

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. _____/2020

VERIFIED COMPLAINT

Plaintiff Kristen L. Eikenberry (“Plaintiff,” “Eikenberry,” or “Ms. Eikenberry”), by her undersigned counsel, for her Verified Complaint alleges as follows:

NATURE OF THE ACTION

1. By this action, Ms. Eikenberry seeks an accounting of the assets of the at-will business partnership (the “EL Partnership”) comprised of Eikenberry and defendant Richard Joseph Lamson (“Defendant” or “Lamson”), a dissolution of that Partnership, and a distribution of its assets based on her material contributions to the venture. As Lamson has concealed and transferred significant assets of the EL Partnership over time, Ms. Eikenberry seeks other relief, including (a) damages for Lamson’s serial breaches of fiduciary duty, including making fraudulent transfers, breach of contract and unjust enrichment, and (b) 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 relationship of the partners.

2. In or around 1996, Lamson and Eikenberry entered into their partnership which primarily involved 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 Eikenberry primarily contributed market intelligence, including identifying properties that would appreciate in value, overall concept and design, interior

design and maintenance of the properties, with the two agreeing to share equally in profits and losses. Eikenberry is and has been listed as owner on a number of limited liability companies the partnership formed for their development projects and, as owner, she obtained various building permits from the Department of Buildings using her contractor's license.

3. The EL Partnership has been very successful in its money-making endeavors, sometimes earning profits three or four times that of its initial investment. Their success has been featured in publications such as Vogue. To date, the EL Partnership has developed over eight projects, has one development project in process, and now owns real property and improvements in Brooklyn, upstate New York, and New Jersey. The partnership has significant other liquid assets, including investment and other accounts at various financial institutions.

4. In addition to their business relationship, since 1995 Lamson and Eikenberry have had a romantic relationship which continued (with short intermittent breaks) until recently. For the vast majority of their romantic and business relationship, Lamson and Eikenberry have co-habitated and have three minor children together (ages 15, 18 and 19) and a fourth child (age 21) from a previous relationship, but they have never married. As agreed, distributions from the EL Partnership have been made from time to time for the care of their children.

5. Recently, Lamson has increasingly determined to go his own way, bringing in other business partners without Eikenberry's knowledge or consent, using EL Partnership assets toward these projects, again without her knowledge or consent, and transferring or attempting to transfer EL Partnership assets outside of the EL Partnership, also without Eikenberry's knowledge or consent.

6. On information and belief (and unbeknownst to Eikenberry until recently), Lamson has diverted significant assets from the EL Partnership over time, including cash and investment

opportunities, even though Ms. Eikenberry has continued to remain responsible for her share of EL Partnership expenses. Lamson's actions breached not only their agreement of a 50/50 split in profit and loss, but also his fiduciary duties to Eikenberry as his partner.

7. As an example, in mid-July, 2020, unknown to Eikenberry and without her consent, Lamson emptied the approximately \$1.2 million in funds held in a corporate account at Santander Bank, N.A., which is jointly managed by the partners, and transferred the funds via certified check. The whereabouts of the diverted funds is currently unknown to Eikenberry. Lamson has also recently taken action to cut off partnership credit and other operating support to Eikenberry and to deprive her of access to other Partnership assets such as vehicles.

8. Lamson's willful breaches of the EL Partnership agreement, including secreting and transferring its assets, in breach of his fiduciary duties to Eikenberry, have made continuation of the EL Partnership untenable.

9. Ms. Eikenberry has attempted to resolve this matter amicably, but Lamson is unwilling to have an open, honest, and productive dialogue, insisting that he is entitled to call all the shots with respect to the EL Partnership and its assets. As Lamson has been, and is, dissipating EL Partnership assets, recently Eikenberry has been forced to take control of some of these assets herself to ensure they are preserved.

10. Consequently, Ms. Eikenberry seeks an accounting of EL Partnership assets, a judicial declaration dissolving the EL Partnership, establishment of a constructive trust over EL Partnership assets held by Lamson, and equitable division of Partnership assets in connection with the dissolution, and awarding money damages in Eikenberry's favor and against Lamson for his breaches of fiduciary duty, breaches of contract, unjust enrichment, and fraudulent conveyances, including his diverting assets away from the EL Partnership.

PARTIES

11. Plaintiff Kristen Eikenberry is a resident of New York State having an address at 297 Pacific Street, Brooklyn, New York.

12. Defendant Richard Lamson is a resident of New York State having an address at 297 Pacific Street, Brooklyn, New York.

13. Since 1996 Lamson and Eikenberry have been general business partners.

JURISDICTION AND VENUE

14. This Court has personal jurisdiction over Defendant Lamson pursuant to New York Civil Practice Law and Rules (“CPLR”) § 301.

15. Venue is proper in this Court pursuant to CPLR § 503 because the parties have resided in Kings County and a substantial part of the events or omissions giving rise to the claims in this action occurred in Kings County.

16. Venue is proper in this Court pursuant to CPLR § 507 because the action will affect title to, possession, use, and enjoyment of real property situated in Kings County.

FACTS COMMON TO ALL COUNTS

EL Partnership Formation and Scope of EL Partnership Business

17. Ms. Eikenberry and Lamson met in 1995 and began a romantic relationship.

18. At that time, Lamson owned a demolition company called Sunset Demolition, but it was neither buying, building, nor developing properties. He was living in a one-bedroom rental.

19. By the time she met Lamson, Ms. Eikenberry had graduated from Boston University with an English degree and had previously worked as a style editor for Conde Nast for seven years. In 1995, she was the President of a prominent business which operated both a gallery focusing on interior design and a high-profile photo studio.

20. As Lamson's and Eikenberry's relationship progressed, they sought to synergize business capabilities and eyed possibilities to pool their talents and resources.

21. In 1996, Eikenberry and Lamson decided to enter into the EL Partnership whereby they would primarily acquire properties and renovate or develop them into residences, with Ms. Eikenberry providing conceptual, exterior and interior design services and Lamson providing construction services and the EL Partnership then selling the developed properties for a profit.

22. The parties agreed as partners that they would share equally in the profits and losses of their business endeavors.

23. As business partners and significant others, each of Lamson and Eikenberry trusted the other and owed each a duty to act with the utmost good faith and loyalty toward the other for the mutual benefit of each other and the EL Partnership.

24. In or about 2005, once Eikenberry and Lamson had successfully renovated and sold a few projects, Lamson requested that Ms. Eikenberry quit her job as President of the gallery and photo studio and focus solely on the partners' projects purchasing, renovating, and selling properties, and take on primary responsibility for raising their children. She agreed and did so. This arrangement benefitted the EL Partnership, as Eikenberry was able to be more involved and available to work on EL Partnership business and in the raising the partners' children, while Lamson was able to focus on EL Partnership business.

25. Throughout the years, the partners contributed time, skills, and capital to the EL Partnership, often using Partnership profits to reinvest in additional development projects.

26. As part of their business, Eikenberry, in addition to providing interior design and staging services, also added significant value elsewhere, such as locating the properties to develop by assessing their potential, creating the overall conceptual design that informed and guided the

renovation, as well as tapping her network of contacts to help market the properties and find potential buyers. She also holds a contractor's license which is used to carry-out the EL Partnership renovation and development projects.

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

28. Lamson, generally takes title to Partnership real property in his name which is purchased with EL Partnership funds and is beneficially owned by the EL Partnership.

29. Some of the EL Partnerships' bank accounts and corporate entities are jointly managed and held by the partners, while others are maintained in the name of one of the partners, but are beneficially owned by the EL Partnership.

30. All of the EL Partnership's debts and liabilities, such as obligations to contractors, architects, legal services and the like are paid with EL Partnership funds.

31. The EL Partnership has engaged in multiple projects more fully described below.

EL Partnership Assets

32. The EL Partnership owns, or has interests in, a number of business entities 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 accounts held at various institutions.

33. 330 Atlantic Ave Development LLC (“330 Atlantic LLC”) is a Wyoming limited liability company that the EL Partnership formed in June 2019, 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. Upon information and belief, Ms. Eikenberry is 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.

34. Both partners have managerial control of the 330 Atlantic Account which is presently “red flagged” by Morgan Stanley, meaning neither partner can access the funds without mutual agreement or court order, pending resolution of the partners’ dispute. Upon information and belief, Morgan Stanley “red flagged” the account after Lamson was caught impersonating Eikenberry by submitting fictitious documents and requesting that Morgan Stanley transfer all the funds to an account solely controlled by him. Upon further information and belief, Lamson later presented additional false documents to Morgan Stanley, insisted he had sole ownership and control of the 330 Atlantic Account, and demanded that Morgan Stanley release the funds to him.

35. Easy Wind L.L.C. (“Easy Wind”) is a Delaware limited liability company formed in June 2015. Upon information and belief, Eikenberry is the sole owner of this entity. Easy Wind holds an account at Morgan Stanley of which Ms. Eikenberry is the “key controller,” which Morgan Stanley describes as an “individual with significant responsibility to control, manage, or direct the legal entity”. In or about August 2020, after Lamson attempted to access funds in the Easy Wind account without Eikenberry’s knowledge or consent, Eikenberry moved \$1.2 million from that account into her personal account at Morgan Stanley. Upon information and belief, Lamson has presented false documents to Morgan Stanley indicating that he is the sole owner of

Easy Wind and has demanded that Morgan Stanley release the funds to him, causing the Easy Wind Account to be “red flagged”.

36. Eikenberry’s personal account has also been “red flagged” as a result, and consequently, she cannot access any funds in that account.

37. Fairmont Industries Supply, LLC (“Fairmont Supply”) is a Delaware LLC of which, upon information and belief, Lamson is a managing member. Upon further information and belief, Anthony Minervini, an accountant used by the EL Partnership and Lamson, may also be a member of this entity. This entity is used for various EL Partnership business ventures and Lamson often directs funds coming into the Partnership, including proceeds of sales of EL Partnership investments, to be made to Fairmont Supply. Lamson controls and manages the checkbook for the bank account held by Fairmont Supply (the “Fairmont Supply Account”).

38. Fairmont Industries Inc. (also known as Fairmont Industries Corp.) (“Fairmont Industries”) is a New York corporation formed in 2007, that the EL Partnership has used in its various business ventures. Upon information and belief, Ms. Eikenberry is listed as the sole shareholder of this entity. Lamson manages the finances for this entity. Lamson often has EL Partnership liabilities paid from the account held by this entity at Santander Bank, N.A. (the “Fairmont Industries Account”). Lamson controls and manages the checkbook for the Fairmont Industries Account and has sole access to that Account.

39. HTHP Leasing LLC (“HTHP”) is a New Jersey limited liability company formed in December 2010, and 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 and/or controls three large trucks, each worth approximately \$500,000.

40. Upon information and belief, Ms. Eikenberry is the sole managing member of HTHP and holds 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 related to the EL Partnership's real estate projects and sells the collected scrap, such as copper piping, steel, wiring, other recyclable materials for a profit.

41. Ms. Eikenberry handles the public records and licensing for HTHP, while Lamson manages the business's day-to-day operations, including how its funds are used and dispersed. Upon information and belief, account receivables for HTHP are generally directed to paid to be Fairmont Supply.

42. Two Route 17 South LLC ("Route 17 LLC") is a New Jersey limited liability company formed in April 2013. Upon information and belief, Route 17 LLC's managing members are Ms. Eikenberry for the EL Partnership and Jeanine Minervini, the wife of Anthony Minervini. Upon further information and belief, Route 17 LLC owns the building and land on which HTHP operates. As between Eikenberry and Lamson, Lamson manages the operations and finances of Route 17 LLC.

43. The EL Partnership also holds leases to at least four vehicles.

44. Upon information and belief, Lamson has record title to, and/or management control of other entities, assets, and accounts which consist of, or are funded by, EL Partnership property, including, but not limited to, accounts at Morgan Stanley, Sterling National Bank, the Delaware National Bank of Delhi, Bank of America, TD Bank, and JPMorgan Chase.

45. All EL Partnership expenses are all paid with EL Partnership funds.

Notable EL Partnership Activities and Projects

Birdsong Farm

46. In 1996, the partners together located a farm in Delhi, New York which was improved with multiple structures. They purchased it and together tore down the original farm house structure, designed and built the new main house, and refurbished the barn to operate it as a business boarding horses and horse farm. The partners agreed that they would combine their resources to revitalize the property, use the property both for business and as a second weekend home, and share equally in the venture's profits and losses. The partners (and later with their children) cohabitated in the guest house while working on renovating the property overall and have regularly occupied the guest house, particularly on weekends and holidays since 1996.

47. Each of the partners contributed labor for the redevelopment of this property, now known as Birdsong Farm. In particular, Ms. Eikenberry designed the gardens and the interior spaces.

48. In 2003, Vogue magazine featured a piece on Ms. Eikenberry, noting her role in developing Birdsong Farm.

49. With investment from the EL Partnership, 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 to be completed.

50. Once the horse barns were refurbished, the partners began boarding horses there for a fee and operated that business for a number of years until recently when they determined to discontinue operations.

51. The property, however, has been and is used for a number of other purposes. Notably, through an arrangement with Cornell Cooperative Extension, the property 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 on the property.

52. Upon information and belief, the record title holder of Birdsong Farm is Lamson.

53. Birdsong Farm is beneficially owned by the EL Partnership.

The Boerum Hill Townhouse

54. In 2002, the partners purchased and renovated a townhouse in Boerum Hill, Brooklyn on Boerum Place between Dean and Pacific Streets.

55. The EL Partnership sold the Boerum Hill Townhouse shortly thereafter for a small profit.

56. While renovating the Boerum Hill property, Eikenberry and Lamson met Philip Mendlow (“Mendlow”), who would later participate with them in other development projects in Brooklyn.

The Beach Haven Project

57. In or around 2004, Lamson and Eikenberry, using EL Partnership assets, purchased for approximately \$500,000 two adjacent properties located at 444 Dock Road and 445 Centre Street in Beach Haven, New Jersey.

58. To develop these properties, the partners demolished the house located at the Dock Road address in order to create a larger yard for the house on the Centre Street parcel, and thereafter fully renovated the Centre Street house.

59. Eikenberry redesigned the interiors of the Centre Street residence.

60. In 2014, the EL Partnership sold the combined Centre Street and Dock Road properties for approximately \$2 million (400% of the original purchase price).

13 Harrison Street, Unit 1, Tribeca

61. In or around 2005, the EL Partnership, using EL Partnership funds, purchased from Mendlow for approximately \$1.5 million, a two-story loft condo unit located at 13 Harrison Street, Unit 1 in Tribeca, Manhattan. Record title to the unit was held in Lamson's name for the benefit of the EL Partnership.

62. The EL Partnership renovated this two-story loft using Eikenberry's design.

63. The partners cohabitated in the Tribeca condo with their children and in 2007, sold the unit for \$3.8 million.

297 Pacific Street, Brooklyn

64. In or around 2007, Ms. Eikenberry searched for and located a property at 297 Pacific Street in Brooklyn, NY, which at the time was not a commercially developed neighborhood. Ms. Eikenberry, however, saw potential in the neighborhood and the property and particularly in its large space. Eikenberry and Lamson purchased the property with EL Partnership funds for \$2.2 million.

65. Thereafter, the partners 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. To accomplish this, Ms. Eikenberry researched carriage house design and the history and architectural makeup of the neighborhood so that the 297 Pacific residence would be architecturally similar. The property is now estimated to be worth \$10-12 million.

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

67. The partners cohabitated in the 297 Pacific Street property with their children until early to mid-2020.

110 North Atlantic, Beach Haven, New Jersey

68. In or around 2015, the EL Partnership, using EL Partnership funds, purchased for approximately \$1 million a residential property located at 110 North Atlantic in Beach Haven, New Jersey, one block from the ocean. Together the partners redesigned the house and installed a pool. Ms. Eikenberry was fully responsible for the interior renovation, including redecorating the residence.

69. In or around 2017, the EL Partnership sold the 110 North Atlantic property for approximately \$2.7 million to their real estate agent, who bought it the same day it was slated to go on the market. The purchaser indicated to Eikenberry that he liked the interior design so much he intended to keep every element of the design.

28 Sidney Avenue, Rutherford, New Jersey

70. In or around 2017 or 2018, the EL Partnership purchased an approximately 50% interest in 28 Sidney Avenue, in Rutherford, New Jersey from Lamson's mother.

71. 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 and they generate rental income.

72. Lamson promised Eikenberry that the EL Partnership's interest in the 28 Sidney Avenue property would be deeded to her.

73. Lamson advised Eikenberry the remaining interest was to be deeded to Jeanine Minervini.

The Pacific and 330 Atlantic Street Developments

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

75. All investment funds and expenses for the EL Partnership's participation in the venture were paid for with EL Partnership funds.

76. The partners likewise agreed that the profits obtained from their participation in the development projects were to be shared equally between the partners.

First Lot: Schermerhorn Street

77. The owners of the Ace Hotel took over ownership of the first lot on Schermerhorn Street, with the EL Partnership providing the design for the lot's development in exchange for \$1 million, which will be due to the EL Partnership on its completion. The EL Partnership, primarily through Ms. Eikenberry's efforts, created a design concept for that lot which is based on the partners' 297 Pacific Street property and a carriage house theme.

Second Lot: 319, 321, 323, and 325 Pacific Street

78. On the second lot, located at 319, 321, 323, and 325 Pacific Street, Brooklyn, the EL Partnership and Mendlow constructed four residential townhouses. Mendlow was responsible for the design and development of the two located at 319 and 321 Pacific Street and the EL Partnership was responsible for the design and development of the other two located at 325 and 323 Pacific Street.

79. The EL Partnership, primarily Eikenberry, designed the townhouses choosing the carriage house theme that was similar to the 297 Pacific Street property. Ms. Eikenberry conducted additional research on the carriage house theme for the new residences so that they complimented

the neighborhood. Ms. Eikenberry also chose the more detailed design elements for the townhouses, including all materials, tile work, marble, finishes, flooring, bathrooms, kitchens, windows, and skylight.

80. The townhouse at 323 Pacific Street was completed first, but Mendlow was unable to sell it for over a year of attempting to do so. As a result, Ms. Eikenberry retained a realtor in her network and staged the townhouse. Within two weeks of Ms. Eikenberry's efforts, it sold for \$7,875,000 – the highest selling townhouse in Brooklyn in 2017.

81. The sale of 323 Pacific Street in May 2017 generated interest in the other townhouses owned by the Mendlow/EL Partnership venture, which were thereafter sold: 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 325 Pacific Street sold for approximately \$6.4 million in April 2019.

82. 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” (an entity owned by the EL Partnership) received a fee of \$150,000. These proceeds of this sale are EL Partnership assets, although Lamson has never accounted to Eikenberry for them.

83. The proceeds of sale of the other Pacific Street Townhouses allocable to the EL Partnership's investment in the development project are EL Partnership assets, although Lamson has never accounted to Eikenberry for them.

84. Upon information and belief, Lamson transferred the proceeds from the Pacific Street Townhouses which are EL Partnership Funds into a bank account for West Branch

Management, LLC (“West Branch”) held at Morgan Stanley (the “West Branch Account”), or other accounts that Lamson controls.

85. Upon information and belief, West Branch is a Delaware limited liability company formed in May 2002 and its sole managing member is Lamson. Upon further information and belief, West Branch may also be known as “West Branch Trust” or “West Branch Trust Company.”

Third Lot: The 330 Atlantic Avenue Project

86. The EL Partnership and Mendlow are currently under agreement to construct another residential development in Brooklyn, located at 330 Atlantic Avenue (“330 Atlantic”). That project is currently under construction.

87. As with the other residential development projects, Ms. Eikenberry has been and is responsible for the interior design of 330 Atlantic.

88. The EL Partnership holds its interest in the 330 Atlantic venture through 330 Atlantic LLC and funds the development with EL Partnership funds held in the 330 Atlantic Account.

89. The work permit issued by the NYC Department of Buildings for the 330 Atlantic development is issued to Ms. Eikenberry on behalf of Fairmont Industries.

90. Upon information and belief, Eikenberry is listed as the general contractor for this project.

91. Lamson’s responsibilities in the 330 Atlantic project are to manage the construction, including hiring all of the contractors.

92. Upon information and belief, currently the 330 Atlantic development project is estimated to require an approximately \$2 million investment from the EL Partnership to complete.

Upon further information and belief, the project has approximately \$500,000 in outstanding invoices to various contractors and suppliers.

93. As with all their other projects, the partners are to share in the profits and losses of the 330 Atlantic project.

EL Partner Relations Break Down

94. Throughout the years, the partners have had a productive personal and business relationship until recently.

95. In recent months, the partners have had an increasingly difficult time working together on EL Partnership business as well as in their personal relationship, often resulting in hostile exchanges.

96. In early May 2020, the relations between the partners permanently broke down after an argument during which Lamson demanded that Ms. Eikenberry leave Birdsong Farm where the partners had been staying during the COVID-19 pandemic. Ms. Eikenberry left the following day and has not returned.

Lamson's Breaches of Fiduciary Duty Surface

97. Shortly after leaving Birdsong Farm, in or around June 2020, Lamson cancelled the credit card Ms. Eikenberry used for operating expenses in order to cut off her financial resources and deprive her of the use of EL Partnership funds.

98. Ms. Eikenberry then sought independent financial advice and began looking into the state of the EL Partnership's finances, which upon information and belief further upset Lamson.

99. On or around June 30, 2020, Lamson accessed an email account used by both partners, and, without Ms. Eikenberry's knowledge or consent, emailed Adam Miller, a banker at

Morgan Stanley who handles the EL Partnership accounts held 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 signed the email “Kristen Eikenberry.”

100. The 330 Atlantic Account is controlled by Ms. Eikenberry and Lamson jointly and the West Branch Management Account is controlled solely by Lamson.

101. Mr. Miller thereafter called Ms. Eikenberry to verbally confirm that Ms. Eikenberry had made the transfer request. Ms. Eikenberry advised Mr. Miller “no”—she had sent no such request and did not authorize the transfer. The account was thereafter “flagged” by Morgan Stanley pending resolution of the partners’ dispute via mutual agreement or court order.

102. On or around July 14, 2020, and without knowledge or consent of Ms. Eikenberry, 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 the partners and held in the name of Fairmont Industries.

103. The whereabouts of the funds from the Fairmont Industries Account is currently unknown to Ms. Eikenberry.

104. Lamson has not accounted to Ms. Eikenberry for these funds, despite her requests that he do so.

105. In July 2020, Lamson also attempted to withdraw funds, without Ms. Eikenberry’s consent or knowledge, from a number of other jointly managed accounts holding EL Partnership funds held at Morgan Stanley by writing large checks to the partners’ children. Morgan Stanley had already flagged the accounts, however, and those accounts, including the 330 Atlantic Account, have been frozen pending resolution of the partners’ dispute.

106. Upon information and belief, in another attempt to remove and deprive Ms. Eikenberry of Partnership assets, Lamson has also intentionally 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, rather than Eikenberry, is the owner of that entity. Upon further information and belief, Lamson has provided that altered, false document to Morgan Stanley in an attempt to convince, trick, and defraud Morgan Stanley into believing that the 330 Atlantic LLC funds should be released to him.

107. Upon information and belief, Morgan Stanley has observed that the certified copy of the Certificate of Formation from the Wyoming Secretary of State has the same time stamp as the falsified document received from Lamson, and, upon information and belief, Morgan Stanley has demanded an explanation from Lamson in writing.

108. Upon information and belief, on or around August 12, 2020, in a further effort to deprive Eikenberry of the 330 Atlantic Account funds and gain control of 330 Atlantic LLC, Lamson filed with the Wyoming Secretary of State a false annual report and a certificate of reinstatement listing himself as the owner of 330 Atlantic LLC. Upon further information and belief, 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 330 Atlantic LLC, as well as the false annual report and reinstatement certificate, to deceive Morgan Stanley into thinking that Lamson is the owner of 330 Atlantic. Upon further information and belief, Morgan Stanley has requested that Lamson explain why the operating agreement is unsigned.

109. In response to Lamson's pattern of transferring partnership assets away from Eikenberry and attempting to remove others, Eikenberry has been forced to take control of EL Partnership assets herself to ensure they are not dissipated further. For example, on or around

July 16, 2020, Ms. Eikenberry, requested that Morgan Stanley transfer the funds in the Easy Wind Account to her personal account at Morgan Stanley. As alleged above, this account has been “red flagged” as holding disputed assets. In another example, Ms. Eikenberry holds partnership cash which she removed from the 297 Pacific Street premises.

110. Upon information and belief, in an attempt to cut off all of Ms. Eikenberry’s financial sources, further dissipate the EL Partnership’s assets and deprive Ms. Eikenberry of their benefit, Lamson demanded that Morgan Stanley release to him the funds that had been held in the Easy Wind Account but transferred to Eikenberry’s personal account there.

111. Upon information and belief this instruction was contrary to records Morgan Stanley has in its possession listing Ms. Eikenberry as the account holder and as the sole member and manager of Easy Wind.

112. Upon information and belief, on or about August 7, 2020, in a calculated attempt to overcome these records that do not permit Lamson to access the Easy Wind Account, Lamson created through BizFilings.com, and without Ms. Eikenberry’s knowledge or consent, an amended Easy Wind operating agreement listing himself as the sole owner of Easy Wind (the “Phony Easy Wind Agreement”).

113. Upon information and belief, on or around August 7, 2020, Lamson supplied the Phony Easy Wind Agreement to Morgan Stanley.

114. Upon further information and belief, as a result of the Phony Easy Wind Agreement, Morgan Stanley froze Ms. Eikenberry’s personal account on the basis that funds in her personal account came from the Easy Wind Account.

115. Upon information and belief, Lamson has removed and destroyed and/or is attempting to remove and destroy EL Partnership books and records and to dissipate partnership

assets. Upon returning to the partners' residence at 297 Pacific Street on or around August 25, 2020, Ms. Eikenberry found that a number of EL Partnership books and records had been removed from the Partnership office there, and approximately \$20,000 worth of jewelry and expensive handbags were missing.

116. Upon information and belief, Lamson, throughout the years, and without Ms. Eikenberry's knowledge or consent, has concealed and diverted other Partnership assets, or otherwise transferred or used EL Partnership assets for his own purposes and to prevent Ms. Eikenberry from accessing, using, or otherwise benefiting from those assets.

117. For example, upon information and belief, Lamson has cashed checks, sometimes in the tens and hundreds 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 the exclusion of Ms. Eikenberry.

118. Upon further information and belief, Lamson has deposited checks made out to 330 Atlantic and Fairmont Industries (entities which Ms. Eikenberry has direct management authority) into accounts held by West Branch Management (an account over which EL has no management authority) for Lamson's personal use and gain, to prevent Ms. Eikenberry accessing those funds or otherwise benefit from them, and thereby to transfer the assets away from the EL Partnership.

119. On information and belief, Lamson has forged Eikenberry's signature on a power of attorney and other documents, including as alleged herein.

Attempted Resolution of the Partners' Dispute

120. Since July 2020, Ms. Eikenberry and her counsel have approached Lamson in an attempt to determine the full amount, value, and location of the EL Partnership assets, dissolve the

EL Partnership amicably, and distribute the EL Partnership's assets. However, Lamson has responded negatively, often with anger, vulgar remarks, and profanity.

121. Ms. Eikenberry's communications with Lamson have similarly been unproductive, and vacillate between extremes: on the one hand, Lamson states that Eikenberry is his partner, that he depends on her to be his partner, and that he needs her be his partner; and on the other, that he owes her nothing, that he will "starve" her, and that he intends to ensure that if the EL Partnership is dissolved she will wind up with nothing.

122. Lamson has indicated that he is unwilling to engage in a productive dialogue to resolve the partners' dispute, dissolve the EL Partnership, and account and distribute the EL Partnership assets. In particular, on August 20, 2020, Mr. Lamson wrote to Ms. Eikenberry's counsel, "Tell your client she will never win this war."

123. To break the impasse, court intervention is therefore required to order an accounting, issue a declaratory judgment dissolving the EL Partnership, awarding Eikenberry damages for Lamson's fraudulent transfers of EL Partnership assets, breach of contract, unjust enrichment, and establish a constructive trust over real property and other EL Partnership assets in which Lamson continues to hold an interest.

FIRST CAUSE OF ACTION

(Accounting of the EL Partnership Assets Pursuant to NY PTR § 44)

124. Ms. Eikenberry repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs.

125. As a partner in the EL Partnership, Lamson and Eikenberry owe fiduciary duties to the EL Partnership and to each other.

126. As a partner in the EL Partnership, Lamson has been entrusted and has assumed management responsibility of certain aspects of the EL Partnership including its companies, accounts, title ownership of real property, and other assets. Lamson has also been entrusted to ensure that EL Partnership funds were and are used for EL Partnership purposes, and to properly report same to Ms. Eikenberry.

127. As a result of Lamson's self-dealing, including, but not limited to, Lamson's draining of the Fairmont Industries Account in the amount of \$1.2 million, cashing of checks and diverting of Partnership proceeds, diversion of proceeds from the sale of the Pacific Street townhouses, and removal of EL Partnership books and records from the partners' office, Lamson has repeatedly breached his fiduciary duties over time.

128. Ms. Eikenberry and her counsel have demanded an accounting from Lamson concerning all funds and other assets used or misused by him or others under his direction and control.

129. Lamson has failed and refused to provide Ms. Eikenberry with access to the books and records of all of the assets of the EL Partnership.

130. Lamson has failed otherwise to account for the EL Partnership property as Eikenberry has requested.

131. Ms. Eikenberry has no adequate remedy at law.

132. Ms. Eikenberry is entitled to an order directing Lamson to fully account for all EL Partnership assets pursuant to New York Partnership Law § 44 and the common law.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty)

133. Ms. Eikenberry repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs.

134. As a partner in the EL Partnership, Lamson owes a fiduciary duty to the EL Partnership and to Ms. Eikenberry.

135. As alleged herein, Lamson has breached his fiduciary duties owed to the EL Partnership and to Ms. Eikenberry including by transferring, and attempting to transfer, EL Partnership assets for his own use and to deny Ms. Eikenberry the benefits of the EL Partnership.

136. Lamson has breached his fiduciary duties owed to the EL Partnership and Ms. Eikenberry through his self-dealing, including, but not limited to Lamson's draining of the Fairmont Industries Account in the amount of \$1.2 million without Ms. Eikenberry's knowledge or consent, cashing of checks and diverting of partnership proceeds, and diversion of proceeds from the sale of the Pacific Street townhouses.

137. As a result of Lamson's breaches of fiduciary duties, Ms. Eikenberry has been harmed in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Breach of Contract)

138. Ms. Eikenberry repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs.

139. From the start of their relationship, the parties agreed that they would share the profits and losses generated during the relationship equally.

140. Lamson promised to provide certain services to support the EL Partnership and their personal relationship, including construction and building services and Eikenberry promised and did provide certain services to support the EL Partnership and their personal relationship, including design, marketing and sales services as well as child care services.

141. Both parties also contributed capital and agreed to share equally in all expenses related to the EL Partnership and their personal relationship, including everyday expenses.

142. In exchange for Eikenberry's services, Lamson promised that the parties would share all profits and losses generated during the relationship equally.

143. Lamson further promised that all assets held in his name, specifically including, but not limited to, Birdsong Farm and 297 Pacific Street, would be shared equally by the parties, notwithstanding title ownership.

144. On information and belief, Lamson has breached the parties' agreement by concealing and diverting funds away from the EL Partnership, including, but not limited to transferring approximately \$1.2 million from the Fairmont Industries Account outside of Eikenberry's reach, and contrary to the parties' agreement, to deprive Eikenberry of the benefit of the parties' agreement.

145. Eikenberry has performed under the parties' agreement, including but not limited to, sharing equally in all of the parties' expenses, providing design and marketing services to the EL Partnership, and in raising their children.

146. As a result of Lamson's breach of the parties' agreement, Eikenberry has been damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

147. Ms. Eikenberry repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs.

148. Lamson promised that, notwithstanding his record ownership, assets and interests held solely in Lamson's name would be owned by the EL Partnership.

149. In reliance on Lamson's promise, Ms. Eikenberry made considerable investments of time and money to the EL Partnership.

150. Ms. Eikenberry, through the EL Partnership has shared equally in the losses and expenses of the EL Partnership as agreed, without being provided an equal return.

151. On information and belief, Lamson owns other assets, entities, and property which have been funded, in whole or in part, with EL Partnership funds.

152. By keeping for himself, misusing, and wrongfully transferring and using assets of the EL Partnership which have been funded with EL Partnership funds, Lamson has been unjustly enriched at Ms. Eikenberry's expense.

153. It is against equity and good conscience to permit Lamson to retain more than his equal share of the EL Partnership assets, including but not limited to, assets held solely in Lamson's name, when Ms. Eikenberry has equally contributed to the Partnership through her work described above and having been responsible for half of the EL Partnership's expenses.

FIFTH CAUSE OF ACTION

(Constructive Trust)

154. Ms. Eikenberry repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs.

155. As a partner in the EL Partnership, Lamson owes a fiduciary duty to the EL Partnership and Ms. Eikenberry.

156. Lamson holds number of EL Partnership assets in his name or accounts in his name which hold partnership funds, including but not limited to, Birdsong Farm, 297 Pacific Street, Fairmont Supply, the Fairmont Supply Account, and on information and belief accounts at Morgan Stanley and other institutions.

157. Lamson promised that, notwithstanding that assets are held in his name, these assets, as well as other assets acquired in his name during the Partnership, would be owned by the EL Partnership.

158. In reliance on Lamson's promise, Ms. Eikenberry made considerable investments of time, services, energy, and money to the EL Partnership, including, but not limited to designing and renovating certain properties, assisting in selling and marketing certain properties, contributing EL Partnership funds to these assets, and performing household and child care services to allow Lamson to spend additional time and energy running the EL Partnership's businesses.

159. Notwithstanding Ms. Eikenberry's interest in these assets, Lamson is refusing to share them with Eikenberry as partners and has transferred significant assets away from Eikenberry and EL Partnership.

160. Lamson is being unjustly enriched by his record ownership of these assets held on behalf of the Partnership, but solely in his name, at Ms. Eikenberry's expense.

161. It is against equity and good conscience to permit Lamson to retain full record title ownership of these assets which have been funded, in whole or in part with EL Partnership funds.

162. Ms. Eikenberry is entitled a constructive trust over these assets, pending an equitable distribution representing her 50% interest in EL Partnership.

SIXTH CAUSE OF ACTION**(Fraudulent Conveyance Pursuant to New York Debtor and Creditor Law)**

163. Ms. Eikenberry repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs.

164. On information and belief, Lamson has intentionally and fraudulently conveyed and transferred funds out of the EL Partnership, including, but not limited to, Lamson's draining out of the Fairmont Industries Account in the amount of \$1.2 million without Ms. Eikenberry's knowledge or consent.

165. Upon further information and belief, Lamson has engaged in other fraudulent conveyances including cashing of checks and diverting of partnership proceeds into accounts and or entities owned solely by him including the West Branch Account, and transferring or diverting the proceeds from the sale of the Pacific Street townhouses out of the EL Partnership.

166. Upon information and belief, Lamson has intentionally made these transfers for the purpose of hindering, defrauding, and delaying Ms. Eikenberry from receiving the benefit of the EL Partnership assets.

167. Lamson has also made these transfers for the purpose of draining EL Partnership of its assets for his own benefit and self-dealing, and to render the EL Partnership insolvent and/or unable to pay what is owed to Ms. Eikenberry.

168. As a result of Lamson's fraudulent transfers, Eikenberry has been damaged in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION**(Dissolution of the EL Partnership Pursuant to NY PTR § 63)**

169. Ms. Eikenberry repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs.

170. Ms. Eikenberry and Lamson have continued an at-will partnership under New York law since 1996.

171. Ms. Eikenberry and Lamson agreed that all profits and losses of the EL Partnership would be shared equally by the partners.

172. Lamson has been willfully breaching the EL Partnership agreement among the partners, including by transferring, and attempting to transfer, EL Partnership assets to himself or third parties and, consequently, to deny Ms. Eikenberry the benefits of the EL Partnership.

173. Lamson has been conducting himself in matters relating to the EL Partnership which are not reasonably practicable for carrying on the business of the EL Partnership with him, including diverting assets, increasingly leaving Eikenberry out of the decision-making process, having constant disputes with Ms. Eikenberry and her counsel regarding EL Partnership business and threatening them.

174. Lamson has and is prejudicially and adversely affecting the EL Partnership, including by transferring, and attempting to transfer, EL Partnership assets to himself or third parties and consequently to deny Ms. Eikenberry the benefits of the EL Partnership.

175. Lamson is unwilling to amicably dissolve the EL Partnership without court intervention.

176. Given the nature of the EL Partnership and the partners' personal relationship, an accounting of EL Partnership assets and dissolution of the EL Partnership is necessary, appropriate, and equitable.

177. An actual and justiciable controversy exists governing the jural relations of the parties requiring the Court to declare the rights of the parties.

178. Plaintiff has no adequate remedy at law.

179. Ms. Eikenberry is entitled to court dissolution of the EL Partnership.

WHEREFORE, Plaintiff demands judgment in her favor:

180. As to the First Cause of Action, ordering an accounting from Lamson of all EL Partnership assets (i.e., all assets acquired since the EL Partnership formed in 1996), including, but not limited to, all assets held in Lamson's name and all assets transferred to third parties or otherwise used outside of the EL Partnership's business; and

181. As to the Second Cause of Action, a money judgment against Lamson, and in Ms. Eikenberry's favor, for damages in an amount to be determined at trial caused by Lamson's breach of fiduciary duty.

182. As to the Third Cause of Action, a money judgment against Lamson, and in Eikenberry's favor, for damages in an amount to be determined at trial caused by Lamson's breach of contract.

183. As to the Fourth Cause of Action, granting judgment in Eikenberry's favor awarding monetary damages, in an amount to be determined at trial caused by Lamson's unjust enrichment at Ms. Eikenberry's expense.

184. As to the Fifth Cause of Action, granting a constructive trust as to all interests in assets held in Lamson's name acquired during the duration of the EL Partnership in which Lamson is being unjustly enriched at Ms. Eikenberry's expense.

185. As to the Sixth Cause of Action, granting judgment in Eikenberry's favor awarding monetary damages, in an amount to be determined at trial caused by Lamson's fraudulent conveyances and awarding attorneys' fees incurred to recover same.

186. As to the Sixth Cause of Action, dissolving the EL Partnership between Ms. Eikenberry and Lamson; and

187. As to all Causes of Action, granting such other and further relief as the Court may deem just, equitable and proper.

Dated: New York, New York
September 4, 2020

Respectfully Submitted,

GREENBERG TRAURIG, LLP

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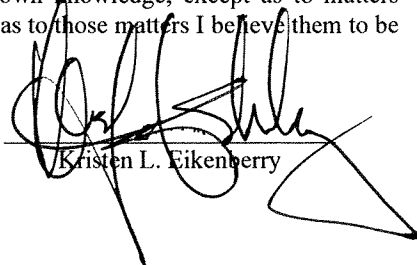
Attorneys for Plaintiff Kristen L. Eikenberry

VERIFICATION

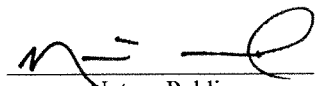
STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Kristen L. Eikenberry, being duly sworn, deposes and says:

I am the Plaintiff in the within action. I have read the within Verified Complaint and know the contents thereof and the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.


Kristen L. Eikenberry

Sworn to before me this
4th day of September, 2020


Notary Public

NIAL D WOOD
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01WO6388422
Qualified in Suffolk County
My Commission Expires: 3/4/2023