and Medicare and Unincorporated Business taxes which was D and L's obligation to pay from 1990 to the present.

109. That the defendants' filing of the K-1's were fraudulent within the meaning of fraudulent information returns thereby violating 26 USC §7434, *Civil damages for fraudulent filing of information returns*, entitling plaintiff to recover from defendants his actual damages, costs and reasonable attorneys fees.

110. The plaintiff thus demands damages of \$500,000 on this cause of action.

WHEREFORE, the plaintiff demands:

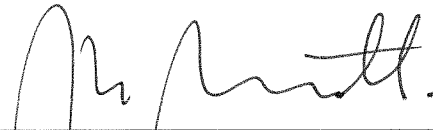
- a. That said partnership be deemed dissolved;
- b. The partnership property and effects, including the good will be directed to be sold;
- c. That an accounting be had of the affairs of said partnership from 1990 to the present;
- d. That the proceeds of the partnership assets be divided after payment of all just debts of said partnership;
- e. That a receiver be appointed to direct the dissolution of the partnership, the sale of its assets the collection of all monies in the division of the proceeds;
- f. That plaintiff be awarded an amount of money in excess of the jurisdiction limits of all lower courts for intentional and negligent fraud, misrepresentation and conversion plus interest, costs and disbursements;

- g. That plaintiff be awarded punitive damages against the defendants for intentional fraud, misrepresentation, conversion and age discrimination;
- h. That defendants be estopped from asserting that no partnership exists and from asserting Statute of Limitations as a defense;
- i. That plaintiff be awarded One Million (\$1,000,000.00) dollars on each Cause of Action for age discrimination;
- j. That plaintiff be awarded \$500,000 on the cause of action for violation of 26 U.S.C. 7434;
- k.. That plaintiff be awarded such other and further relief as may be proper, together with costs and disbursements of this action.

WHEREFORE, plaintiff demands judgment against the defendants in a sum which exceeds the jurisdictional limit of all lower Courts which would otherwise have jurisdiction, together with the costs and disbursements of this action.

Dated: New York, NY
April 11, 2012

Yours, etc.,



Philip Russotti
WINGATE, RUSSOTTI, SHAPIRO &
HALPERIN, LLP
Attorneys for Plaintiff(s)
420 Lexington Avenue
Suite 2750
New York, NY 10170
(212) 986-7353

VERIFICATION BY AFFIDAVIT

STATE OF NEW YORK, COUNTY OF NEW YORK SS:

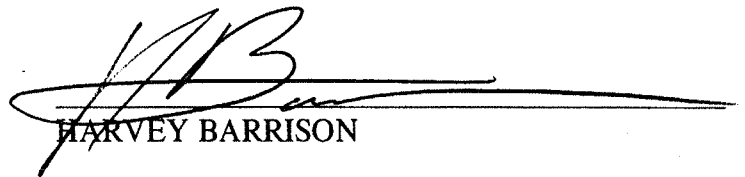
HARVEY BARRISON, being duly sworn, says:

I am a Plaintiff in the action herein: I have read the annexed

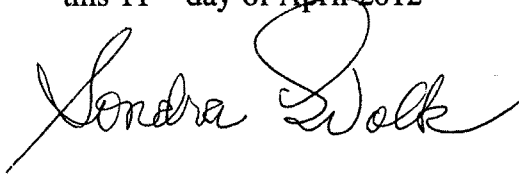
AMENDED VERIFIED COMPLAINT

and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my personal files.

Dated: New York, New York
 April 11, 2012


HARVEY BARRISON

Subscribed and sworn to before me
this 11TH day of April 2012



NOTARY PUBLIC

SONDRA WOLK
Notary Public, State of New York
No. 30-4755817
Qualified in Nassau County
Commission Expires April 30, 20 14

Index No.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

HARVEY BARRISON,,

Plaintiff(s),

- against -

D'AMATO AND LYNCH, LLP., LUKE D. LYNCH, JR., and HECHT AND COMPANY, CERTIFIED
PUBLIC ACCOUNTANTS, P.C.,,

Defendant(s).

AMENDED VERIFIED COMPLAINT

WINGATE, RUSSOTTI, SHAPIRO & HALPERIN, LLP

Attorneys for Plaintiff(s)
420 Lexington Avenue
Suite 2750
New York, New York 10170
(212) 986-7353
Facsimile (212) 953-4308

TO: