

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY: COMMERCIAL DIVISION

<p>KRISTEN L. EIKENBERRY, Plaintiff, - against - RICHARD JOSEPH LAMSON, Defendant.</p>
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Index No. 516653/2020
Mot. Seq. 001

AFFIDAVIT OF KRISTEN L. EIKENBERRY IN SUPPORT OF ORDER TO SHOW CAUSE FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, ACCESS TO PARTNERSHIP DISTRIBUTIONS, AND RELATED RELIEF

STATE OF NEW YORK }

 ss:
COUNTY OF SUFFOLK }

KRISTEN L. EIKENBERRY, being duly sworn, deposes and says:

1. I am the Plaintiff in the above-captioned action for an accounting, to dissolve a business partnership (the “EL Partnership”) to which I belong with Defendant Richard Joseph Lamson (“Lamson”), and for damages Lamson has caused me from his serial breaches of duty, including his wrongful seizure and transfer of Partnership assets.

2. I submit this affidavit in support of my application for a temporary restraining order and preliminary injunction enjoining Lamson from transferring or attempting to transfer assets of the EL Partnership without my knowledge or consent, so they will be available for a proper accounting and a fair division of those assets in this matter. As set forth below and in the Verified Complaint, Lamson has taken control of and is dissipating Partnership assets, jeopardizing the possibility of an ultimate fair division of those assets, which I estimate total over \$35,000,000 in value. Lamson has told me and my attorney on various occasions that he intends to ensure that I

receive nothing in retaliation for my seeking judicial relief to dissolve our Partnership. I am aware of efforts Lamson has recently made to move Partnership assets out of my reach and he continues to spend Partnership assets and incur debt without my knowledge or consent. Unless Lamson is restrained, Partnership assets will likely be transferred out of the Partnership or otherwise unavailable when this matter is ultimately decided.

3. Recently, Lamson retaliated against me for seeking to end our Partnership by deleting all of my emails, text messages, photographs and other electronic information from my iPhone and he has refused to restore it despite my request. Accordingly, I also seek an order directing that Lamson immediately restore this information to my possession.

4. Moreover, Lamson, who controls most of the Partnership assets, has cut me off from credit and other resources to pay basic expenses and has threatened to take away the vehicle I use and cancel my medical insurance. As mentioned, he meanwhile is freely spending Partnership assets without my knowledge or consent. Therefore, I seek an order allowing me to access Partnership funds held at Morgan Stanley as distributions to pay my ordinary expenses during the pendency of this action.

5. I have personal knowledge of the facts and circumstances set forth herein based on my role as a 50% partner of the EL Partnership for the past twenty-five years.

**INTRODUCTION: THE PARTNERSHIP,
ITS BREAKUP AND THE NEED FOR PROVISIONAL RELIEF**

6. In or around 1996, Lamson and I entered into the EL Partnership which primarily concerns acquiring real property in New York and New Jersey, developing and/or renovating it into residences, and then selling the improved properties. Lamson contributed investment and construction services, while I primarily contributed market intelligence, including identifying properties that would increase in value, overall concept and design, interior design and

maintenance of the properties. We agreed that we would both share equally in profits and losses as partners.

7. The EL Partnership has been very successful, sometimes earning profits three or four times that of its initial investment. Our success has been featured in publications such as Vogue.

8. To date, the EL Partnership has successfully developed over eight projects, earning millions of dollars, has one development project in process, and owns real property and improvements in Brooklyn, upstate New York, and New Jersey. The EL Partnership also has significant liquid assets, including investment and other accounts at various financial institutions.

9. Lamson and I have also had a romantic relationship which continued (with short intermittent breaks) until recently. For most of our relationship, we have lived together with our children. We have four children: three children together (ages 15, 18 and 19) and a fourth child (age 21) from a previous relationship. We have never been married.

10. Since the beginning of the EL Partnership, we have agreed to use distributions from the Partnership for both the care of our children and for our personal expenses. Until recently, these expenses have been paid for with regular distributions from the EL Partnership.

11. Lamson has increasingly left me out of business-making decisions and used, transferred, or attempted to transfer EL Partnership assets outside of the EL Partnership including spending Partnership funds daily without my knowledge or consent.

12. Based on my review of Partnership records (and unknown to me until recently when I began to look more closely at the EL Partnership's finances), Lamson has diverted significant assets from the EL Partnership over time, including cash and investment opportunities. Lamson's

actions are contrary to our agreement of a 50/50 split in profit and loss, and his other obligations to me as his business partner.

13. As an example, in mid-July 2020, unknown to me and without my consent, Lamson took approximately \$1.2 million in funds held in a corporate account at Santander Bank, N.A., which is jointly managed by both of us, and transferred the funds via certified check to an unknown location. He also held at least \$500,000 in cash as of March 2020 but that money is now unaccounted for. Lamson also received millions of dollars in proceeds from sales of units of a property we developed located at 319, 321, 323, and 325 Pacific Street, Brooklyn, New York, but transferred those funds to an unknown location.

14. Lamson's breaches of our partnership agreement, including secreting its assets, has made continuation of the EL Partnership untenable.

15. I have attempted to resolve this dispute amicably, but Lamson is unwilling to have an open, honest, and productive dialogue, insisting that he is entitled to call all the shots and I have no say whatsoever. Lamson recently cut me off from access to credit cards and discontinued regular distributions made to me to cover expenses. I was able to move some Partnership funds to a separate account to prevent Lamson from taking them, and for my support. I no longer have access to those funds and have been forced to take out loans from family members, including to pay our children's school tuition. Lamson, who has access to Partnership assets, always paid these expenses, but he has now refused. As described below, Lamson has taken steps toward his goal of freezing me out, and he has repeatedly told me over the past few months that he will leave me penniless.

16. In another example of his malice and harassment, Lamson recently "wiped" my iPhone of all of its data, including emails, texts and contacts, as he has control of the Apple account

that was paired with my iPhone. The data included information that concerns this case, including text messages and emails between Lamson and me, and communications with my attorneys. Even though my attorneys requested my “wiped” information be restored and returned, Lamson has refused and I am not certain the data exists any longer.

17. Lamson has also resorted to inflicting other types of emotional distress upon me, including by refusing to allow our youngest child to visit me where I presently reside. This is particularly spiteful, as Lamson knows I am recovering from alcohol dependency, having recently successfully completed a voluntary rehabilitation program.

18. By this action, in addition to seeking (a) accounting of Partnership assets and (b) dissolution, I also seek (c) damages for Lamson’s serial breaches of fiduciary duty, including making fraudulent transfers, breach of contract and unjust enrichment, and (d) an imposition of a constructive trust over all assets in which Lamson has an interest including real property, other investment property, and cash acquired during the twenty-five year (since 1996) Partnership. *See* Verified Complaint at NYSCEF No. 2.

19. By this application, I seek an order (a) restraining and enjoining Lamson from transferring or attempting to transfer Partnership assets without my knowledge or consent, (b) directing Lamson to restore the information he deleted from my iPhone and Gmail account, enjoining him from using any data he obtained from my iPhone and Gmail account, and allowing an inspection to ensure he has complied, and (c) directing that I may access EL Partnership funds held at Morgan Stanley as distributions to pay my expenses during the pendency of this action.

FACTUAL BACKGROUND¹

EL Partnership Formation and Scope of EL Partnership Business

20. I met Lamson in 1995 and we developed a romantic relationship.
21. In 1996, we formed the EL Partnership primarily to acquire properties and renovate or develop them into residences. Lamson had experience in demolition and I had experience in design and marketing. We agreed that I would provide conceptual, exterior and interior design services and Lamson would provide construction services. We would then sell the developed properties for a profit.
22. Lamson and I agreed that we would share equally in the profits and losses of our business.
23. As business partners and significant others, we trusted each other and agreed to work toward the mutual benefit of each other and our Partnership.
24. In or about 2005, once the EL Partnership had successfully renovated and sold a few projects, Lamson requested that I resign from my other job as President of a gallery and photo studio and instead focus on the Partnership and take on primary responsibility for raising our children.
25. Throughout the years, Lamson and I contributed time, skills, and capital to the EL Partnership, often using Partnership profits to reinvest in additional development projects.
26. In addition to providing interior design and staging services, I added significant value elsewhere, such as by locating the properties to develop, creating the overall conceptual design that informed and guided the renovation, and tapping my network of contacts to help market

¹ These facts are also set forth in the Verified Complaint dated September 11, 2020 (NYSCEF No. 2) and filed herein.

the properties and find potential buyers. I also hold a contractor's license which we use to carry out the EL Partnership renovation and development projects.

27. Lamson has primarily provided construction and management services, with access to contractors and investment partners to participate in projects.

28. As agreed, our living expenses are and have been paid for with distributions from the EL Partnership.

EL Partnership Assets

29. The EL Partnership owns, or has interests in, a number of companies and other assets, some of which are held solely in one or the other partner's name, but which are all beneficially owned by the Partnership. These include, but are not limited to: 330 Atlantic Ave Development LLC; Easy Wind L.L.C.; Fairmont Industries Supply, LLC, Fairmont Industries Inc. (also known as Fairmont Industries, Corp.); HTHP Leasing Inc.; Two Route 17 South LLC; Birdsong Farm located in Delhi, New York; 297 Pacific Street, Brooklyn; 110 North Atlantic, Beach Haven, New Jersey; 28 Sidney Avenue, Rutherford, New Jersey; and multiple bank and investment accounts at various institutions.

30. Lamson generally holds title to Partnership real property, which is purchased with EL Partnership funds and beneficially owned by the EL Partnership.

31. Some of the EL Partnerships' bank accounts and companies are jointly managed and held by us as partners, while others are maintained in one of our names.

32. 330 Atlantic Ave Development LLC ("330 Atlantic LLC") is a Wyoming limited liability company that the EL Partnership formed in June 2019, primarily to hold and manage the Partnership's investment in a development project that is presently under construction located at 330 Atlantic Avenue in Brooklyn, New York ("330 Atlantic"). I am listed as the sole owner of

330 Atlantic LLC, which owns an account at Morgan Stanley (the “330 Atlantic Account”) with a balance of approximately \$3.5 million. A true and correct copy of the formation documents on file with the Wyoming Secretary of State is attached hereto as **Exhibit A**. A true and correct copy of the 330 Atlantic Account opening documents are attached hereto as **Exhibit B**.

33. Both Lamson and I have management control of the 330 Atlantic Account which is presently “flagged” by Morgan Stanley, meaning neither of us can access the funds without mutual agreement or court order, pending resolution of this dispute. I understand that Morgan Stanley “flagged” the account after Lamson was caught impersonating me by submitting fictitious documents and demanding that Morgan Stanley transfer all funds to an account solely controlled by him. I also understand that Lamson later presented additional false documents to Morgan Stanley, insisted he had sole ownership and control of the 330 Atlantic Account, and again demanded that Morgan Stanley release the funds to him.

34. Easy Wind L.L.C. (“Easy Wind”) is a Delaware limited liability company formed in June 2015. I am listed as the sole manager of this entity. A true and correct copy of the Easy Wind formation documents on file with the Delaware Secretary of State is attached hereto as **Exhibit C**.

35. Easy Wind holds an account at Morgan Stanley of which I am the designated “key controller,” which Morgan Stanley defines as an “individual with significant responsibility to control, manage, or direct the legal entity”. A true and correct copy of the Easy Wind Account opening documents are attached hereto as **Exhibit D**.

36. Fairmont Industries Supply, LLC (“Fairmont Supply”) is another Partnership company. I believe Lamson is a managing member. This entity is used for various EL Partnership business and Lamson often directs funds coming into the Partnership, including proceeds of sales

of EL Partnership investments, to be deposited with Fairmont Supply. Lamson manages the Fairmont Supply bank account and checkbook (the “Fairmont Supply Account”). I am a signatory on the Fairmont Supply Account.

37. Another Partnership asset, Fairmont Industries Inc. (also known as Fairmont Industries Corp.) (“Fairmont Industries”) is a New York corporation formed in 2007. I understand that I am the sole shareholder of this company, but Lamson manages the finances. Lamson often has EL Partnership expenses and other debts paid from the Fairmont account held at Santander Bank, N.A. (the “Fairmont Industries Account”). Lamson controls the Fairmont Industries Account and its checkbook, but I am supposed to have joint access.

38. Another Partnership asset, HTHP Leasing LLC (“HTHP”) is a New Jersey limited liability company formed in December 2010. It is authorized to do business in New York as of March 2012. HTHP operates out of a stand-alone office and garage building located at 2 Station Square, Rutherford, New Jersey. HTHP owns three large trucks, each worth approximately \$500,000.

39. I understand that I am the sole managing member of HTHP and I hold the hauling license that HTHP uses to operate its business. The HTHP hauling license authorizes the Company to clean up demolished buildings and haul debris. HTHP’s business is lucrative and particularly useful to the EL Partnership because it handles hauling debris for our real estate projects and sells the collected scrap, such as copper piping, steel, wiring, other recyclable materials for a profit.

40. I handle the public records and licensing for HTHP, while Lamson manages the business’s day-to-day operations, including how its funds are used and disbursed. I understand that Lamson directs payments owed to HTHP to be paid instead to Fairmont Supply.

41. Two Route 17 South LLC (“Route 17 LLC”) is a New Jersey limited liability company formed in April 2013. I understand that I am one of the managing members of Route 17 LLC. I further understand that the company owns the building and land on which HTHP operates located at 2 Station Square, Rutherford, New Jersey. Lamson manages the operations and finances of Route 17 LLC.

42. The EL Partnership, through its operating companies, also holds leases for at least four other vehicles, including two Chevrolet Suburbans, a Range Rover, and Jeep Cherokee.

43. I understand that Lamson owns and/or controls other accounts which contain EL Partnership assets, including accounts at Morgan Stanley, Sterling National Bank, the Delaware National Bank of Delhi, Bank of America, TD Bank, and JPMorgan Chase.

EL Partnership Projects and Operations

44. EL Partnership has been involved in a number of development projects over the last twenty-five years. (*See the Verified Complaint which describes these activities in more detail.*)

Birdsong Farm

45. In 1996, Lamson and I located and purchased a farm in Delhi, New York with multiple structures. Both Lamson and I redeveloped this property, now known as Birdsong Farm. I designed the gardens and the interior spaces.

46. Birdsong Farm now is comprised of a 10,000 square foot home, guest house, modern horse barns for 45 horses, ponds, greenhouse, gym, yoga/gallery space and indoor pool. The main farmhouse is just about completed.

47. The property has been used for boarding horses and other purposes. Currently, through an arrangement with Cornell Cooperative Extension, it is home to a non-profit called the

Birdsong Farm Community Garden. In addition, other acreage on the property is licensed to a farmer who actively farms it.

48. Since 1996 we (later with our children) have lived on the farm from time to time, particularly on weekends and holidays.

49. Although Lamson is the record title holder of Birdsong Farm, it is beneficially owned by the EL Partnership.

297 Pacific Street, Brooklyn

50. In or around 2007, I searched for and located a property at 297 Pacific Street in Brooklyn, NY. Lamson and I purchased the property for \$2.2 million, using EL Partnership funds.

51. Thereafter, Lamson and I developed 297 Pacific Street, which was originally used as a carriage house, into 6,000 square feet of living space, plus a garage, including adding three stories to the front part of the house. The property is now estimated to be worth \$10-12 million.

52. Lamson and I cohabitated in the 297 Pacific Street property with our children until early to mid-2020.

53. Record title for 297 Pacific Street is held by Lamson, but for the benefit of the EL Partnership.

28 Sidney Avenue, Rutherford, New Jersey

54. In or around 2017 or 2018, we purchased an approximately 50% interest in 28 Sidney Avenue, in Rutherford, New Jersey from Lamson's mother. The property consists of the main house on the lower floor with a separate apartment on the upper floor. The EL Partnership has leased both living spaces which generate monthly rental income.

55. Lamson promised me that our interest in the 28 Sidney Avenue property would ultimately be deeded to me.

The 319, 321, 323 and 325 Pacific Street Townhouses

56. In or around 2013, the EL Partnership participated in a larger development project with venture partner Philip Mendlow and the owners of the Ace Hotel. We all worked together to acquire three vacant parking lots in Brooklyn for \$11 million and develop them into residences.

57. One of the three lots was developed into four townhouses by the EL Partnership and Mendlow located at 319, 321, 323, and 325 Pacific Street in Brooklyn, with the Partnership receiving 70% of the profits for all four. I managed the overall theme and design elements for all four townhouses with focus on the more detailed design elements for the two for which the EL Partnership was primarily responsible.

58. The townhouse at 323 Pacific Street sold for \$7,875,000 – the highest selling townhouse in Brooklyn in 2017. 319 Pacific Street sold for approximately \$5.9 million in March 2018, 321 Pacific Street sold for approximately \$5.75 million in December 2017, and the 325 Pacific Street sold for approximately \$6.4 million in April 2019.

59. The closing statement for the 325 Pacific Street townhouse indicates that in addition to the proceeds of the sale going to various contractors and vendors to pay expenses, Lamson received a “fee” of \$4,328,530.60 and “Fairmont” (the EL Partnership company described above) received a fee of \$150,000. Lamson has never accounted to me for the sale proceeds of any of these townhouses. A true and correct copy of the closing statement for 325 Pacific Street is attached hereto as **Exhibit E**.

60. I understand that Lamson instead transferred the proceeds from the Pacific Street Townhouses into a bank account or accounts that Lamson controls. I do not know the location of that account(s) or what happened to the money.

The 330 Atlantic Avenue Project

61. As mentioned above, the EL Partnership and Mendlow are currently under agreement to construct another residential development in Brooklyn, located at 330 Atlantic Avenue, and construction is underway.

62. The EL Partnership holds its interest in the 330 Atlantic venture through 330 Atlantic LLC.

63. As with the other residential development projects, I am responsible for the interior design of 330 Atlantic. Throughout the past few months and even during this litigation, Lamson has continued to reach out to me for design advice on this project.

64. The work permit issued by the NYC Department of Buildings for the 330 Atlantic development is issued to me on behalf of Fairmont Industries. I am listed as the general contractor for this project. A true and correct copy of the permit is attached hereto as **Exhibit F**.

65. Lamson informed my business counsel in late August that currently the 330 Atlantic development project is estimated to require an approximately \$2 million additional investment from the EL Partnership to complete, and it has approximately \$500,000 in outstanding invoices to various contractors and suppliers. Lamson has not provided me with these invoices.

66. As with all our other projects, Lamson and I are to share equally in the profits and losses of the 330 Atlantic project.

67. EL Partnership funds to be used for the development are held in the 330 Atlantic Account. I have no problem allowing these funds to be used for the project, provided there is a budget and any funds to be released are accounted for in documentation.

EL Partner Relations Break Down

68. Lamson and I have had a productive personal and business relationship until recently. In recent months, we have had an increasingly difficult time working together on EL Partnership business and in our personal relationship, often resulting in hostile exchanges.

69. In early May 2020, our relationship permanently broke down after an argument during which Lamson demanded that I leave Birdsong Farm where we had been staying during the COVID-19 pandemic. I left the following day and have not returned.

70. Shortly thereafter, and at Lamson and our children's suggestion, I voluntarily enrolled in an alcohol dependency rehabilitation program in East Hampton, New York. I completed the program in July 2020, but continue to receive counseling.

Lamson's Efforts to Take Control of and Diverts Assets from the Partnership Surface

71. Shortly after leaving Birdsong Farm, in or around June 2020, Lamson cancelled the credit card I used, claiming he disagreed with some of the medical treatment and prescriptions I received while in rehabilitation. Plainly this was to cut off my financial resources, so that I could not pay for the treatment and would continue to be dependent on him.

72. At that point I sought independent financial advice and began looking into the state of the EL Partnership's finances, which further upset Lamson.

Lamson Unsuccessfully Attempts to Drain the 330 Atlantic Account

73. On or around June 30, 2020, Lamson accessed a shared email account regularly used by both of us, birdsong5@mac.com (same account as birdsong5@me.com), and, without my knowledge or consent, emailed Adam Miller, an advisor at Morgan Stanley who handles the EL Partnership accounts there, and requested that Morgan Stanley "Please transfer all assets fro[m] 330 Atlantic account except \$5000.00 to the West Branch Management account." Lamson falsely signed the email "Kristen Eikenberry." The 330 Atlantic Account is controlled by Lamson and

me jointly, but West Branch Management, LLC (“West Branch”) is an entity solely controlled by Lamson which holds an account at Morgan Stanley (the “West Branch Account”) also solely controlled by Lamson. A true and correct copy of the June 30, 2020 email is attached hereto as **Exhibit G**.

74. Mr. Miller thereafter called me to confirm that I had made the transfer request. I told Mr. Miller that I had sent no such request and did not authorize the transfer. The account was thereafter “flagged” by Morgan Stanley until resolution of the dispute between Lamson and me. Morgan Stanley advised that the funds would remain “flagged” unless there was mutual agreement between Lamson and me, or court order. Although I have tried to reach an agreement with Lamson concerning use of and access to funds, we have been unsuccessful.

75. In another attempt to access the 330 Account, Lamson altered and falsified a digital copy of the Certificate of Formation for 330 Atlantic LLC filed with the Wyoming Secretary of State so as to indicate that he is the owner of that entity, when I am in fact the owner. A true and correct copy of a July 20, 2020 email Lamson sent to me attaching the falsified certificate that he claimed to be legitimate is attached hereto as **Exhibit H**. Compare Exhibit A (certified true copy listing me as the owner) with Exhibit H (listing Lamson as owner but bearing the identical time stamp as Exhibit A and on page 2 contains a signature for “Richard Lamson,” but a corresponding “Print Name” of “Kristen Eikenberry”).

76. I also understand that on or about August 26, 2020, Lamson provided a similarly altered, false document to Morgan Stanley to attempt to trick the bank into believing that the 330 Atlantic LLC funds should be released to him. Morgan Stanley notified me of this through my lawyer. A true and correct copy of the fake documents Lamson provided to Morgan Stanley are attached hereto as **Exhibit I**.

77. On or around August 12, 2020, in another effort to deprive me of the 330 Atlantic Account funds and gain control of that company, Lamson filed with the Wyoming Secretary of State a false annual report and a certificate of reinstatement listing himself as the member of 330 Atlantic LLC instead of me. A true and correct copy of the certificate of reinstatement Lamson filed (wrongfully listing himself as the member) and sent Morgan Stanley is attached hereto as **Exhibit J**.

78. I understand that on September 4, 2020, Lamson provided Morgan Stanley with an unsigned, undated, and false operating agreement for 330 Atlantic LLC, purporting that he is owner of that company, and the false annual report and reinstatement certificate, to deceive Morgan Stanley into thinking that Lamson is the owner of 330 Atlantic and demand the release of funds from that account. *See* Exhibit J.

Lamson Drains the Fairmont Industries Account

79. On or around July 14, 2020, and without my knowledge or consent, Lamson transferred, via certified check, the full balance of approximately \$1.2 million consisting of EL Partnership funds out of the Fairmont Industries Account which was jointly managed by both of us and held in the name of Fairmont Industries.

80. I do not know the location of the funds transferred from the Fairmont Industries Account. Lamson has not accounted to me for these funds, despite my (and my counsel's) requests that he do so.

Lamson Unsuccessfully Attempts to Drain the Easy Wind and My Personal Accounts

81. I understand further that around July 5, 2020, without my knowledge or consent, Lamson demanded Morgan Stanley release to him the funds held in the Easy Wind Account.

82. This instruction was contrary to records described above that Morgan Stanley had in its possession listing me as the account holder and as the sole member and manager of Easy Wind. *See* Exhibit D.

83. On or about July 13, 2020, also without my knowledge or consent, Lamson attempted to withdraw funds from the Easy Wind Account by writing large checks to our children in amounts of approximately \$75,000 and \$80,000 each. Morgan Stanley had already flagged the account as to Lamson and alerted me by phone regarding the checks, and so Lamson was unsuccessful in this attempt.

84. In response to Lamson's efforts to take the assets for himself, on or around July 16, 2020, I instructed Morgan Stanley to move the funds and assets held in the Easy Wind Account to my personal account there to preserve them. This process was complete on August 5, 2020.

85. On or about August 7, 2020, Lamson created through BizFilings.com, and without my knowledge or consent, an amended Easy Wind operating agreement listing himself as the sole owner of Easy Wind (the "Phony Easy Wind Agreement"). A true and correct copy of the Phony Easy Wind Agreement provided to Morgan Stanley is attached hereto as an attachment to **Exhibit K**.

86. I understand that on the same day, Lamson submitted the Phony Easy Wind Agreement to Morgan Stanley.

87. I further understand that, as a result of the Phony Easy Wind Agreement, Morgan Stanley froze my personal account on the basis that funds in that account came from the Easy Wind Account.

Lamson's Other Unauthorized Transfers and Attempted Transfers of Partnership Assets and Destruction of Partnership Records

88. Lamson has also removed and destroyed and/or is attempting to remove and destroy EL Partnership books and records and to dissipate other Partnership assets. On or around August 25, 2020, when I returned to 297 Pacific Street, I found that a number of EL Partnership books and records had been removed from the Partnership office there.

89. Lamson has cashed large checks, sometimes in the tens of thousands of dollars, made out to EL Partnership companies such as Fairmont Supply and Fairmont Industries and used the cash or otherwise transferred the funds out of the EL Partnership's reach, for Lamson's own personal benefit, and to prevent me from accessing these funds.

90. I am also aware that Lamson has deposited checks made out to 330 Atlantic and Fairmont Industries (entities over which I have direct management authority) into accounts held by West Branch Management or other companies for Lamson's personal use, to prevent me from benefitting from them. As mentioned, Lamson had accumulated \$500,000 in cash as of March 2020, but that money is now unaccounted for.

Lamson is Taking Manipulative, Vindictive, and Harassing Actions to Strong-Arm Me

91. Beginning in July 2020, my business lawyer communicated with Lamson to attempt to determine the full amount, value, and location of the EL Partnership assets, dissolve the EL Partnership amicably with full transparency. However, Lamson has responded negatively, often with anger, vulgar remarks, and profanity.

92. My communications with Lamson have similarly been unproductive, and vacillate between extremes: on the one hand, Lamson states that I am his partner, and that he needs me be his partner; and on the other, he has stated that he owes me nothing, that he will "starve" me, and that he intends to ensure that if the EL Partnership is dissolved I will wind up with nothing.

93. I understand Lamson has made similar remarks to my counsel, including stating to him that the money will “disappear” and that he is unconcerned with any consequences of removing it. In another example, on August 20, 2020, Lamson wrote to him, “Tell your client she will never win this war.”

Lamson Cut Me Off of Partnership Assets and Credit

94. Lamson has demonstrated he is intent on depriving me of funds and forcing me to resolve the dispute on his terms. First, as discussed, Lamson has taken steps to cut me off from all sources of financial support. He has drained accounts, cancelled the only credit card I used, discontinued all Partnership distributions that had been regularly made to me over the past 25 years, and transferred assets outside of the Partnership and beyond my reach. I had access to some cash to pay for my expenses since Lamson cut me off, but those resources are gone.

95. My counsel and I have tried on multiple occasions to negotiate with Lamson to come to an agreement so that Morgan Stanley can release some of the funds in my personal account as regular distributions to use for my expenses while we work to resolve our dispute, but Lamson has refused.

96. Meanwhile, while this dispute continues, as shown above, Lamson continues to exercise control over other Partnership assets, including spending significant sums on himself and others, all without my knowledge or consent.

Lamson Deletes My Electronic Data

97. Second, Lamson has removed and/or destroyed my electronic information. In particular, on or around July 9, 2020, I found that my Gmail e-mail account had been hacked into, the account password and secondary email changed, and a number of emails, including those with my business counsel, were deleted or missing. This hacking was traced to Delhi, New York where

Lamson is residing. True and correct copies of print outs tracking the changes to this email account including change of the recovery email to birdsong5@mac.com which is an address Lamson uses, are attached hereto as Exhibit L.

98. More recently, on or about September 28, 2020, Lamson “wiped” my iPhone, including deleting all contacts, photos, emails and text messages, which includes information that concerns this case. My iPhone, which Lamson had set up, was connected to his Apple ID, but I do not know the password. Apple has advised me that the iPhone was remotely wiped using Lamson’s Apple ID and password.

99. On October 1, 2020 my counsel wrote Lamson’s counsel, proposing a protocol for access to Partnership funds and requesting that Lamson provide the Apple ID and password so that I could attempt to retrieve my data. We have received no response to this request and Lamson apparently seeks to use his control over the account as some sort of ransomware. Instead, the next day, October 2, 2020, Lamson taunted me by text: “I have a good deal for you to get the AppleID. You must be sooo angry.” This text clearly indicates to me that he accessed and deleted my data. A true and correct copy of that text message is attached hereto as Exhibit M.

Lamson Uses our Children as Pawns

100. Third, and as is evident from this manipulation, Lamson is resorting to attempting to hurt me psychologically. In another example, Lamson is using our children as pawns in his “war” and as a bargaining chip. He has refused to pay our children’s school tuition (Syracuse University, Smith College, and Saint Ann’s School), even though he has paid tuition without incident in years past. Over the last two months our children and I have repeatedly asked him to release funds to pay for their tuition or, at least, allow funds in the 330 Atlantic Account to be used on an interim basis. Lamson has refused, stating that the only way he will agree to release funds

for tuition is if I agree to drop this case and take what he decides to give me. Lamson recently proposed through counsel that their tuition be paid out of one of the accounts at Morgan Stanley (which my lawyer proposed over a month ago), but he has conditioned that payment on his control over other Partnership assets. Meanwhile, each school has sent letters indicating that, without payment of the tuition, the child will not be able to continue attending. This situation has placed a tremendous amount of stress on both the children and me.

101. I also understand from my children that Lamson is calling me harsh and extremely derogatory and offensive names in front of them, and telling them that it is my fault that their tuition is not being paid, and that I have destroyed the family. In an extreme example, while my children were staying with me over the summer, Lamson told our fifteen-year-old daughter that he intended to kill himself if I did not reconcile with him.

102. More recently, on Saturday October 3, 2020, Lamson told me that he would not allow our fifteen-year-old daughter to stay with me, even though we had previously agreed that she would stay with me beginning Sunday, October 4, 2020, and even though the children have been freely moving between staying with Lamson and with me. I have not seen my daughter since.

103. Lamson's lawyers have also written false and defamatory letters about my character and physical state, not offering anything productive, but plainly designed to degrade me and break my resolve.

The Need for An Order to Allow Partnership Distributions to Pay My Expenses

104. As a result of Lamson's actions described above, I am without resources to pay my ordinary living expenses, including to support our children, which for years have come from EL Partnership distributions. I have been forced to use what remaining funds I have and my recently opened credit card, and to borrow from family members to cover expenses.

105. These sources, however, are insufficient to pay my ordinary living expenses. For the past two years I have incurred approximately \$30,000 per month in personal living expenses, not including any expenses related to housing or utilities. As I currently have no access to any itemized records of my expenses prior to July 2020, these are numbers are estimates only. I attach as **Exhibit N** a schedule of my approximate monthly expenses for the last few months since leaving the rehabilitation facility in July 2020. Based on my relatively new living situation, I have also estimated expenses I reasonably foresee I will have to incur going forward, which are also included on the schedule.

106. One of my larger expenses now is housing. To assist with my recovery from alcohol dependency, I secured a rental in July 2020 as a sober house near the rehabilitation facility in East Hampton, NY that is large enough to accommodate myself, two supportive sober roommates who stayed with me until the fall, and our children and dogs. Lamson was supportive of the rental and in July agreed to disbursements for it for July 21, 2020 through Labor Day. In August I was able to negotiate a lower off-season month-to-month rent for the same house beginning in September 2020, and Lamson disbursed funds to pay for the house through October 2020. As mentioned, he has since cut off access to funds and credit, including any further payment for rent, as our relationship has deteriorated during that time.

107. Since July, Lamson's threats have caused me to fear for my safety if I were to continue to live at either Birdsong Farm or the 297 Pacific residence, as Lamson stays at both locations.

108. I also have living expenses for food, auto maintenance, and personal care which have always been paid for with Partnership distributions, there are other expenses which I anticipate I will be required to pay beginning in the next month or so. For example, my health

insurance is on a company policy currently paid by Lamson, who has told me that the cost is approximately \$2,000 a month, but that he intends to remove me as an insured.

109. Another possible new expense is for use of an automobile. The lease on the Chevy Suburban I use ends this month. Although Lamson told me on October 13 that he would agree to extend the lease and insurance, without warning on October 17 he told me he wanted the car back, so I have estimated an expense for the possibility that I may need to lease or finance a new vehicle and obtain insurance. A true and correct copy of his October 17, 2020 text informing me of this is attached hereto as Exhibit O.

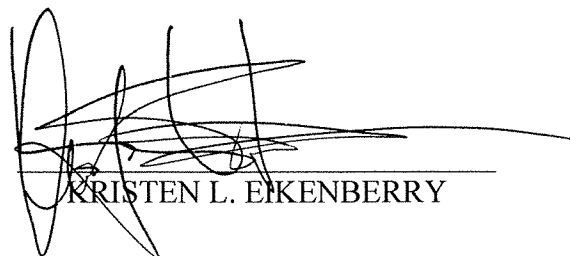
110. I also anticipate legal expenses in the amount of at least \$40,000 per month while this litigation is ongoing. Lamson's refusal to cooperate in sharing of and access to Partnership distributions and his deleting my electronic data has driven up my legal expenses substantially.

111. As is evident from the above, Lamson has access to and use of Partnership assets, and I do not. He is using that fact to retaliate against me, inflict pain on me, and to attempt to control me to obtain the outcome he desires.

112. In addition to existing accounts that Lamson controls, the \$1.2 million from the Fairmont Account which disappeared over the summer, and the approximately \$500,000 in cash that he accumulated, he regularly receives funds for HTHP's services. Lamson continues to use these Partnership assets, including to make disbursements to himself for his own living expenses, without my knowledge or consent and without any accounting to me for them.

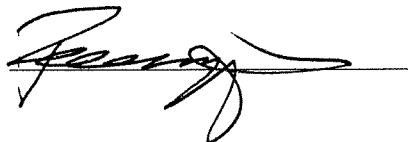
113. We have been partners for 25 years and the obligations created during that period do not disappear overnight, although Lamson is acting as though they did. At this point, the Court is needed to step in and protect the Partnership assets and me from Lamson's further waste and abuse.

WHEREFORE, to prevent further dissipation of the EL Partnership assets and to ensure that I am able to sustain myself financially through the course of this litigation, I respectfully request that the Court grant the relief sought in the order to show cause, and issue an order: (a) restraining Lamson from transferring Partnership assets without my knowledge or consent, (b) directing Lamson to (i) provide me with the Apple ID and password so I can attempt to restore the data he wiped from my iPhone, (ii) return to me the emails he took from my personal Gmail account and (iii) not use any data, included privileged data, he may have taken when accessing my Gmail account or iPhone, and to destroy any copies, and allow an inspection to confirm compliance with the order, (c) directing the release of Partnership distributions to me on an ongoing basis to cover my ordinary living expenses as set forth in Exhibit N, and (d) granting other relief the Court deems just and proper.



KRISTEN L. EKENBERRY

Sworn to before me this
19~~th~~ day of October 2020.




Robert DeStefano
 Notary Public, State of New York
 No. 01DE6321944
 Qualified in Suffolk County
 Commission Expires March 30th, 20~~22~~**23**

CERTIFICATE OF COMPLIANCE

This document complies with the 7,000 word limit set forth in Commercial Division Rule 17(i). This document contains 6,913 words, excluding the caption, table of contents, table of authorities and signature block. I have relied on the word count of the word processing system used to prepare this document.

/s/ James W. Perkins

James W. Perkins

Dated: New York, New York
October 19, 2020